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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award

**Tasmanian Trades and Labor Council**

(T11548 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11564 of 2004)

Private Sector Awards

**Tasmanian Trades and Labor Council**

(T11566 of 2004)

Private and Public Sector Awards

**FULL BENCH:**

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

**Wage Rates – State Wage Case July 2004 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002004 – Safety Net Review – Award rates to be increased by \$19 per week – Wage related allowances increased by 3.5% - Meal allowances increased to \$12.70 – Supported Wage increased to \$61 per week – Operative date ffpp 1 August 2004 – State Minimum Wage determined at \$467.40 – s.35(1)(b)**

**ORDER BY CONSENT**

**PLANT NURSERIES AWARD**

**No. 1 of 2004  
(Consolidated)**

CLAUSES 4 AND 6 OF PART I, CLAUSE 1 OF PART III AND CLAUSE 1 OF PART IV ARE VARIED AND THE AWARD IS CONSOLIDATED

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## **PART I - APPLICATION AND OPERATION OF THE AWARD**

### **1. TITLE**

This Award shall be known as the Plant Nurseries Award.

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## **3. SCOPE**

This award is established in respect of the industry of plant nursery (as defined) and without limiting the generality of the foregoing shall include the growing of instant turf but excludes floriculturist (as defined).

## **4. DATE OF OPERATION**

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

## **5. AWARD INTEREST**

- (a) The following employee organisation has an interest in this award pursuant to section 63(10) of the *Industrial Relation Act 1984*:

The Australian Workers' Union, Tasmania Branch

- (b) The following employer organisation is deemed to have an interest in this award pursuant to section 62(2) of the *Industrial Relations Act 1984*:

The Tasmanian Chamber of Commerce and Industry Limited

- (c) The following organisation is deemed to have an interest in this award pursuant to section 62(3) of the *Industrial Relations Act 1984*:

The Tasmanian Trades and Labor Council.

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## **6. SUPERSESSION**

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

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

**PROVIDED ALWAYS** that where an employer, at the time of the making of this award, is paying wage rates in excess of those herein prescribed to an employee the wage rates so paid in excess of those herein prescribed shall not be reduced as a result of this award.

Nothing in this award shall be taken to reduce the conditions of an employee, who at the time of the making of this award, is in receipt of conditions in excess of those herein prescribed.

## **7. GENERAL DEFINITIONS**

**'Casual Employee'** means a person who is engaged on an irregular basis to perform a specific task(s) over a defined time period.

At the completion of such period and or task(s) the contract of employment shall be deemed to be terminated.

**'Floriculturist'** means an employer whose business involves the growing of flowers through to bloom for the retail and/or wholesale market.

**'Full-time Employee'** means any person who is engaged on an ongoing full-time basis on one of the work cycles described in Part V – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work, subclause (a).

**'Part-time employee'** means a person engaged to regularly work for less hours per day or per week than those hours prescribed in Part V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work for a full-time employee (as defined).

**'Plant Nursery'** means where the principle business of the employer includes the preparation of growing media for the growing of plant material, the growing of plant material, presentation of plant material for sale, selling of plant material (which may include the selling of garden and or household accessories).

**'Propagator'** means a person who is capable of identifying when a plant is ready for propagation and, if required by his/her employer, is capable of performing propagation work or treatment of plant material and/or is capable of directing other employees to perform propagation work and/or treatment of plant material.

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**'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, making a total of up to 11 paid holidays per year.

**'Union'** means a registered organisation of employees listed in Part I – APPLICATION AND OPERATION OF THE AWARD, Clause 5 - Award Interest of this award.

## **PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS**

### **1. CONTRACT OF EMPLOYMENT**

#### (a) General

- (i) Upon commencing work with an employer, all employees shall be classified at a level prescribed in Part III – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 2 - Classification Descriptors of this award.
- (ii) Further, all employees prior to the commencement of duties shall be provided with advice in writing, of the classification level to which they have been appointed, upon which they shall remain and be paid the wage rate thereof until reclassified. Further advice in writing will be issued by the employer if an employee is reclassified.

