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**TASMANIAN INDUSTRIAL COMMISSION**

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

**Tasmanian Trades and Labor Council**
(T10886 of 2003)
Private and Public Sector Awards

**Tasmanian Trades and Labor Council**
(T10887 of 2003)
Private Sector Awards

**Tasmanian Trades and Labor Council**
(T10927 of 2003)
Private and Public Sector Awards

**Tasmanian Trades and Labor Council**
(T10928 of 2003)
Private Sector Awards

**FULL BENCH:**
PRESIDENT P L LEARY
DEPUTY PRESIDENT R J WATLING
COMMISSIONER T J ABEY

**Wage Rates – State Wage Case July 2003 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002003 – Safety Net Review – Award rates increased by $17 per week up to and including $731.80, $15 per week in award rates above $731.80 per week – Wage related allowances increased by 3.24% - Meal allowances increased to $12.30 – Supported Wage increased to $60 per week – Operative date ffpp 1 August 2003 – State Minimum Wage determined at $448.40 – s.35(1)(b) – Model Reasonable Hours Clause approved – Awards will be varied on application.**

**LICENSED CLUBS AWARD**

**ORDER BY CONSENT -**

**No. 1 of 2003**
**(Consolidated)**

CLAUSES 4, 5, 8, 9 and 24 ARE VARIED, AND THE AWARD IS CONSOLIDATED

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## 1. TITLE

This award shall be known as the "Licensed Clubs Award".

## 2. SCOPE

This award is established in respect of Clubs and Unlicensed Club Permits licensed under the *Licensing Act 1932*.

## 3. ARRANGEMENT


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## 4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2003.

## 5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No 1 of 2002 (Consolidated).

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

## 6. PARTIES AND PERSONS BOUND

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

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

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

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

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

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

(i) the Registered Clubs of Tasmania Co-operative Society Limited, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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

## 7. DEFINITIONS

(a) Introductory/Entry Level

**'Introductory/Entry Level**' shall mean a worker who enters the industry and is unable to meet the competency requirements of Grade 1 will remain in this level for a maximum of 494 hours. Provided that an additional 494 hours may be served at this level by mutual agreement between the employer and employee, and the union where such an employee is a union member. Further, if any disagreement arises from this provision it shall be determined in accordance with the disputes settling clause of this award.

(b) Hospitality (Food And Beverage/Kitchen)

**'Hospitality Service Grade 1'** shall mean an employee with at least 494 hours experience carrying our a broad range of functions at this level.

Duties include any or all of the below listed duties which are indicative of this grade, under supervision:

- cleaning and tidying of kitchen food preparation or customer services areas, including the cleaning of equipment, crockery and general utensils, as well as general cleaning duties in and around the employer's premises;
- assembly and preparation of ingredients for cooking including preparation of takeaway foodstuffs;
- handling, storing and distributing goods, including pantry items;
- setting and/or wiping down tables, removing food plates, emptying ashtrays and picking up glasses;
- providing general assistance to employees of a higher grade.

Shall not include service to customers.

**PROVIDED** that the following categories of employees, who would ordinarily be classified as Hospitality Service Grade 2, may perform the duties of Grade 2 under close supervision, and be paid as Hospitality Service Grade 1, to achieve the competency levels of Hospitality Service Grade 2:

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- An employee without previous experience in the relevant duties at Hospitality Service Grade 2 shall remain in this grade for a maximum of 60 hours actual service; or

- An employee with at least one years experience performing the relevant duties in Grade 2 and who has not been employed performing such duties in the immediately preceding two years or an employee with the appropriate level of training without previous industry experience performing the relevant duties in Grade 2 shall remain on this level for a maximum of 30 hours.

**PROVIDED ALWAYS** that this progression shall only apply to employees engaged to perform duties at Hospitality Service Grade 2.

**'Hospitality Service Grade 2'** shall mean an employee who has the appropriate level of training, undertaking functions at a level of complexity greater than Grade 1 and as applicable has completed the required service at Hospitality Service Grade 1.

Shall competently undertake any or all of the below listed duties under routine supervision and shall be responsible for ensuring the quality and accuracy of their own work but may be still training in aspects of the duties.

Duties include any of the following:

- heating prepared meals and/or preparing simple food items, such as sandwiches and salads;

- cooking of breakfasts and snacks, baking pastry, cooking or butchering;

- undertaking general waiting duties of both food and/or beverages, including cleaning of restaurant equipment, preparing tables and sideboards, taking customer orders, serving food and/or beverages and clearing tables, and under general supervision the greeting and seating of guests;

- supplying, dispensing or mixing of liquor, including cleaning of bar area and equipment, preparing the bar for service, taking orders and serving drinks;

- assisting in the cellar;

- receipt of monies;

- receiving, storing and distributing goods;

- engaged in delivery duties;

**'Hospitality Service Grade 3'** shall mean:

An employee who has the appropriate level of training undertaking functions at a level of complexity greater than Grade 2;

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Shall competently undertake any or all of the below duties with little or no supervision.

Duties include any of the following:

- undertaking general waiting duties of both food and liquor service including supplying, dispensing or mixing of liquor;
- non-cooking kitchen duties of a specialised nature;
- cooking duties including baking, pastry cooking or butchery;
- as Hospitality Service Grade 2 who is involved in the operation of mechanical lifting device or attending TAB terminal;
- taking reservations, greeting and seating guests;
- full control of a cellar or liquor store (including the receipt, delivery and recording of goods within such an area);
- mixing a range of sophisticated drinks;
- may provide guidance, supervision and training to employees at this or lower grades.

**'Hospitality Service Grade 4'** shall mean an employee who has completed an apprenticeship or who has passed the appropriate trade test.

Duties include any of the following:

- cooking (known as a Commis Chef), baking, pastry cooking or butchering;
- specialised skilled duties in a fine dining room or restaurant.

**'Hospitality Service Grade 5'** shall mean:

An employee who has completed an apprenticeship or who has passed the appropriate trade test and appropriate additional training;

Shall be engaged in the supervision and training of other employees including the development of on-the-job training for other employees.

Duties include any of the following:

- general or specialised cooking (known as Demi Chef), butchering, baking or pastry cooking and/or supervises and trains other cooks and kitchen employees;
- supervision, training and co-ordination of food and beverage staff or stock control for a bar or series of bars.

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**'Hospitality Service Grade 6'** shall mean:

An employee who has completed the appropriate level of trade and post-trade training;

Shall supervise, co-ordinate and/or train other kitchen staff.

Duties include any of the following:

- cooking (known as a Chef de Partie), baking, pastry cooking or butchering who carries out the ordering and stock control.

Shall also include a cook solely responsible for other cooks and employees in a single kitchen establishment.

(c) General Service (Including Guest And Leisure)

**'Guest Service Grade 1'** shall mean an employee undertaking the appropriate level of training with at least three months experience undertaking a broad range of functions at a level higher than that prescribed for the introductory level employee.

Duties include any of the following:

- laundry and/or linen duties which may include minor repairs to linen or clothing such as buttons, zips, seams, and working with flat materials;

- the collection and delivery of guests' personal dry-cleaning and laundry, linen and associated materials to and from accommodation areas;

- performs general cleaning duties (not in accommodation areas);

- parking guest cars;

- STORE PERSON - receives and stores general and perishable goods including cleaning of stores area.

- PERSON NOT OTHERWISE CLASSIFIED - included within this grade shall be any employee for which no specific grade exists in this award.

