

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.23 application for award or variation of award

Tasmanian Trades and Labor Council

(T13471 of 2009)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2009 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$12.00 per week - wage related allowances to be increased by 1.9% – meal allowance increased to \$15.40 - Supported wage increased to \$71.00 - State Minimum Wage rate determined at \$558.10 - s.35(1)(b) – operative date ffpp 1 August 2009 - Wage Fixing Principles set aside in part

MEAT RETAILING AWARD

ORDER -

**No. 1 of 2009
(Consolidated)**

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

1. TITLE

This award shall be known as the "Meat Retailing Award".

2. SCOPE

This award is established in respect of the industry of:

- (a) selling of uncooked meat;
- (b) making and selling of Butchers' smallgoods;
- (c) preserving and processing meat in conjunction with (a) and/or (b);
- (d) some or all of (a), (b) and (c) above.

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 2009.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Meat Retailing Award No. 1 of 2008 (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. AWARD INTEREST

(a) The following employee organisations have an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:

- (i) The Australasian Meat Industry Employees Union, Tasmanian Branch;
- (ii) the Australian Municipal, Administrative, Clerical and Services Union;

- (iii) the Construction, Forestry, Mining and Energy Union, Tasmanian Branch; and
 - (iv) the Transport Workers' Union of Australia (Victorian/Tasmanian Branch).
- (b) The following employer organisation has an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:
- (i) the National Meat Association of Australia (Tasmanian Division);
 - (ii) The Retail Traders Association of Tasmania;
- (c) The following organisation is deemed to have an interest in this award pursuant to Section 62(2) of the *Industrial Relations Act 1984*:
- the Tasmanian Chamber of Commerce and Industry Limited
- (d) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:
- the Tasmanian Trades and Labor Council.

7. DEFINITIONS

- (a) Classification Definitions

Meat Industry Employee Entry Level - Wage Relativity to a Meat Industry Employee - Level 4 is 80%)

Meat Industry Employee - Entry Level is an employee appointed by the employer to this level who is undertaking up to three months training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow workers, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal opportunity and quality control/assurance.

An employee at this level performs duties under direct supervision and to the level of the employee's training.

Meat Industry Employee - Level 1 - Wage Relativity to a Meat Industry Employee - Level 4 is 85%)

Meat Industry Employee - Level 1 is an employee who has completed up to three months structured training, so as to enable the employee to perform work at this level.

An employee at this level performs duties under direct supervision and to the level of the employee's training.

- (i) works under direct supervision either individually or in a team environment;
- (ii) understands and undertakes basic quality control/assurance and hygiene procedures including the ability to recognise basic quality and hygiene deviations/faults;

Indicative of the tasks which an employee at this level may perform are the following:

- * house keeping duties;
- * customer sales and service including cash register operation, wrapping, packaging product, value adding and weighing; such an employee shall advance to Meat Industry Employee Level 2 after six months service. This means 830 hours of actual service. Service shall mean - **"Service"** shall mean service with an employer falling within the scope of this award or the Retail Trades Award.

Meat Industry Employee - Level 2- Wage Relativity to a Meat Industry Employee - Level 4 is 92.1%)

Meat Industry Employee - Level 2 an employee appointed by the employer to this level who has sufficient training and/or experience to enable the employee to perform work within the scope of this level.

An employee at this level performs work above and beyond the skills of an employee at Level 1 and to the level of the employee's training:

Indicative tasks for an employee at this level are as follows:

- * customer sales and service; including:
 - cash register operation;
 - wrapping;
 - packaging product;
 - value adding; and
 - weighing.
- * driving motor vehicle; including:
 - van sales and delivery.

Meat Industry Employee - Level 3 - Wage Relativity to a Meat Industry Employee - Level 4 is 95%)

Meat Industry Employee - Level 3 is an employee appointed by the employer to this level who has completed sufficient training so as to enable the employee to perform work within the scope of this level.

An employee at this level performs work above and beyond the skills of an employee at Level 2 and to the level of the employee's training:

- (i) works from complex instructions and procedures;
- (ii) assists in the provision of on-the-job training to a limited degree;
- (iii) co-ordinates work in a team environment or works individually under general supervision;
- (iv) is responsible for assuring the quality of the employee's own work.

Indicative of the tasks which an employee at this level are as follows:

- * customer sales and service, including:
 - providing supervisory assistance;
 - opening and closing of premises and associated security: and
 - security of cash (excluding banking).
- * driver vehicle over 4.5 GVM capacity;

Meat Industry Employee - Level 4 - Wage Relativity to a Meat Industry Employee - Level 4 is 100%)

Meat Industry Employee - Level 4 is an employee appointed by the employer to this level who, while still being primarily engaged in meat processing and sales work applies the skills acquired through the successful completion of a trade certificate level qualification.