An employer may direct an employee to carry out such duties as are within the limits of the employees' skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

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

#### (b) Termination of Employment

- (i) Employment for a full-time employee (as defined) or part-time employee (as defined) may be terminated only by the giving of one weeks notice by either party or by the payment or forfeiture of one weeks wages as the case may be.
- (ii) For the purpose of this clause, termination of employment shall include termination with or without notice.
- (iii) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for wilful misconduct or neglect of duty.

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## **2. EMPLOYMENT CATEGORIES**

(a) Full-time Employees (as defined)

Full-time employees (as defined) shall be engaged by the week.

(b) Part-time Employees (as defined)

- (i) A part-time employee (as defined) engaged to work less than 15 hours per week shall be paid, per hour, one thirty-eighth of the appropriate classification rate prescribed in Part III – WAGE RATES AND RELATED MATTERS, Clause 1 - Wage Rates of this award.

In addition thereto such employee shall receive 20% of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

- (ii) Part-time employees (as defined) engaged to work 15 or more hours per week shall be entitled to the holidays, annual leave and sick leave as prescribed in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 1 - Annual Leave, Clause 5 - Holidays with Pay and Clause 3 - Sick Leave, provided that payment therefore shall be made at the rate normally paid to such employees for a similar period of time worked. The wage rates payable per hour shall be one-thirty-eighth of the appropriate classification rate prescribed in Part III – WAGE RATES AND RELATED MATTERS, Clause 1 - Wage Rates.

**PROVIDED** that by agreement between the employer and the employee affected payment in lieu of the abovementioned entitlements may be made in the manner prescribed in sub-clause (i) of this clause.

- (iii) A part-time employee (as defined) shall have only one engagement consisting of consecutive hours per day with any one employer.
- (iv) No part-time employee (as defined) shall be employed for less than four hours for work performed on any given day within the span of ordinary hours prescribed in Part V HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work.
- (v) For a part-time employee (as defined) written advice as prescribed in Part II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 1 - Contract of Employment, subclause (a)(ii) of this clause, shall in addition clearly state that the employee is engaged as a part-time employee (as defined).

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(c) Casual Employees (as defined)

- (i) For a casual employee (as defined) written advice as prescribed in Part II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 1 - Contract of Employment subclause (a)(ii) of this clause, shall in addition clearly state that the employee is engaged as a casual employee (as defined).
- (ii) The employer shall, at the time of engagement, advise the employee, to the best of the employer's ability, of the period over which they expect to be able to offer ongoing availability of work on an irregular basis and shall regularly review and update this position with the employee as changes occur.
- (iii) Where it is the intention of the employer not to re-engage the employee referred to in subclause (c)(ii) hereof when work becomes available, the employer shall notify the employee in writing of such intention as soon as the decision is made.
- (iv) Casual employees (as defined) shall be engaged for a minimum of four hours per engagement.
- (v) A casual employee (as defined) for working ordinary time shall be paid per hour one thirty-eighth of the weekly rate prescribed for a full-time employee (as defined) engaged at the equivalent classification level for the work performed, plus 20%. Such additional amount to be payable in lieu of annual leave, sick leave and public holidays.
- (vi) If a casual employee (as defined) is not informed before leaving the job at the end of a days work that that employee is not required to work on the next day, and such employee attends work and does not commence work on that day, the employee shall be paid a minimum of four hours pay at the appropriate classification rate.