**'Guest Service Grade 2'** shall mean:

An employee undertaking the appropriate level of training;

Undertake a range of functions with little or no supervision.

Duties include any of the following:

- servicing accommodation areas and cleaning thereof;

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- receiving and assisting guests at the entrance to the establishment;
- transferring guests' baggage to and from rooms;
- driving a passenger or courtesy vehicle;
- providing butler services, basic food or beverage service and personalised guest service;
- assists in the maintenance of dress standards and good order at the establishment;
- HANDY PERSON - routine repair work and maintenance in and about the establishment.
- STORE PERSON - store duties outlined at Grade 1 and in addition may also operate a mechanical lifting equipment such as a forklift and/or may perform duties of a more complex nature.

**'Guest Service Grade 3'** shall mean:

An employee undertaking the appropriate level of training;

Shall competently undertake any or all of the below listed duties with little or no supervision or is carrying out duties at Grade 1 or 2 and is responsible for the training and supervision of other employees at lower grades.

Duties include any of the following:

- providing butler services, basic food or beverage service and personalised guest service;
- major repair of linen and/or clothing including basic tailoring and major alterations and refitting;
- dry-cleaning;
- timekeeping of staff, security of keys, checking in and out of delivery vehicles.

**'Greenkeeper Grade 1'** shall mean:

- a greenkeeper or gardener who attends and maintains a garden; and/or
- cares for the alignment, maintenance and satisfactory condition of all sporting and playing areas and may be required to operate machinery or equipment and carry out minor repairs and maintenance thereto.

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**'Greenkeeper Grade 2'** shall mean:

- A greenkeeper or gardener employee with the appropriate level of training undertaking functions at a level of complexity greater than Grade 1; and

- Shall competently undertake any or all of the duties outlined at Grade 1 with little or no supervision and may assist in the training and supervision of other employee/s. A non-trade greenkeeper, working alone shall be included at this grade.

**'Greenkeeper Grade 3'** shall mean a gardener or greenkeeper who has completed an apprenticeship or who has passed the appropriate trade test.

**'Greenkeeper Supervisor'** shall mean:

- A tradesperson, greenkeeper known as a Supervisor, Curator or Superintendent - in charge, who is responsible for the operation of an area and in charge of the greenkeeping or gardening area where more than one greenkeeper is employed;

- An advanced skill and/or supervisory course will have been completed.

(d) Administrative (Including Front Office)

**'Clerical Grade 1'** shall mean:

An employee undertaking the appropriate level of training with at least three months experience;

Shall competently undertake any or all of the below listed duties under direct supervision and will exercise minimal discretion:

- basic clerical and routine office duties including collating, filing, photocopying, delivering messages and typing and data processing.

**'Clerical Grade 2'** shall mean:

An employee undertaking the appropriate level of training;

- Carries out routine and repetitive functions, speed, accuracy and reliability expected. Limited decision making, may have responsibility for guidance of Grade 1 personnel and juniors. Calculations of moderately complex nature.

  Eg. Shorthand Typist, Switchboard Attendant (solely engaged), Telex Operator, Despatch Clerk, Production Clerk, Punch Card Operator, Verifier, Accountant Machine Operator.

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**'Clerical Grade 3'** shall mean an employee who has the appropriate level of training and who performs any of the following:

- operates adding machines, switchboard, paging system, telex machine, typewriter and calculator;

- uses knowledge of keyboard and function keys to enter and retrieve data through computer terminal;

- copy types at 25 words per minute with 98 percent accuracy;

- maintains mail register and records;

  - maintains established paper-based filing/records system in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations;

  - transcribes information into records, completes forms, takes telephone messages;

- acquires and applies a working knowledge of office or sectional operating procedures and requirements;

  - acquires and applies a working knowledge of the organisation's structure and personnel in order to deal with inquiries at first instance, locates appropriate staff in different sections, relays internal information, responds to or redirects inquiries, greets visitors;

- keeps appropriate records;

  - sorts, processes and records original source financial documents (eg. invoices, cheques, correspondence) on a daily basis; maintains and records petty cash, prepares bank deposits and withdrawals and does banking;

- and who has the appropriate level of training and also performs any of the following:

  - operates computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer, dictaphone equipment, typewriters;

  - produces documents and correspondence using knowledge of standard formats, touch types at 40 words per minutes with 98 percent accuracy, audio types;

  - uses one or more software application package(s) developed for a micro/personal computer to operate and populate a database, spreadsheet/worksheet to achieve a desired result; graph previously prepared spreadsheet; use simple menu utilities of personal computer;

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- follows standard procedures or template for the preceding functions using existing models/fields of information. Creates, maintains and generates simple reports;

- uses a central computer resource to an equivalent standard;

- uses one or more software package(s) to create, format, edit, proof read, spell check, correct, print and save text documents, eg. standard correspondence and business documents;

- takes shorthand notes at 70 words per minutes and transcribed with 95 percent accuracy;

- arranges travel bookings and itineraries, makes appointments, screens telephone calls, follows visitor protocol procedures, establishes telephone contact on behalf of executive;

- applies a working knowledge of the organisation's products/services, function, locations and clients;

  - responds to and acts upon most internal/external inquiries from own function area;

- uses and maintains a computer-based record management system to identify, access and extract information for internal sources;

  - maintains circulation, indexing and filing systems for publications, reviews files, closes files, archives files;

- maintains financial records and journals, collects and prepares time and wage records; prepares accounts queries from debtors; posts transactions to ledgers.

**'Clerical Supervisor'** shall mean:

An employee undertaking the appropriate level of training which requires a technical (may including accounting degree) and/or supervisory training;

Shall undertake a broad range of clerical functions including the total range of clerical and administrative functions utilising advance skills with little or no supervision and will supervise and be accountable for the work of other clerical employees and for the assessment and/or delivery of on-the-job training of other employees. Will include a professionally qualified accountant and chief clerk total responsibility for administration of an office.

(e) Definitions - General

**'Appropriate level of training'** shall mean:

(a) completion of a training course deemed suitable according to guidelines issued through Tasmanian Training Authority for that particular classification.

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After 1 June 1991 such course to be accredited by the Tasmanian Training Authority;

(b) that the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in (a) above, such assessment to be undertaken by a qualified skills assessor; or

(c) that for a transitional period until 1 January 1993, the employees can be deemed to have the appropriate level of training.

**'Casual employee'** means any person specially engaged to work on an irregular basis, as and when required by mutual consent between employer and employee, but does not include any person employed on a part-time or full-time basis.

**'Progression/promotion'** will be on the basis of the duties carried out by the employee and having acquired the skill and competency outlined in the appropriate level of training (subject to phasing-in period) and on being selected on merit when a position becomes available.

**'Union'** for the purposes of this award shall mean the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch thereof.