A Meat Industry Employee - Level 4 employee works above and beyond an employee at Level 3 and to the level of the employee's training:

- (i) understands and applies quality control techniques;
- (ii) exercises good interpersonal communications skills;
- (iii) exercises discretion within the scope of this grade;

- (iv) performs work under general supervision either individually or in a team environment;
- (v) able to inspect products and/or materials for conformity with established operational standards.

Indicative of the tasks which an employee at this level in addition to those at Level 3 are as follows:

- * tradesperson - slaughterer in connection with Butcher Shop;
- * tradesperson - making smallgoods;
- * tradesperson - bacon curing;
- * general assistants, cutters up, bacon trimmers in bacon curing department;
- * tradesperson - general butcher.

Meat Industry Employee - Level 5 - Wage Relativity to a Meat Industry Employee - Level 4 is 105%)

Meat Industry Employee - Level 5 is an employee appointed by the employer to this level who works above and beyond a person at Level 4 and to the level of the employee's training.

- (i) exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards prescribed.
- (ii) exercise discretion within the scope of this grade;
- (iii) works under general supervision either individually or in a team environment;
- (iv) understands and implements quality control techniques;
- (v) provides trade level guidance and assistance as part of a work team;

Tasks which an employee at this level may perform which are normally performed by a tradesperson are subject to the employee having the appropriate trade and post trade training to enable them to perform particular tasks.

Indicative of the tasks which an employee at this level may perform in addition to those at Level 4 are as follows:

- * tradesperson in charge of Branch shop;
- * tradesperson who has completed at least six appropriate modules towards a relevant Advanced Certificate or Associate Diploma;

(b) General Definitions

'Casual employee' means a person who is engaged on an irregular basis to perform a specific task(s) or over a defined time period until such time as the task is completed or the time has expired, whereupon the contract comes to an end.

'Full-time employee' means any person who is engaged as such for 38 hours.

'Intermittent employee' means any person whose period of employment, whether for full or part-time, whose employment is terminable by the employer in accordance with the employer's requirements.

'Part-time employee' means a person engaged to regularly work for less hours per day or per week than those hours prescribed in Clause 16 - Hours, for a full-time employee.

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

8. WAGE RATES

1. ADULT WAGES

An adult employee of a classification specified herein employed in any of the industries or divisions hereof to which this award applies shall, except as otherwise specified, be paid the weekly wage rate herein assigned to that classification.

	*Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Meat Industry Employee Entry Level	80	333.80	232.70	566.50
Meat Industry Employee Level 1	85	354.60	232.70	587.30
Meat Industry Employee Level 2	92	384.20	232.70	616.90
Meat Industry Employee Level 3	95	396.30	232.70	629.00
Meat Industry Employee Level 4	100	417.20	234.70	651.90
Meat Industry Employee Level 5	105	438.10	234.70	672.80

2. 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 4. SUPPORTED WAGE SYSTEM, of this clause, is \$558.10 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause.

PROVIDED that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).

- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award.

PROVIDED that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

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

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2009 State Wage Case Decision (T.13471 of 2009) and all previous safety net and state wage case adjustments.

3. APPRENTICES AND JUNIORS

APPRENTICES

The minimum weekly wage rate for apprentices engaged as an apprentice slaughterer, apprentice butcher or apprentice smallgoods person shall be the undermentioned percentages of the tradespersons wage contained in Level 4:

	%
First year	50
Second year	65
Third year	72
Fourth year	95

PROVIDED that the employees employed as apprentices and who do not receive accredited off-the-job technical training shall be paid the relevant tradespersons weekly wage rate as set out in Wage Rates - Level 4.

JUNIOR WORKERS

The minimum weekly wage rates that may be paid to junior workers shall be the undermentioned percentages of Level 1 adjusted to the nearest 10 cents.

	%
Under 17	50
17 to 18 year old	60
18 to 19 year old	70
19 to 20 year old	80
20 to 21 year old	90

4. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

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

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

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

'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

'Assessment instrument' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

'Disability Support Pension' means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

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

(c) Supported Wage Rates

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

Assessed capacity (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 \$71 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 division, 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 division shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

- (h) Workplace Adjustment

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

- (i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this division for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$71 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 subclause (c) hereof.

9. ALLOWANCES

DRIVER'S LICENCE

If an employee employed in any of the classifications in respect of which this award is made uses his driver's licence exclusively in the business of driving any class or type of motor vehicle in respect of which such employee is required to hold a licence, his licence fee shall be paid by the employer at the time of the employee taking his annual leave.