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### **PART III - WAGE RATES AND RELATED MATTERS**

#### **1. WAGE RATES**

##### 1. WAGE RATES

(a) Adult employees in a classification level hereunder mentioned shall be paid the weekly wage rate appearing opposite that classification.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
1. Nursery Assistant Level 1 (as defined)	80	333.80	142.00	475.80
2. Nursery Assistant Level 2 (as defined)	84	350.50	142.00	492.50
3. Nursery Assistant Level 3 (as defined)	92	383.80	142.00	525.80
4. Nursery Assistant Level 4 (as defined)	100	417.20	144.00	561.20
5. Nursery Assistant Level 5 (as defined)	108	450.60	144.00	594.60

(b) Translation Schedule

1. An employee having less than one months continuous service with their present employer	Nursery Assistant Level 1 (as defined)
2. An employee who without direct supervision, carries out any duties required in connection with the growing of seeds and/or plants.	Nursery Assistant Level 2 (as defined)
3. Propagator	Nursery Assistant Level 3 (as defined)
4. Horticultural Tradesman (as defined)	Nursery Assistant Level 4 (as defined)



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## 2. APPRENTICES

The weekly wage rate to be paid to apprentices shall be the undermentioned percentage of the weekly wage rate payable to a Nursery Assistant - Level 4 (as defined).

	%
1st year	42
2nd year	55
3rd year	75
4th year	88

## 3. JUNIOR EMPLOYEES

The weekly wage rate to be paid to unapprenticed junior employees shall be the undermentioned percentage of the weekly wage rate for the classification Nursery Assistant - Level 1 (as defined).

	%
Under 16 years of age	50
16 to 17 years of age	65
17 to 18 years of age	75
18 to 19 years of age	90
19 to 20 years of age	95
20 years of age and over	100

## 4. SUPPORTED WAGE SYSTEM

### (a) Eligibility criteria

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

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

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

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(b) For the purposes of this subclause:

- (i) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **'Accredited Assessor'** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (iii) **'Disability Support Pension'** means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- (iv) **'Assessment instrument'** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(c) Supported wage rates

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

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

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

(d) Assessment of capacity

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

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- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
  - (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.
- (e) Lodgment of assessment instrument
- (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
  - (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.
- (f) Review of assessment
- The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.
- (g) Other terms and conditions of employment
- Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.
- (h) Workplace adjustment
- An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.
- (i) Trial Period
- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

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

#### 5. 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 Clause 1 - subclause 1 - Supported Wage System is \$467.40 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(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).

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(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T11548 of 2004) and all previous safety net and state wage case adjustments.

## **2 CLASSIFICATION DESCRIPTORS**

### **'Nursery Assistant Level 1'**

(% Wage Relativity to Nursery Assistant Level 4 (as defined) after Minimum Rates Adjustment 80%)

Nursery Assistant Level 1 means a person with less than 4 months experience (at the time of or prior to the making of this award) in the industry as specified in Part I – APPLICATION AND OPERATION OF THE AWARD Clause 3 - Scope of this award who is capable of performing, under constant supervision some or all of the following:

- General labouring
- General cleaning
- Preparation of media
- Operating equipment (media mixer, small tractor)
- Assisting in loading and unloading of stock
- Potting and laying out of beds after potting
- Labelling
- Price marking
- Putting stock away
- Filling shelves or beds
- Limited plant maintenance including weeding, watering, thinning and transplanting.

Progression to Nursery Assistant Level 2 (as defined) will be automatic following four months experience in the industry as specified in Part I – APPLICATION AND OPERATION OF THE AWARD Clause 3 - Scope of this award, prior to or following the making of this award.

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### **'Nursery Assistant Level 2'**

(% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment - 84%)

Nursery Assistant Level 2 means a person with more than four months experience in the industry (at the time of or prior to the making of this award) as specified in Part I – APPLICATION AND OPERATION OF THE AWARD Clause 3 - Scope of this award who is capable of performing, under limited supervision some or all of the functions of a Nursery Assistant Level 1 (as defined) and in addition may be required to perform some or all of the following:

- Small fork lift
- 34 - 50 H.P. tractors
- Potting machines
- Front end loader - up to 1M
- Spray equipment (motorised, tractor mounted or by hand)
- Deliveries (irregular)
- Brush cutters, mowers (hand held, ride on)
- Limited plant identification
- Basic sales and associated clerical duties
- Plant life maintenance including feeding
- Preparation of media for the growing of plants
- Spraying and or drenching
- Labelling
- Preparation of orders
- Plant life maintenance
- Assist in propagation

Progression to Plant Nursery Assistant Level 3 (as defined) will be by appointment or when an employee is capable of performing efficiently some or all of the tasks as prescribed for a Nursery Assistant Level 3 (as defined).