## 8. WAGE RATES

1. CAREER STRUCTURE/GRADES

(a) An adult employee of a grade specified in the table hereunder shall be paid the weekly wage rate assigned opposite the grade wage/salary.

| | | Base Rate Relativity | Base Rate $ | Safety Net Adjustment $ | Weekly Wage Rate $ |
|---|---|---|---|---|---|
| (i) | Introductory/Entry Level | 78 | 325.40 | 123.00 | 448.40 |
| (ii) | Hospitality (Food and Beverage Service/Kitchen) | | | | |
| | Hospitality Service Grade 1 | 82 | 342.10 | 123.00 | 465.10 |
| | Hospitality Service Grade 2 | 88 | 367.20 | 123.00 | 490.20 |
| | Hospitality Service Grade 3 | 92.4 | 385.50 | 123.00 | 508.50 |
| | Hospitality Service Grade 4 | 100 | 417.20 | 125.00 | 542.20 |
| | Hospitality Service Grade 5 | 110 | 458.90 | 125.00 | 583.90 |
| | Hospitality Service Grade 6 | 115 | 479.80 | 123.00 | 602.80 |

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(iii) General Service (Including Guest and Leisure)

| | | | | |
|---|---|---|---|---|
| Guest Service Grade 1 | 82 | 342.10 | 123.00 | 465.10 |
| Guest Service Grade 2 | 88 | 367.20 | 123.00 | 490.20 |
| Guest Service Grade 3 | 92.4 | 385.50 | 123.00 | 508.50 |
| Greenkeeper Grade 1 | 88 | 367.20 | 123.00 | 490.20 |
| Greenkeeper Grade 2 | 92.4 | 385.50 | 123.00 | 508.50 |
| Greenkeeper Grade 3 | 100 | 417.20 | 125.00 | 542.20 |
| Greenkeeper Supervisor<br>Head Greenkeeper | 110 | 458.90 | 125.00 | 583.90 |

(iv) Administration (Including Front Office)

| | | | | |
|---|---|---|---|---|
| Clerical Grade 1 | 90 | 375.50 | 123.00 | 498.50 |
| Clerical Grade 2 | 95 | 396.30 | 123.00 | 519.30 |
| Clerical Grade 3 | 100 | 417.20 | 125.00 | 542.20 |
| Clerical Supervisor | 120 | 500.60 | 123.00 | 623.60 |

(v) General Provisions

Notwithstanding the recognition of their career path streams, such streaming does not prevent employees undertaking duties across different streams.

**PROVIDED** that where work is undertaken at a higher grade and/or at a higher rate then Clause 25 - Mixed Function - Higher and Lower Grade Work applies.

**PROVIDED ALWAYS** that a person who is responsible for an apprentice shall be paid the trade rate.

**TRANSITIONAL PROVISION**: Any grade of work identified in Clause 7 - Definitions, for which there is not listed an appropriate classification and weekly wage rate in Clause 8 - Wage Rates, shall be paid the lowest wage rate listed at the appropriate grade.

This provision shall also apply to juniors, apprentices and trainees.

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## 2. APPRENTICES

The minimum weekly wage rate to be paid by employers to apprentices shall be the undermentioned percentages of the weekly wage rate as follows:

| Food and Beverage Trade Percentage of Hospitality Grade 4 - Trade Waiter | | Greenkeeping Trade Percentage of Green-keeper Grade 3 | | Kitchen/All Other Trades Percentage of Hospitality Grade 4 | |
|---|---|---|---|---|---|
| | % | | % | | % |
| 1st 6 months | 62 | First year | 42 | First year | 50 |
| 2nd 6 months | 76 | Second year | 55 | Second year | 65 |
| 3rd 6 months | 76 | Third year | 75 | Third year | 80 |
| 4th & 5th 6 months | 90 | Fourth year | 90 | Fourth year | 90 |

An apprentice, on completion of his/her apprenticeship, who is under the age of 20 shall be paid adult rates.

## 3. JUNIOR WORKERS

The minimum weekly wage rate to be paid to a junior employee shall be the undermentioned percentage of the appropriate adult weekly wage rate prescribed in subclause 1 hereof:

| | Administration based on Grade 2 | All Others based on appropriate grade |
|---|---|---|
| | % | % |
| Under 16 years of age | 40 | 60 |
| 16 to 17 years of age | 45 | 60 |
| 17 to 18 years of age | 55 | 60 |
| 18 to 19 years of age | 70 | 75 |
| 19 to 20 years of age | 80 | 90 |
| 20 to 21 years of age | 90 | 100 |
| 21 years of age | 100 | |

(a) Liquor Service

Junior male and female employees, on reaching the age of 18 years, may be employed in the bar or other places where liquor is sold, provided that, subject to a satisfactory training period not exceeding four weeks during which he or she receives the appropriate junior rate, such junior on the completion of this training period, is paid the adult rate for the work being performed.

However, such a junior, if required to work alone, or without supervision shall be paid the adult rate for the work being performed.
**PROVIDED** that when determining the weekly wage rate payable to an employee attaining the age of 21 years who has been employed as a junior clerk in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established applicable to private industry employees, experience obtained after reaching the age of 18 years shall be counted as adult experience.

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(b) Estimating Service

In estimating the number of years service of an employee, the total clerical experience in the service of every employer in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established applicable to private industry employees, shall be taken into account.

## 4. 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 5 - Supported Wage System is $448.40 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.

(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 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 2003 State Wage Case Decision (T.10887 of 2003) and all previous safety net and state wage case adjustments.

## 5. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

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

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

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

(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.

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**'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:

| Assessed capacity (paragraph (d)) | Percentage 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 $60 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 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 $60 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

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employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

## 9. AMENITIES DRESSING ROOM, TOILET ACCOMMODATION AND FIRST AID EQUIPMENT

Provision of the above facilities shall be in accordance with those prescribed in the *Industrial Safety, Health and Welfare Act 1977* and Regulations made thereto.

An employee who has undertaken a first aid course and who is the holder of a current recognised first aid qualification such as a certificate from St John's Ambulance or similar body shall be paid a weekly allowance of $6.10 per week if he or she is appointed by the employer to perform first aid duty.

## 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).

By agreement between the employee and the employer annual leave may be taken in more than one period.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 21 - Holidays with Pay hereof, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

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

(c) Calculation of Continuous Service

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

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

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(ii) Any absence from work on account of personal sickness or accident, and in calculating the period of 12 months continuous service, absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service.

(iii) Any absence with reasonable cause, proof whereof shall be upon the employee, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months continuous service.

(d) Proportionate Leave on Termination of Service

If after 3 months continuous service in respect of which leave has not been granted an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee he shall be paid at his ordinary rate of wage as follows:-

- thirteen and one third hours for each completed month of continuous service.

(e) Leave to be Taken

The annual leave provided for by this clause shall be allowed and taken.

(f) Payment in Lieu Prohibited

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

(g) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued. Where practicable, and unless otherwise mutually arranged between the employer and the employee, at least 2 weeks notice shall be given to the employee that his annual leave is to be taken.

(h) Payment for Period of Leave

All employees, before going on annual leave, shall be paid 28 days at the ordinary rate of pay, ie. Monday to Friday wage rate prescribed in subclause 1 of Clause 8 – Wage Rates. Part-time employees shall receive pro rata payment of this amount including the 7.5 per cent loading.

In addition thereto all employees other than casual employees, shall be paid an additional loading of 17.5 per cent to the amount prescribed in the paragraph above.

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## 11. ANNUAL SALARY

(a) As an alternative to being paid by the week according to Clause 8 - Wage Rates, by agreement between the employer and the employee an employee can be paid at a rate equivalent to an annual salary of at least 25 percent or more above the rate prescribed in Clause 8 - Wage Rates, times 52 for the work being performed.

In such cases there is no requirement under Clause 26 - Overtime, and Clause 30 - Penalty Rates, to pay overtime and penalty rates in addition to the weekly award wage.

**PROVIDED** that the salary paid over a year was sufficient to cover what the employee would have been entitled if all award overtime and penalty rate payment obligations had been complied with.