FIRST AID

The employer shall provide and maintain a sufficient first aid box for injured employees. Such first aid box shall be to the satisfaction of the Tasmanian Industrial Commission.

An employee who holds current first aid qualifications from St. John Ambulance, the Red Cross Society or similar body, and who is appointed by the employer to perform first aid duty shall be paid \$1.75 per day extra.

INCIDENTAL EXPENSES

Where an employee is involved in meeting the cost of fares, accommodation or other expenses incurred as a result of attending for work to which he is directed by the employer, he shall be reimbursed for all expenses reasonably incurred.

MEALS

An employee who is required overtime for more than one and one half hours without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of \$15.40.

TOOLS

All employees (other than pieceworkers) engaged in classifications that are proclaimed as trades under the *Vocation 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 \$9.20 per week.

An Employer shall provide each apprentice with such tools as are customarily used in the trade, such tools to remain the property of the employer.

Employees (including juniors) other than those mentioned above shall be supplied with all tools and equipment or be paid an allowance of \$1.00 per week.

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

TRAVELLING

When an employee uses his/her own motor vehicle at the request of the employer the employee shall be paid an allowance of 38 cents per kilometre travelled in the course of the employee's duties.

10. CHANGE ROOM

A change room and washing facilities shall be provided for employees which shall be properly cleansed by the employer at least once daily.

11. CONSULTATIVE PROCEDURES

- (a) The parties to the award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the industry covered by the scope of this award, and to enhance the career opportunities and job security of employees in the industry.
- (b) To further the achievement of these objectives there shall be established at an industry level a State Meat Industry Consultative Committee comprising three representatives from the employers and three representatives from the union party to this award.
- (c) The Committee shall be chaired by The Australasian Meat Industry Employees Union, Tasmanian Branch union representative initially for a twelve month period and thereafter the chair shall be rotated between the parties. Alternately the Secretary of the Committee shall be provided by the other party.
- (d) The Committee shall meet at least twice each year and at such other times as determined jointly by the chairperson and the secretary. Formal records of decision of the Committee shall be kept.

12. CONTRACT OF EMPLOYMENT

- (a) General
 - (i) Upon commencing work with an employer, all employees shall be classified at a level prescribed in Clause 8 - Wage Rates, of this award.

- (ii) Further all employees prior to 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 limit of the employee's skills, competence and training consistent with the classification structure of this award **PROVIDED** that such duties are not designed to promote deskilling.

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

- (iii) The employer shall be entitled to deduct payment for any time the employee cannot be usefully employed because of any strike, or through any breakdown of machinery or any stoppage of work or by any cause for which the employer cannot reasonably be held responsible.

(b) Full-time Employees shall be engaged by the week.

(c) Part-time Employees

- (i) A part-time employee engaged to work less than 15 hours per week shall be paid, per hour, one thirty-eighth of the appropriate classification rate prescribed in Clause 8 - Wage Rates, of this award.

In addition thereto such employee shall receive 20 percent of the ordinary hourly rate in respect of each hour for which the employee is paid; such additional amount to be payment in lieu of annual leave, holidays with pay and personal leave.

- (ii) Part-time employees engaged to work 15 or more hours per week shall be entitled to the holidays, annual leave and personal leave as prescribed in Clause 15 - Holidays with Pay and Clause 17 - Leave, **PROVIDED** that payment therefore shall be made at the rate normally payable per hour shall be one thirty-eighth of the appropriate classification rate prescribed in Clause 8 - 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 subclause (i) of this clause.

- (iii) A part-time employee shall have only one engagement consisting of consecutive hours per day with any one employer.

- (iv) No part-time employee shall be employed for less than three hours for work performed on any given day within the span of ordinary hours prescribed in Clause 16 - Hours.
 - (v) For a part-time employee written advice as prescribed in subclause (a)(ii) of this clause shall in addition clearly state that the employee is engaged as a part-time employee.
- (d) Casual Employees
- (i) For a casual employee written advice as prescribed in subclause (a)(ii) of this clause shall in addition clearly state that the employee is engaged as a casual employee.
 - (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) Casual employees shall be engaged for a minimum of three hours per engagement.
 - (iv) A casual employee for working ordinary time shall be paid per hour one thirty-eighth of the weekly rate prescribed for a full-time employee engaged at the equivalent classification level for the work performed, plus 20 percent. Such additional amount to be payable in lieu of annual leave, personal leave, and holidays with pay.
 - (v) If a casual employee is not informed before leaving the job at the end of a day's 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 three hours pay at the appropriate classification rate.
- (e) Intermittent Employee.
- (i) For an intermittent employee written advice as prescribed in subclause (a)(ii) of this clause shall in addition clearly state that the employee is engaged as an intermittent employee.
 - (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 and shall regularly review and update this position with the employee as changes occur.
 - (iii) An intermittent employee may be engaged on either a full time or part time basis.