### **'Nursery Assistant' Level 3'**

(% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment - 92%)

Nursery Assistant Level 3 means a person with at least 12 months experience in the industry as specified in Part I – APPLICATION AND OPERATION OF THE AWARD Clause 3 - Scope of this award who is capable of performing efficiently with minimal supervision any of the tasks reasonably required of him/her, which may include some or all of the following:

- Propagator (as defined)
- Deliveries
- Handle customer queries
- Wholesale sales
- Limited supervision of other employees

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- Assist with training of Nursery Assistant Level 1 (as defined) and/or Nursery Assistant Level 2 (as defined)

#### **'Nursery Assistant Level 4'**

(% Wage relativity after minimum rate adjustment - 100%)

Nursery Assistant Level 4 means a person who has successfully completed a recognised apprenticeship in a relevant trade. This shall not restrict the employer from classifying an employee at Level 4 if that employee has achieved a certain standard of knowledge and/or competence in the industry as specified in Part I – APPLICATION AND OPERATION OF THE AWARD Clause 3 - Scope of this award; or

An employee who, in addition to performing some or all of the functions of Nursery Assistant Level 3 (as defined), accepts responsibility for supervision of employees and in addition is capable of performing some or all of the following functions:

- Advise of remedial treatment of diseases and pests in plants
- Training of Nursery Assistant Level 1 (as defined) and/or Nursery Assistant Level 2 (as defined) and or Nursery Assistant Level 3 (as defined).

#### **'Nursery Assistant Level 5'**

(% Wage relativity to Nursery Assistant Level 4 (as defined) after minimum rate adjustment - 108%)

Nursery Assistant Level 5 means an employee who, in addition to performing some or all of the functions of Nursery Assistant Level 3 (as defined) and/or Nursery Assistant Level 4 (as defined), accepts responsibility for acting in charge and in addition is capable of performing some or all of the following functions:

- Supervision of employees
- Training of Nursery Assistant Level 1 (as defined) and/or Nursery Assistant Level 2 (as defined) and/or Nursery Assistant Level 3 (as defined)
- Sales and marketing
- Ordering of stock
- Quality control
- Engagement and termination of employees

### **3. MIXED FUNCTIONS**

An employee engaged for more than 2 hours in the aggregate on any one day performing duties carrying a higher rate than their ordinary classification shall be paid the higher rate for such day.

If so engaged for two hours or less in the aggregate during any one day the employee shall be paid the higher classification rate only for the time so worked.

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#### **4. PAYMENT OF WAGES**

- (a) For all employees payment of wages shall be made, on a nominated day weekly or fortnightly or, by agreement between the employer and the employee affected, monthly.
- (b) Wages shall be paid by cash, cheque or electronic fund transfer.

**PROVIDED** that where wages are paid by electronic fund transfer the employer shall meet the cost of the deposit transaction.

**PROVIDED ALWAYS** that for employees engaged on or before 29 July 1992 payment by electronic fund transfer shall be by agreement between the employer and the employee.

- (c) An employee who is kept waiting for his/her pay longer than 15 minutes after the cessation of work on pay day shall be paid at ordinary time work rates for all time he/she is so kept waiting for his/her pay. However, where circumstances causing the delay in payment in wages are beyond the control of the employer no such payment shall be made.

#### **5. SUPERANNUATION**

- (a) Contributions
  - (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into TASPLAN (as defined) or any other approved fund (as defined) where an exemption has been granted under subclause (d) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 30 July 1992.
  - (ii) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.
  - (iii) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
  - (iv) Where an eligible employee (as defined) has completed 38 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.



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(b) Casual Employees

Contributions shall be made in respect to a casual employee (as defined) where that employee works at least 20 hours over a fund billing statement month.