**PROVIDED ALWAYS** that in the event of termination of employment prior to completion of a year the salary paid during such period of employment shall be sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.

(b) An employee being paid according to subclause (a) herein shall be entitled to a minimum of eight days off per four week cycle.

**PROVIDED** that if an employee covered by this clause is required to work on a public holiday, such employee shall be entitled to a day off in lieu or a day added to his or her annual leave entitlement.

(c) Where payment in accordance with subclause (a) herein is adopted, the employer shall keep a daily record of the hours worked by an employee which shall show the date and start and finish times of the employee for the day.

The record shall be counter-signed weekly by the employee and shall be kept at the place of employment for a period of at least six years.

## 12. BOARD AND LODGING

The amount that may be deducted from the wages prescribed for adult employees shall be as follows:

(a) Board and Lodging - $50.00 per week

(b) Board only - $46.00 per week

(c) Lodging only - $ 3.00 per week

For persons not on adult wages the percentage of the adult rate as outlined in Clause 8 - Wage Rates, shall be applied when determining the above for such persons.

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The employer may deduct $2.50 for each meal supplied to the employee and $1.00 for both morning and afternoon tea.

An employee who is required by the employer to remain on the premises of the employer during a meal period shall either be supplied with a meal free of charge or the time so spent shall be counted as part of the 38- hour week.

## 13. BREAKAGES

An employer shall not charge a sum against nor deduct any sum from the wages of an employee in respect of breakages of crockery or other utensils except in the case of wilful misconduct.

## 14. BROKEN PERIODS OF WORK

All employees who have a broken work day shall receive an additional allowance for a spread of hours as follows:

(a) Two hours over the hours worked in a day and up to three hours - $1.30 per day.

(b) Three hours over the hours worked in a day - $2.00 per day.

## 15. CARER'S LEAVE

(a) Paid Carer's Leave

(i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 37 - 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.

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.

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.

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(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.

(c) Grievance Process

Clause 20 - Grievance Procedure, of this award also applies to a dispute about the operation or effect of this clause.

## 16. CASUAL EMPLOYEES

A casual employee (as defined) shall be engaged for a minimum period of two hours and each engagement shall stand alone. Payment for casual work shall be on the basis of one thirty-eighth of the appropriate weekly wage prescribed in Clause 8 - Wages Rates, plus:

(a) 25 percent for work Monday to Friday inclusive provided that for work performed between the hours of 7.00 pm and midnight an additional $1.03 per hour or any

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part of an hour shall be paid with a minimum daily payment of $1.57 and a maximum daily payment of three hours.

**PROVIDED** that for work performed between midnight and 7.00 am , an additional $1.50 per hour or any part of an hour shall be paid with a minimum daily payment of $1.57 and a maximum daily payment of three hours. For the purposes of this subclause midnight shall include midnight Sunday.

(b) 50 percent for all work performed on Saturday;

(c) 75 percent for all work performed on Sunday;

(d) 150 percent for all work performed on public holidays.

## 17. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days.

**PROVIDED** that no payment shall be made in respect of an employee's rostered days off.

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

**PROVIDED ALWAYS** that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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.

## 18. DAYS OFF COINCIDING WITH PUBLIC HOLIDAY

An employee shall not be required to take a rostered day off on any of the holidays prescribed by Clause 21 - Holidays with Pay, hereof unless one of the following provisions apply:

(a) one day with pay added to the annual leave;

(b) payment of one day's pay shall be made to the employee on the next succeeding pay day;

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(c) such holiday may be allowed off with pay to the employee within 28 days after such holiday falls;

(d) one of the above methods must be mutually agreed upon by the employee and the employer, failing such agreement the provisions prescribed in subclause (a) herein shall apply;

(e) one of the above methods must be mutually agreed upon by the employee and the employer, failing such agreement the provisions prescribed in subclause (a) herein shall apply;

(f) for the purposes of calculation one day for a part-time employee shall be:

$$\frac{\text{total number of hours worked in the 4 week period prior to the public holiday}}{\text{number of days worked}}$$

giving the average number of hours worked each day.

## 19. EXISTING WAGE RATES

Any employee who is at the date of this award 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, including overaward payments and back payments.

## 20. GRIEVANCE PROCEDURE

with respect to each of the employers covered by this award, disputes or grievances between it and its employees or any of them shall be settled in accordance with the procedures set out below:

(a) Any grievance, claim or dispute which arises shall, where possible, be settled by discussion on the job between the employee and the management.

(b) If the matter is not resolved at this level, the matter will be further discussed between the affected employee, the union delegate and the management.

(c) If no agreement is reached, the relevant union organiser and delegate will discuss the matter with representatives of the employer.

(d) Should the matter still not be resolved the following procedures may be followed:

(i) A joint discussion shall be held between representatives of the Licensed Clubs Association and/or Tasmanian Chamber of Commerce and Industry Limited and the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch;

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(ii) If the matters are not finalised they shall be referred to the Industrial Commission.

(e) Whilst the foregoing procedure is being followed work shall continue normally without bans or limitations.

Where it is agreed that there is an existing custom work shall continue in accordance with that custom, but in other cases, the work shall continue in accordance with the direction of the company.

No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.

## 21. HOLIDAYS WITH PAY

(a) All employees (other than casual 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.

(b) An employer may, by agreement with the employee, work that employee on any public holiday prescribed in subclause (a).

**PROVIDED** that an agreed substitute day off is provided at the penalty equivalent (time and one half).

The substitute day shall by agreement between the employer and employee be taken either within 28 days of the entitlement being accrued or as an addition to annual leave.

(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 holidays, he had been at work.

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

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

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## 22. HOURS

(a) Ordinary Hours

The hours of all permanent full-time employees shall be an average of 38 hours per week to be worked on the following basis;

(i) (1) eight hours per day on four days and six hours on one day in each week.

(2) eight hours per day on nine days and four hours on one day in each fortnight; or

(3) eight hours per day on nineteen days with accumulated rostered leisure time in form of a rostered leisure day in each four week period; or

(4) eight hours per day, with an accumulation of rostered leisure time in form of rostered leisure days that can be stored up to a maximum of seven before being taken; or

(5) By arrangement between the employer and the employee and/or the union, the arrangements of hours of work can be implemented within any one or combination of the following:

- 152 hours per each four week period; or,
- 160 hours per each four week period, with a day banked per period up to a maximum of five.

(ii) The hours of work arrangements agreed upon in subparagraph (e) hereof shall be within a minimum period of 6 hours and a maximum of 12 hours per day and shall be exclusive of meal break intervals, subject to Clause 23 - Meal Periods.

**PROVIDED** that where shifts of more than 10 hours per day are rostered for work, employees working such hours cannot be rostered for work on more than three consecutive days without a break of at least 48 hours.

**PROVIDED ALWAYS** that no more than eight shifts of more than 10 hours can be worked in a four week period without consultation with the State branch of the union.

In relation to this paragraph, an employee shall be entitled to 8 full days off per four week period.

No employee shall work more than ten (10) days in succession without a rostered day off.

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(b) Spread of Hours

The time worked, exclusive of meal breaks, shall be worked within a spread of 10 hours from commencing time except for employees covered by the provisions of subparagraph (a)(ii)(e) hereof.

(c) Minimum Break between Shifts

The roster for all employees on weekly hire shall provide for a minimum of ten hours break between the finish of ordinary hours on one day and the commencement of ordinary hours on the following day.

In the case of changeover of rosters, eight hours shall be substituted for ten hours.

(d) Wage Entitlements

Employees shall be entitled to a week's wages in accordance with Clause 8 - Wage Rates, of this award for each of week of work.

Notwithstanding the provision of this subclause, an employer may, subject to agreement with the employee pay wages fortnightly according to the actual hours worked in that fortnightly pay period.

(e) Pay Day

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

(f) Special Provisions for Banking of Days

(i) Where a rostered day off which has resulted from the method of implementations of the 38 hour week set out in the subclause (a) hereof falls on a public holiday, the following day may be taken where practicable in lieu thereof.

(ii) Each day of paid leave taken (not including annual leave, long service leave and periods of worker's compensation) and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.

(g) Payment in Lieu of Accumulated Leisure Time

An employee who has not worked a complete four week cycle in order to accrue a rostered day off shall be paid a pro rata amount for credit accrued for each day worked in such cycle payable for the rostered day off (ie. an amount of 24 minutes for each eight hours worked or two hours for each 40 hours worked.

Likewise an employee that has "banked" the maximum number of days as outlined in subclause (a) shall have any subsequent accruals paid out in the same manner.

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(h) Implementation of Hours

(i) In such establishment, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the subjective being to reach agreement on the method of implementation. A representative of the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch, and the relevant employer association may join in such consultation.

(ii) If agreement cannot be reached on the Method of Implementation, the procedures as outlined in Clause 20 - Grievance Procedure, shall apply.

(iii) The Method of Implementation shall be notified in writing to the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch, and the relevant employer association.

(iv) Where notification of the Method of Implementation is not given in accordance with paragraphs (ii) and (iii) of this subclause, the Method of Implementation shall be as prescribed in subparagraph (a)(i)(4) for all provisions of this award.

**PROVIDED** that the arrangement shall be notified by the employer to the Registrar of the Industrial Commission. Such arrangements that were notified or existed prior to 1 April 1991 shall remain in existence unless otherwise determined in accordance with this subclause.

(i) 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 a later time, during the spread of ordinary hours 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

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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, as prescribed in Clause 41 - Time and Wages Records/Award, of this award each time this provision is used.

(j) 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 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.

(v) Once a decision has been taken to introduce an enterprise system of Rostered Days Off 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 Rostered Days Off arrangements in the time and wages book, as prescribed in Clause 41 - Time and Wages Records/Award.

## 23. MEAL PERIODS

(a) Each employee shall be granted a meal interval of not less than 30 minutes to be commenced after completing not less than one hour and not more than six 6 hours of duty.

**PROVIDED** that where it is not possible to grant the meal interval on any day, the said meal interval shall be treated as time worked and be paid at the rate of the day plus half time additional at the ordinary weekly rate until released for a meal or end of shift.

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**PROVIDED ALWAYS** that when an employee is required to work in excess of five 5 hours after the first meal interval he or she shall be granted a further meal interval of twenty minutes to be treated as time worked.

Where a rostered meal break requires an employee to work for more than six hours before such a meal break, then an employee shall be allowed a 20 minute break without loss of pay during such work period at a time suitable to the employer.

(b) Notwithstanding the provisions of subclause (a) hereof, employees rostered to work more than ten 10 ordinary hours in a shift shall be entitled to a paid 20 minutes rest break in addition to an unpaid meal break of at least half an hour. In rostering for these breaks the employer shall make all reasonable efforts to provide these breaks at a time which gives the employee an even mix of work time and breaks.

(c) Where an employee is required to work overtime and such overtime follows the completion of the employee's normal hours of work a 20 minutes paid meal break shall be allowed where such overtime exceeds two hours work.

## 24. MEAL (TEA) MONEY

An employee required to work overtime for more than one and a half hours and who has not been notified the day before that he or she will be so required to work shall be paid $12.30 for each meal or be provided with a meal, without charge, by the employer.

**PROVIDED** that a meal allowance will only be paid in circumstances whereby an employee has worked at least six hours in ordinary time prior to the commencement of the overtime.

## 25. MIXED FUNCTIONS - HIGHER AND LOWER GRADE WORK

Employees, including casual employees, performing more than one class of work in any one day, shall be paid the rates applicable to the various classes of work performed. The minimum payment for the highest rate shall be two hours in any one day.

**PROVIDED** that the provisions of this clause shall not have the effect of reducing an employee's wage rate below his normal rate of pay.

## 26. OVERTIME

(a) For all time of duty in excess of the ordinary hours of duty per day and/or outside the spread of hours or outside the rostered hours prescribed in Clause 22 - Hours, payment shall be made at the rate of time and a half for the first two hours and double time thereafter. In computing overtime each day's work shall stand alone.

(b) For all time of duty on an employee's rostered days off, payment shall be made at the rate of double time with a minimum as for four hours.

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(c) For overtime and work outside the spread of hours and performed on a Saturday payment shall be made at the rate of time and three quarters for the first two hours and double time thereafter.

(d) Sunday Work - All time worked on a Sunday shall be paid for at the rate of double time subject to Clause 30 - Penalty Rates.

**PROVIDED** that notwithstanding the rate prescribed in this clause for overtime at the instigation of the employee there may be an agreement in writing between the employer and the employee to take time off with pay equivalent to the amount for which payment would otherwise have been made. Such accumulated time must be taken within four weeks from the time of accrual.

An employer shall, if requested by the employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause, for any overtime worked where such time has not been taken within four weeks of accrual.

## 27. PARENTAL LEAVE

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

### PART A - MATERNITY LEAVE

(a) Nature of Leave

Maternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

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(c) Eligibility for Maternity Leave

(i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

(ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.

(iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

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

(ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

(i) An employee shall, not less that ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).

(ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).

(iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

(iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

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(f) Transfer to a Safe Job

Where in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (j), (k), (l) and (m) hereof.

(g) Variation of Period of Maternity Leave

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

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

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

(ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

(i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

(ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(i) Special Maternity Leave and Sick Leave

(i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:

(1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or

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(2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

(ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.

(iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.

(iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

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

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

(k) Effect of Maternity Leave on Employment

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

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(l) Termination of Employment

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

(ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

(i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

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

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## PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

**'Maternity leave'** means leave of the type provided for in Part A - Maternity Leave (and includes special maternity leave).

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

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

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

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

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

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for Paternity Leave

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

(i) an unbroken period of up to one week at the time of confinement of his spouse;

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

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

(d) Certification

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

(i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;

(ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

(1) he will take that period of paternity leave to become the primary care-giver of the child;

(2) particulars of any period of maternity leave sought or taken by his spouse; and

(3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

(i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.

(ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:

(1) the birth occurring earlier than the expected date; or

(2) the death of the mother or the child; or

(3) other compelling circumstances.

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

(f) Variation of Period of Paternity Leave

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

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

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

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

(g) Cancellation of Paternity Leave

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

(h) Paternity Leave and Other Leave Entitlements

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

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

(i) Effect of Paternity Leave on Employment

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

(j) Termination of Employment

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

(ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

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(k) Return to Work after Paternity Leave

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

(ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(l) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

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

## PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

**'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

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

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

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

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

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

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

(ii) any period of part-time employment worked in accordance with this clause, or

(iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility

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

(i) an unbroken period of up to three weeks at the time of the placement of the child;

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

(1) any period of leave taken pursuant to paragraph (i) hereof; and

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

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

(d) Certification

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

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(i) (1) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:

(e) Notice Requirements

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

(2) particulars of any period of adoption leave sought or taken by the employee's spouse; and

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

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

(ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

(iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.

(iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and

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(iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave

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

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

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

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

(g) Cancellation of Adoption Leave

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

(ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

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

(i) Adoption Leave and Other Entitlements

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

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

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

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

(l) Return to Work After Adoption Leave

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

(ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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

(m) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary

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nature of the promotion or transfer and of the rights of the employee who is being replaced.

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

## PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

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

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

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

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

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

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(b) Entitlement

with the agreement of the employer:

(i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

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(iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.

(iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

(i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

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

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

(e) Pro Rata Entitlements

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

(f) Transitional Arrangements - Annual Leave

(i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

(ii) (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent

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necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

(i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:

(1) that the employee may work part-time;

(2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(3) upon the classification applying to the work to be performed; and

(4) upon the period of part-time employment.

(ii) The terms of this agreement may be varied by consent.

(iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

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

(i) Termination of Employment

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

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

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(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

(i) limiting the number of employees who may work part-time;

(ii) establishing quotas as to the ratio of part-time to full-time employees;

(iii) prescribing a minimum or maximum number of hours a part-time employee may work; or

(iv) requiring consultation with, consent of or monitoring by a union;

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

(m) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.

(ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.

(iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a)(v) hereof.

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

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## 28. PART-TIME EMPLOYEES

A part-time employee may be engaged in any of the classifications outlined in Clause 8 - Wage Rates.

**PROVIDED** that such employee accepts employment on the following terms:

(a) The ordinary hours of work of part-time employees shall be; not less than 3 hours and not longer than 8 hours per day, not less than 2 days a week and not more than 5 days a week, not less than 9 hours a week and not more than 35 hours a week.

All time worked in excess of the hours outlined in this subclause shall be overtime and paid for at the rates prescribed in Clause 26. Preference of employment for increased hours shall be given to current part-time employees, up to the limits prescribed in this subclause over employing casual employees.

**PROVIDED** that such part-time employees accept said hours.

(b) (i) Payment for part-time work shall be based on the ordinary hourly rate determined by dividing the appropriate weekly wage rate of the classification in which the employee is working by 38, an additional 7.5 percent shall apply. This 7.5 percent shall be regarded also as ordinary wages for the payment of annual leave, compassionate leave, sick leave and work not performed on a holiday.

(ii) A part-time employee who is required to work any of his/her ordinary hours between the hours of 7.00 pm and midnight Monday to Friday inclusive shall be paid an additional $1.03 per hour of part of an hour for such time worked within the said hours plus the 7.5 percent herein prescribed with a minimum daily payment of $1.57 for any one day.

(iii) A part-time employee who is required to work any of his/her ordinary hours between midnight and 7.00 am Monday to Friday inclusive shall be paid an additional $1.50 per hour or part of an hour for such time worked within the said hours plus the 7.5 percent herein prescribed with a minimum daily payment of $1.57 for any one day. For the purposes of this paragraph midnight shall include midnight Sunday.

(iv) The additional 7.5 percent shall not apply where part-time employees are employed for a specific number of hours each week as follows:

Specific Hours Employee

(1) The specific number of hours for such part-time employees shall be not less than 12 hours and not more than 32 hours each week and not less than 3 hours and not longer than 8 hours each day to be worked in not more than 5 days each week.

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(2) All time worked in excess of the rostered hours each day and the specific number of hours each week shall be overtime and paid for at the rates prescribed for other weekly employees in Clause 26 - Overtime of this Award.

(3) Provided further by agreement between the employer and the employee or the Union, the arrangement of hours of work can be implemented as follows:

The specific number of hours shall be not less than 48 and not more than 128 per each four week period.

Subject to the following conditions:

(A) Not less than the 3 hours and not longer than 8 hours each day and not more than 19 days in each four week period.

(B) Employees shall be entitled to a minimum of nine full days off per each four week period.

(C) No employee shall work more than ten days in succession without a rostered day off.

(D) All time worked in succession of the rostered hours each day and the specific number of hours each 4 week period shall be overtime and paid for at the rates prescribed for other weekly employees in Clause 26 - Overtime of this Award.

(4) A part-time employee employed under the provisions of this subclause shall be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

(5) A part-time employee under the provisions of this subclause shall be entitled to all other conditions of this clause provided such conditions are not inconsistent with the provisions of this subclause.

(c) A part-time employee shall be entitled to all provisions of a full-time employee on a pro rata basis.

## 29. PAYMENT OF WAGES

(a) Except upon the termination of employment, all wages including overtime shall be paid on any day other than Friday, Saturday and Sunday in each week.

(b) Wages may be paid at intervals of up to a fortnight by one of the following means:

(i) cash;

(ii) cheque; and

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(iii) payment into a financial institution of the employee's choice,

without cost to the employee.

An employer may alter the interval and means of payment by giving of 3 months notice.

(c) Employees who are paid their wages at any time other than during their working time shall, if kept waiting more than 15 minutes, be paid overtime rates for all such waiting time.

(d) Employees whose rostered day off falls on pay day shall be paid their wages, if they so desire, before going off duty on the working day prior to their day off.

(e) For the purpose of this subclause, waiting time shall mean all time an employee is kept waiting on the premises of the employer on the day of termination of employment in excess of the waiting time specified herein. In the event of an employee not being paid on the day of termination of employment, such employee shall be paid at the rate of time and a half until payment is effected, with a minimum payment of 2 hours and a maximum of 7.6 hours per day. The 7.6 hours shall refer to the period or shift normally worked by the employee.

**PROVIDED** that in the case of an employee whose ordinary hours are arranged in accordance with Clause 22 - Hours, subparagraph (a)(i)(3) and (a)(i)(4) of this award and who is paid average pay and who has not taken the day off or days due to him during the work cycle in which his employment is terminated, the wages due to that employee shall include the total of credits accrued during the work cycle as mentioned in Clause 22 - Hours, of this award.

**PROVIDED ALWAYS** that where the employee has taken a day off during the work cycle in which his employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

The provisions of this subclause shall only apply to an employee who is paid in accordance with (b)(iii) if such employee is not paid by the next week day not being a public holiday.

(f) An employee whose ordinary hours are arranged in accordance with Clause 22 - Hours, of this award and who is paid average pay and who has not taken the day off or days due to them during the work cycle in which his employment is terminated, the wages due to that employee shall include the total credits accrued during the work cycle as mentioned in Clause 22 - Hours, of this award.

**PROVIDED** that where the employee has taken a day off during the work cycle in which his employment is terminated, the wages due to that employee shall be reduced by the total credits which have not accrued during the work cycle.

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(g) For the purpose of this award including overtime, weekend and public holiday penalties the hourly rates of wages shall be calculated by dividing the appropriate weekly rates provided in subclause 1 of Clause 8 - Wage Rates, of this award by 38, subject to the provisions of Clause 16 - Casual Employees.

## 30. PENALTY RATES

(a) All permanent employees employed as at 1 December 1994 shall be entitled to the following weekend penalty rates:

(i) For all ordinary time worked between midnight Friday and midnight Saturday time and a half of the wages for the respective classification as at 1 December 1994 shall be paid until such amount is exceeded by time and a quarter as provided for in paragraph (b)(i) of this clause when the provision of paragraph (b)(i) shall apply.

(ii) For all ordinary time worked between midnight Saturday and midnight Sunday time and three quarters shall be paid.