(c) Definitions

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

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis.

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

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

(d) Cessation of Contributions

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

(e) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN (as defined) in the following circumstances:

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 1 January 1992 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 1 January 1992 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than either of the nominated approved funds.

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(f) Procedure for Seeking Exemption

- (i) An employer seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 30 October 1992 for hearing and determination.

Such application shall contain the following information:

- (1) Name of Fund into which the funds are to be paid.
  - (2) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (3) Summary of Structure and Benefits.
  - (4) Level of Administration Charge.
  - (5) What date the initial contribution was paid.
  - (6) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union agrees with the application, the exemption will be granted.
- (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (iv) An employer who commences a new business after 30 July 1992 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 30 July 1992.

## **PART IV - ALLOWANCES**

### **1. ALLOWANCES**

(a) First Aid Allowance

The employer shall provide and maintain, in accordance with the *Industrial Health and Safety Act (1977)* and Regulations (1979) a first aid outfit including an affixed list of current employees holding a first aid certificate.

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A full-time employee (as defined) holding first aid qualifications from the Red Cross Society, St John Ambulance or similar body and appointed by the employer to perform first aid duty shall receive in addition to his/her wages an allowance of \$2.20 per day.

(b) Kilometreage Allowance

Where an employee is required by the employer to use his/her own motor vehicle for the purpose of the employer's business, then the employee will be paid \$0.31 per kilometre travelled.

(c) Meal Allowance

An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of \$12.70.

Unless the employer advises an employee on the previous day or earlier that the amount of overtime to be worked will necessitate the partaking of a second or subsequent meal (as the case may be) the employer shall provide such second or subsequent meal or make payment in lieu thereof as above prescribed.

(d) Special Rates

Employees who are engaged in spraying or handling of chemicals shall be provided, by the employer, with protective clothing and be paid \$0.51 per hour extra while so engaged with a minimum payment for four hours on any one day.

(e) Tool Allowance

All employees engaged in work that is normally undertaken as part of a trade under the *Vocational Education and Training Act 1994* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$9.10 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.

(f) Travelling Time Allowance

An employee who on any day or from day to day is required to work away from the usual workplace shall, at the direction of the employer, present for work at such workplace at the usual starting time; but all time reasonably spent in reaching and returning from such workplace (in excess of the time normally spent travelling to and from the usual workplace) shall be paid travelling time payment at ordinary rates of pay.

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## **PART V - HOURS OF WORK, PENALTY PAYMENTS & OVERTIME**

### **1. HOURS AND DAYS OF WORK**

- (a) (i) The ordinary hours of work for a full-time employee (as defined) shall be 38 hours per week and shall not exceed eight consecutive hours on any day within the span of hours of 6 am to 6 pm, Monday to Friday inclusive and are set and may be varied by the employer from time to time.
- (ii) The ordinary hours of work for a part-time employee (as defined) shall be less than 38 hours per week and shall not exceed eight consecutive hours on any day within the span of hours of 6 am to 6 pm, Monday to Friday inclusive and are set and may be varied by the employer from time to time.

**PROVIDED** that where there is agreement between the employer and an employee, the ordinary hours of work may be extended from eight up to ten hours on any day.

- (iii) By agreement between the employer and the majority of employees affected the ordinary hours of work for a full-time employee (as defined) shall be an average of 38 hours per week provided that they not work in excess of eight consecutive hours on any day within the span of hours of 6. am and 6 pm and shall be worked on one of the following basis:
- (1) 38 hours within a work cycle not exceeding five days in seven consecutive days; or
  - (2) 76 hours within a work cycle not exceeding ten days in fourteen consecutive days; or
  - (3) 114 hours within a work cycle not exceeding fifteen days in twenty-one consecutive days; or
  - (4) 152 hours within a work cycle not exceeding twenty days in twenty-eight consecutive days.

**PROVIDED** that where there is an agreement between the employer and an employee, the ordinary hours of work may be extended from eight (8) up to ten (10) hours on any day.