(iii) For all ordinary time worked by liquor food and beverage employees serving on a Sunday double time of the wages for respective classifications as at 1 December 1994 shall be paid until such amount is exceeded by time and three quarters as provided for in paragraph (b)(ii) of this clause when the provisions of paragraph (b)(ii) shall apply.

(b) All permanent employees who commence to be employed after 1 December 1994 shall be entitled to the following weekend penalty rates:

(i) For all ordinary time worked between midnight Friday and midnight Saturday time and a quarter rate shall be paid.

(ii) For all ordinary time worked between midnight Saturday and midnight Sunday time and three quarters shall be paid.

(c) For all ordinary time worked on any of the holidays mentioned in Clause 21 - Holidays with Pay hereof, payment shall be made at the rate of double time and one half.

## 31. PENALTY RATES NOT CUMULATIVE

Where time worked is required to be paid for at more than the ordinary rate such time worked shall not be subject to more than one penalty but shall be subject to that penalty which is to the employees greatest advantage.

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## 32. PREFERENCE OF EMPLOYMENT

Preference shall be given to all members of the union who apply for employment under this award, and retention in employment under this award in the event of retrenchment. Such preference shall be given in the following manner:

(a) Where a member of the union applies for employment and is willing and able to perform work under this award in respect of which work the employer intends to engage a new employee, the employer shall engage such member of the union.

(b) Where the employer is aware that a member of the union is willing and able to continue to perform work under this award in respect of which work the employer intends to reduce the number of his existing employees by retrenchment, the employer shall retain in employment such member of the union in preference to persons who are not members of the union. Such preference shall be given subject to the following conditions:

    (i) Nothing in this clause shall require an employer to engage or retain in employment any particular person who is, in the opinion of the employer not able to perform the work efficiently.

    (ii) Nothing in this clause shall affect the right which an employer may have to dismiss summarily for misconduct or neglect of duty.

## 33. REFERENCE OF DISPUTES

In the matter of reduced hours the Industrial Commission shall determine the following matters, if referred to it:

(a) disagreements about the implementation of weekly hours arrangement;

(b) changes to patterns of shorter hours;

(c) other matters the parties agree to refer.

In addition to the above any dispute arising in respect of any matter to which this award relates shall be referred to the Industrial Commission whose decision shall be final.

## 34. RIGHT OF ENTRY OF UNION OFFICIALS

A duly accredited representative of the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch, shall have the right to enter the employers premises subject to the provisions of the *Industrial Relations Act 1984* as outlined in Part VII.

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## 35. ROSTER

A roster for all employees engaged on weekly hire showing normal starting and finishing time and the surname and initials of each employee shall be prepared by the employer and shall be posted in a conspicuous place or places accessible to the employees concerned. The roster shall be alterable by mutual consent at any time or by amendment of the roster on 7 days notice. Where practicable 2 weeks notice of rostered day or days off shall be given.

**PROVIDED** that the days off may be changed by mutual consent or by absence through sickness, or other cause over which the employer has no control.

In the case of an employee who is working in accordance with the provisions of subclause (a)(i)(5) of Clause 22 - Hours, and subclause (b)(iii) of Clause 28 - Part-time Employees, where practical three weeks notice shall be given.

## 36. SHIFT ALLOWANCE

(a) A permanent employee who is required to work any of his/her ordinary hours between the hours of 7.00 pm and midnight Monday to Friday inclusive shall be paid an additional $1.03 per hour or any part of an hour for such time worked within the said hours with a minimum payment of $1.57 for any one day.

(b) A permanent employee who is required to work any of his/her ordinary hours between midnight and 7.00 am Monday to Friday inclusive shall be paid an additional $1.50 per hour or part of an hour for such time worked within the said hours with a minimum payment of $1.57 for any one day. For the purposes of this subclause midnight shall include midnight Sunday.

## 37. SICK LEAVE

(a) An employee, other than one engaged as a casual employee, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay subject to the following conditions and limitations:

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

(ii) the employee shall wherever possible inform the employer of his inability to attend for work prior to the commencement of such absence. The employee shall, as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence;

(iii) he shall prove to the satisfaction of the employer (or in the event of a dispute the Secretary for Labour) that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;

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(iv) he shall not be entitled in any year to sick leave credit in excess of 76 hours of ordinary working time.

**PROVIDED** that during the first 3 months of employment sick leave shall accrue on the basis of 6.33 hours for each completed 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 employee in a subsequent year without diminution of the sick leave prescribed in respect of that year.

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

(d) An employer taking over a business shall be responsible for all accumulated sick leave covered by the period of employment of each employee who was employed by an immediate predecessor in the business. A business for the purposes of this subclause includes any trade, tender, contract, profession, process or occupation or any part thereof.

(e) (i) An employee who works under the provisions of paragraph (a)(i)(3)(4) and (5) of Clause 22 - Hours, shall have his or her sick leave entitlement for each hour of absence on sick leave reduced by that amount up to a maximum of 7 hours 36 minutes for each day.

(ii) An employee who works under the provisions of subparagraphs (a)(i) and (b) of Clause 22 - Hours, shall have his or her sick leave entitlements for each hour of absence on sick leave reduced by that amount up to the number of hours the employee is rostered for work.

(f) Where an employee is sick or injured on his or her rostered day off he shall not be entitled to sick pay nor shall his sick pay entitlement be reduced as a result of his sickness or injury on that day.

## 38. STRUCTURAL EFFICIENCY

(a) Award Modernisation

(i) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and will assist positively in the restructuring process.

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(ii) The unions are prepared to discuss all matters raised by employers for increased flexibility. The unions will be readily available to discuss award changes at the enterprise level. Accordingly and in conjunction with the testing of the new award structure the parties will identify and discuss award changes that might provide for productivity, efficiency and flexibility improvements across the industry to be embraced within the broad structure of the award.

(iii) The parties will co-operate to review the award to remove obsolete references, remove ambiguities and discriminatory provisions and such other matters that may be identified that will enhance the process of modernising the terms of the award.

(iv) The parties will co-operate positively to eliminate demarcation and optimising the multi-skilling and cross-skilling of employees at each enterprise and at the industry level.

(v) without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility within an enterprise may be implemented subject to the agreement of the parties to this award and subject to the following requirements.

(1) the majority of employees affected by the change at the site or enterprise must genuinely agree to change;

(2) no employee shall lose income as a result of the change;

(3) any agreement which affects a provision of this award shall be subject to approval by the Tasmanian Industrial Commission.

(b) 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 for performing work of a lower classification.

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

## 39. SUPERANNUATION

(a) Enrolment

(i) Each employer listed in Appendix A of this award shall take all necessary steps to ensure that each of his eligible employees becomes a member of HOST PLUS.

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(ii) Each employer listed under Appendix B of this award shall take all necessary steps to ensure that each of his eligible employees becomes a member of one of the following superannuation funds:

TASPLAN, HOST-PLUS, or an approved company scheme.

(b) Contributions

(i) Subject to the appropriate Appendix of the award each employer shall pay to the Trustee in respect of each eligible employee an amount equal to three percent of the employee's ordinary time earnings.

(ii) Each employer shall remit to the Trustees of the Fund all payments due in respect of his employees immediately at the conclusion of each calendar month or at such other times and in such other manner as may be agreed in writing between the Trustees and the employer from time to time.