- (b) The ordinary hours of work for a casual employee (as defined) shall not exceed eight on any day and shall be worked consecutively within the span of hours of 6 am - 6 pm, Monday to Friday inclusive and are set and may be varied by the employer from time to time.

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(c) Meal Break

An unpaid meal interval of not less than 30 minutes shall be allowed not later than 5 hours after commencing work.

An employee required to continue beyond 5 hours without such an interval shall be paid at overtime rates until such time as the meal break is taken.

(d) Rest Period

Employees shall be allowed a paid rest period of 10 minutes each day.

**2. HOLIDAY, SATURDAY, SUNDAY AND OVERTIME PAYMENT**

(a) Holidays

(i) Subject to the provisions of Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay, subclause (d) all employees who perform work on a holiday as prescribed in Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay shall be paid at the rate of double time and one half.

(ii) Subject to the provisions of subclause (a)(i) herein all employees who are required to work on any of the days prescribed Part VI - LEAVE AND HOLIDAYS WITH PAY, Clause 5 - Holidays with Pay shall be paid for a minimum of four hours.

(b) Overtime - Full-time Employees (as defined) or Part-time Employees (as defined)

(i) Overtime for a full-time employee (as defined) or part-time employee (as defined) shall be paid when the employee is required by the employer to work:

- (1) in excess of the number of hours specified in Part V – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work,
- (2) outside the span of hours specified in Part V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work,
- (3) in excess of 8 hours unless there is agreement between the employer and the employee as prescribed Part V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work, subclause (a).

Overtime payment shall be at the rate of ordinary time and one half for the first three hours and double ordinary time thereafter.

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- (ii) If an employee is engaged on overtime to the extent that it does not allow that employee eight hours rest before the next regular starting time, the employee shall be allowed at least eight hours rest without deduction of pay or shall be paid at overtime rates for all time of duty until the employee has had at least eight hours rest.
  - (iii) A full-time employee (as defined) shall work a reasonable amount of overtime as directed by the employer.
- (c) Saturday and Sunday Payment for full-time employees (as defined) or part-time employees (as defined)
  - (i) For work performed on a Saturday payment shall be made at the rate of ordinary time and one quarter.
  - (ii) For work performed on Sunday payment shall be made at the rate of ordinary time and one half.
- (d) Overtime, Saturday and Sunday Payment for Casual Employees (as defined)
  - (i) For work performed on a Saturday payment shall be made at the rate or ordinary time and one half for the first two hours and double ordinary time thereafter.
  - (ii) For work performed on a Sunday payment shall be made at the rate of double ordinary time.
  - (iii) For work performed in excess of eight hours a day or prior to or following the span of hours prescribed Part V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 1 - Hours and Days of Work, payment shall be made at the rate of ordinary time and one half for the first two hours and double time thereafter.
- (e) Call Back

An employee recalled to work overtime after leaving his employers business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours work at the appropriate rate for the first time he/she is so recalled and a minimum of two hours for each subsequent recall; provided that the employee shall not be required to work the full period if the job he/she is recalled to perform is completed within a shorter period.

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## **PART VI - LEAVE AND HOLIDAYS WITH PAY**

### **1. ANNUAL LEAVE**

(a) Period of Leave

A period of 28 consecutive days shall be allowed annually to an employee (other than a casual employee (as defined)) after 12 months continuous service (less the period of annual leave).

(b) Annual Leave Exclusive of Public Holidays

(i) Should any of the holidays mentioned in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 5 - of this award, fall during an employee's annual leave, there shall be added to that leave an additional day or days for each such day so falling.

(ii) Subject to subclause (i) hereof where an employee fails without reasonable cause, proof of 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) Time of Taking Leave

The annual leave provided by this clause shall be allowed and shall be taken within 3 months of such leave falling due, at a time or times mutually agreed between the employer and employee.

**PROVIDED** that in the event agreement cannot be reached the employer shall give not less than four weeks notice to the employee concerned of their intention to grant such leave.

(d) Payment in Lieu Prohibited

Except as provided in subclause (e) of this clause, payment shall not be made or accepted in lieu thereof.

(e) Proportionate Leave on Termination of Service

If, after one month's service in any 12 monthly period, an employee lawfully leaves their employment, or the employment is terminated by the employer through no fault of the employee, the employee shall be paid at the rate of 3.076 hours per completed week of continuous service.

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(f) Payment for Period of Leave

- (i) All employees before going on leave shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave for the relevant period.
- (ii) In addition thereto, all employees other than casual employees (as defined), before going on annual leave shall be paid a loading of 17.5% on payments made for annual leave.

(g) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree, in any combination provided one period shall be not less than seven consecutive days, i.e. five working days.

(h) Calculation of Continuous Service

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

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

## **2. SICK LEAVE**

- (a) An employee, other than one engaged as a casual employee (as defined), or a part-time employee (as defined) subject to the provisions of Part II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 1 - Contract of Employment, subclause (c)(i) and/or (ii) who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
  - (i) an employee shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation;
  - (ii) the employee shall, wherever possible, inform the employer of his/her inability to attend for work prior to the commencement of such absence;
  - (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;



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- (iv) the employee shall not be entitled in any year (whether in the employment of one employer or of more), to sick leave credit in excess of two (2) weeks of ordinary working time.

**PROVIDED** that during the first three months of employment, sick leave shall accrue on the basis of 6.66 hours for each completed calendar month of service with the employer.

- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

### **3. BEREAVEMENT LEAVE**

An employee, other than a casual employee (as defined) or a part-time employee (as defined) subject to the provisions of Part II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS, Clause 1 - Contract of Employment subclause (i) and/or (ii) shall on the death of a wife, husband, father, mother, child, step-child, 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 day off.

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

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

### **4. PARENTAL LEAVE**

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

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(a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
  - (1) any period of leave taken in accordance with this clause;
  - (2) any period of part-time employment worked in accordance with this clause; or
  - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
- (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
- (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
- (vii) **'Spouse'** includes a de facto or a former spouse.

(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c)(vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

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- (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
  - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.
- (c) Maternity Leave
- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;
    - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least 4 weeks.
  - (ii) Where the employee gives notice under (d)(i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
  - (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
  - (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
  - (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
  - (vi) Special maternity leave
    - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

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- (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.
- (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.

(vii) Transfer to a safe job

- (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

(d) Paternity Leave

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

- (i) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and
- (ii) written notification of the proposed dates on which the period of paternity leave will start and finish and
- (iii) a statutory declaration stating:
  - (1) that period of paternity leave will be taken to become the primary care-giver of a child;
  - (2) particulars of any period of maternity leave sought or taken by the mother, and

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- (3) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
  - (iv) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.
- (e) Adoption leave
  - (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
  - (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
    - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
    - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
  - (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
  - (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
  - (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
  - (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

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(f) Parental leave and other entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.
- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.  
  
(B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

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(v) Transitional Arrangements - Sick Leave

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

(vi) Part-time Work Agreement

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

(vii) Termination of Employment

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

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(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and sick leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.



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

(i) Return to former position after a period of parental leave or part time work

Unless otherwise agreed between employee and employer, and consistent with the provisions of this clause

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

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

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

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

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

(j) Redundancy

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

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

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## **5. HOLIDAYS WITH PAY**

- (a) All employees (other than casual employees (as defined)) or a part-time employee subject to the provisions of Part II – EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS Clause 1 - Contract of Employment, subclause (c)(i) and/or (ii) shall be allowed the following days as paid holidays:

Christmas Day, Boxing Day, 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 ) and Recreation Day (where Hobart Regatta Day is not observed).

By agreement between any employer and an employee, other days may be substituted for the said days or any one of them.

- (b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when if it were not for such holiday, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed in Part V – HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME, Clause 2 - Holiday, Saturday, Sunday and Overtime Payment contained in this award.