(c) Records

The employer shall retain all records relating to the calculation of payments due in respect of each employee and such records shall be retained for a period of seven years. They shall be available for inspection by:

(i) an official of the union

(ii) representatives of the Trustees.

(d) Definitions

HOST-PLUS means the HOST-PLUS Superannuation Tasmania Scheme established by trust deed and which complies with the Australian Government's Operational Standards for Occupational Superannuation Funds.

Eligible employee means:

(i) Any employee whether full-time or part-time employed in the industry but who is subsequently employed in the industry for a period of four weeks from the appropriate date in Appendix A or B.

(ii) Any employee whether full-time or part-time who was not employed in the industry but who is subsequently employed in the industry for a period of four weeks from the appropriate date in Appendix A or B.

(iii) (1) Any casual after the date of his first engagement who has completed 25 engagements with that employer wither prior to the appropriate date in Appendix A or B, or if subsequently employed for a first engagement from the appropriate date in Appendix A or B.

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**PROVIDED** that no payment shall be made on behalf of a casual for the relevant month unless the casual has been employed for a minimum of 8 engagements in that month.

(2) A casual, due to his regularity of employment or employment with more than one employer, who believes that he should have payments made by the employer to that relevant superannuation scheme but is excluded by virtue of the provisions of (1) of this subclause, shall, on the application of his union to thew Tasmanian Industrial Commission, be covered by Superannuation if the Tasmanian Industrial Commission so determines.

Ordinary time earnings means:

(i) In the case of a full-time employee, his weekly rate for the ordinary hours of the week as prescribed by Clause 8 - Wage Rates, together with payments prescribed by Clauses 10 - Annual Leave, 11 - Annual Salary, 14 - Broken Periods of Work, 17 - Compassionate Leave, 21 - Holidays with Pay, 24 - Meal (Tea) Money, 36 - Shift Allowance, 37 - Sick Leave, 38 - Structural Efficiency, and 42 - Tool Allowance, but excluding Clause 26 - Overtime. Overaward payments shall also be included.

(ii) In the case of a part-time employee, his weekly rate for ordinary hours of the week prescribed by Clause 8 - Wage Rates, together with payments prescribed by Clauses 10 - Annual Leave, 11 - Annual Salary, 14 - Broken Periods of Work, 17 - Compassionate Leave, 21 - Holidays with Pay, 22 - Hours, 24 - Meal (Tea) Money, 28 - Part-time Employees, 36 - Shift Allowance, 37 - Sick Leave and 42 - Tool Allowance, but excluding Clause 26 - Overtime. Overaward payments shall also be included.

(iii) In the case of a casual employee, his weekly rate for ordinary hours of work as prescribed by Clause 8 - Wage Rates together with payment prescribed by Clauses 16 - Casual Employees, 21 - Holidays with Pay, 24 - Meal (Tea) Money, 30 - Penalty Rates, 36 - Shift Allowance, 37 - Sick Leave and 42 - Tool Allowance, but excluding Clause 26 - Overtime. Overaward payments shall also be included.

TASPLAN means the TASPLAN Superannuation Scheme established by trust deed and which complies with the Australian Government's Operational Standards for Occupational Superannuation Funds.

Trustee means a trustee of HOST-PLUS or a trustee of TASPLAN or a trustee of the appropriate employer scheme.

## 40. TERMINATION OF SERVICES/TERMS OF ENGAGEMENT

At the time of engagement an employer shall inform the employee as to the term or his or her engagement including whether full-time, part-time or a casual employee.

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Employment may be terminated by the giving of one week's notice on either side or by the payment or forfeiture of one week's wages as the case may be except in the case of a casual.

## 41. TIME AND WAGES RECORDS/AWARD

(a) Time and wages book or sheets shall be provided by the employer and kept by each employee. Each employee shall enter the following:

(i) Full name.

(ii) Start and finish times as well as all times when all meal, broken shifts, tea breaks are taken.

(iii) The signature of the employee verifying the record is correct.

(b) The employer shall keep a record of the information as laid out in subclause (a) hereof. In addition he shall keep a record of the following:

(i) Employee's address and date of birth if under 21 years.

(ii) Employees work classification.

(iii) Whether full-time, part-time or casual.

(iv) Award rate for the particular classification including hourly rate of pay, penalties, shift allowances, overtime, superannuation and other payments.

(v) Gross wage, any deductions and net wage with date of payment.

(c) Any alterations to the information kept by the employee as detailed in subclause (a) hereof must be initialled by the employee concerned.

(d) The employer shall keep such book or sheet available at all reasonable time and in a convenient place to which employee shall have access for the purpose of making such entries.

(e) Such book or sheet may be inspected by the officials of the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch at all reasonable hours.

(f) A copy of this award shall be kept with the time and wage book or sheets.

(g) In addition to the above each employee is required to enter on his time sheet and his employer is required to enter in the wage book or wages sheet the Employee's membership number of the appropriate Superannuation Scheme and record of payment.

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## 42. TOOL ALLOWANCE

All employees engaged in classifications that are proclaimed as trades under the *Industrial and Commercial Training Act 1985* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than $8.30 per week.

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

## 43. TRAVELLING TIME

Where an employee is detained at work having completed overtime until it is too late to travel by the last means of public transport to his or her usual place of residence, the employer shall either provide proper conveyance or provide accommodation for the night free of charge.

## 44. UNIFORMS

Where special uniforms, including white coats and/or other uniform type of dress are required to be worn, they shall be supplied and laundered at the employer's expense and shall remain the property of the employer.

An employee on commencing employment shall sign a receipt of item/s of uniform. Such receipt shall list the item/s of uniform and value of same. Upon ceasing employment if the employee does not return item/s of uniform in accordance with receipt the employer shall be entitled to deduct the value as stated on the receipt from the employee's termination wages.

Records of receipt shall be available for inspection by an official of the union. In the case of genuine wear and tear, damage, loss, theft that is not the employee's fault this provision shall not apply.

Any disagreement concerning the value of item/s of uniform and any other aspect of this subclause shall be determined in accordance with Clause 20 - Grievance Procedure.

P L LEARY
**PRESIDENT**

18 July 2003

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## APPENDIX A

### SUPERANNUATION

(a) A list of these employers is held at the Registry of the Tasmanian Industrial Commission.

(b) Employers listed under this Appendix shall make contributions on behalf of employees in accordance with Clause 39 - Superannuation, of this award, operative from 1 June 1988.

(c) The Trustees may grant an exemption from participation in the scheme for either or all of the employees of a participating employer. Such exemption must be in writing.

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## APPENDIX B

### SUPERANNUATION

(a) Employers covered by this Appendix are members of the Tasmanian Chamber of Commerce and Industry Limited as at 1 May 1988.

A list of these employers is held at the Registry of the Tasmanian Industrial Commission.

(b) Employers listed under this Appendix shall make contributions on behalf of employees in accordance with Clause 39 - Superannuation, of this award, operative from 30 September 1988.

**PROVIDED** that from 30 June 1988 employers listed under this Appendix shall be contributing **one and one half percent** of each eligible employee's ordinary time earnings.

(c) Provided that an employer to which this Appendix applied who has an existing Superannuation Scheme in place shall be exempt from making any further employer contribution until 30 September 1988, or such later date as the Commission may determine.

During the intervening period the parties will confer on the subject of the existing scheme.

(d) An employer bound by this Appendix may make application to the Tasmanian Industrial Commission to be exempt from this Appendix on the grounds of economic incapacity to pay.