## **PART VII - CONSULTATION AND DISPUTE RESOLUTION**

### **1. ENTERPRISE FLEXIBILITY**

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:-
- (i) The majority of employees affected by the change must genuinely agree to the change.
  - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
  - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
  - (iv) The relevant union must be a party to the agreement.
  - (v) The relevant union shall not unreasonably oppose any agreement.

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- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:-
  - (i) The term of the agreement.
  - (ii) The parties covered by the agreement.
  - (iii) The classes of employees covered by the agreement.
  - (iv) The means by which a party may retire from the agreement.
  - (v) The means by which the agreement may be varied.
  - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

## **2. RESOLUTION OF DISPUTES**

Any industrial dispute arising during the currency shall be dealt with as follows:-

- (a) the matter should first be discussed between the employee and his/her immediate supervisor. At the employee's option the union delegate may also be present;
- (b) if not settled, the matter shall be submitted by the shop steward union representative to the industrial officer or other appropriate officer of the employer;
- (c) if not settled, the matter shall be formally submitted by the Branch Secretary or other appropriate official of the union concerned to the employer;
- (d) if not settled, the matter shall be submitted to the Tasmanian Industrial Commission for determination;
- (e) until the matter is determined in accordance with the above procedure, work shall continue normally. All parties to the award, the employer, and officials of the unions and their members, will take all possible action to settle any dispute within seven (7) days of notification of the dispute to the employer;
- (f) no party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

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### **3. CONSULTATIVE PROCEDURE**

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of industry covered by the scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) At each enterprise or establishment, the employer and the employees shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer and the employees for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.
- (c) Where enterprise consultative committees are established the employees shall be represented at least equally on the committee by duly elected employee representatives.
- (d) Measures raised for consideration consistent with subclause (b) hereof shall be related to implementation of a new classification structure, facilitative provisions contained in this award and matters concerning training.
- (e) Award restructuring should be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.
- (f) The union reserves the right to advise its members on award issues under discussion.
- (g) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (i) developing a more highly skilled workforce;
  - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (iii) removing barriers to the utilisation of skills acquired.

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## **PART VIII - OCCUPATIONAL HEALTH & SAFETY, TOOLS AND AMENITIES**

### **1. PROTECTIVE CLOTHING**

- (a) If an employee is required to work in sloppy or muddy conditions, water or wet under foot or in heavy rain he/she shall be provided with wet weather gear and suitable head covering, so as to protect him/her from getting wet.
- (b) The employer shall supply to each employee on engagement one pair of protective footwear, and two pairs of overalls (or by agreement between the employer and the employee affected equivalent to two pairs of overalls) and thereafter replacement of clothing and protective footwear shall be on a fair wear and tear basis upon production of the unserviceable item.
- (c) All other protective clothing or equipment issued must be returned clean and in good order, fair wear and tear excepted, to the employer, on completion of the job.

### **2. AMENITIES**

- (a) The employer shall where practical provide for the use of employees, suitable washing facilities, change rooms, dining accommodation and sanitary conveniences in accordance with The Industrial Safety Health and Welfare Regulations 1979.
- (b) Remote Work

An employee required to work at a location remote from the usual workplace which does not reasonably enable the employee to return to the employee's usual place of residence each evening shall be supplied free of cost suitable accommodation which shall be clean and in good repair and include hot and cold water.

That accommodation will, on the instruction of the employer, be vacated within 48 hours in the same condition as when occupied.

### **3. FIRST AID**

The employer shall provide and maintain, in accordance with the *Industrial Health and Safety Act (1977)* and Regulations (1979), a first aid outfit in each establishment.

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## **PART IX - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **1. RIGHT OF ENTRY**

Right of entry for a duly accredited representative of The Australian Workers' Union, Tasmania Branch shall be in accordance with the provisions of section 77 of the *Industrial Relations Act 1984*.

### **2. TIME AND WAGES BOOK**

Each employer shall keep a time and wages book in accordance with *the Industrial Relations Act 1984* and Regulations.

P C Shelley  
**DEPUTY PRESIDENT**

11 August 2004