- (f) Termination of Employment
 - (i) Employment of an employee other than a casual employee may be terminated only by the giving of one week's notice by either party or by the payment or forfeiture of one week's wages as the case may be.
 - (ii) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for misconduct or neglect of duty.

13. ENTERPRISE AGREEMENTS

- (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 the majority of the employees engaged by that employer.
- (b) At each plant or enterprise, an employer, the employees and their relevant union or unions shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of that plant or enterprise.
- (c) 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 or unions shall be advised by the employer of his or her intention to commence discussions with employers on an agreement under this clause.
 - (iv) The relevant union or unions must be a party to the agreement.
- (d) An 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 of the agreement may be resolved.

- (e) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

14. GRIEVANCE PROCEDURE

The following procedure shall be observed in the resolution of grievance and in the settling of disputes.

- (a) In the event of a grievance or dispute arising, the matter should first be discussed between the employee(s) concerned and their immediate supervisor.
- (b) Should grievance or dispute not be settled by the discussions referred to in subclause (a) the shop steward shall take the matter up with the Production Manager.
- (c) Should the matter remain unresolved, the shop steward shall notify the State Secretary of the union. A conference on the matter shall then be arranged between the union and the appropriate management representatives including, if desired, a representative of the National Meat Association of Australia (Tasmanian Division) and/or the Tasmanian Chamber of Commerce and Industry Limited.
- (d) If the conference referred to in subclause (c) hereof is unable to satisfactorily resolve the dispute, the matter shall be referred to the Tasmanian Industrial Commission whose decision shall be final and binding on both parties.
- (e) Without prejudice to either party, work shall continue in accordance with the award while matters in dispute between them are being processed in accordance with the preceding procedure.

15. HOLIDAYS WITH PAY

- (a) All employees (other than part-time employees working less than 15 hours per week, casual employees or intermittent 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, Recreation Day (where Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, the employee had been at work or leave of absence for a period not exceeding three months granted by the employer.

- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) If any of the holidays specified herein fall on a Saturday or Sunday and are not observed on an ordinary working day another holiday shall be granted in lieu thereof or an additional day or days added to the employee's annual leave.

16. HOURS

Day Work

- (a) Subject to Clause 25 - Saturday Work, the maximum number of hours in respect of which wages prescribed in Clause 8 - Wage Rates, shall be paid shall be an average of 38 per week worked on a maximum of any five consecutive days between 4.00 am and 7.00 pm Monday to Wednesday, 4.00 am and 9.00 pm Thursday to Friday and 6.00 am and 6.00 pm. Saturday, arranged in accordance with one or more of the methods set out below.
- (b) The method of implementation of the 38 hour week shall be in accordance with one or more of the following:
 - (i) by employees working less than eight ordinary hours on each day; or
 - (ii) by employees working less than eight ordinary hours on one or more days each week; or
 - (iii) by fixing one week day on which all employees will be rostered off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during each particular work cycle so that each employee has one week day off during each such cycle; or
 - (v) by banking the days accrued to be taken as days off in accordance with (3) and (4) above to be taken at a time designated by management; or
 - (vi) by any other method agreed between the employer and employee **PROVIDED** that the ordinary hours of work do not exceed an average of 38 over an agreed and specified work cycle.
 - (vii) Rostered Day Off Falling on Holiday with Pay
 - (1) An employee who by virtue of the arrangement of his or her ordinary hours of work in accordance with this clause is entitled to a rostered day off shall not have such day off rostered on a holiday with pay.

- (2) **PROVIDED** that in the event that a holiday with pay is prescribed after notice is given to any such employee of the taking of the rostered day off and such holiday with pay falls on the day the employee is to take off, the employer shall allow the employee to take such day off on an alternative day upon which such employee is normally rostered to work ordinary hours.
- (viii) Where an employee is sick or injured on the day he or she is rostered off in accordance with this clause he or she shall not be entitled to personal leave nor will his or her personal leave entitlement be reduced as a result of such sickness or injury that day.
- (iii) At each establishment an assessment should be made as to which method of implementation best suits that establishment and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.
- (iv) Employees may be required to work in excess of eight ordinary hours per day but not more than 10 ordinary hours per day.
- (v) Circumstances may arise where different methods of implementation of the 38 hour week apply to various groups, individuals or sections of employees in the plant or establishment concerned.
- (vi) Where the method of implementation adopted is in accordance with subclauses (a)(ii), (3), (4) or (5) of this clause the wages paid each week for ordinary hours shall be paid so that in each week when 40 hours (or more) are worked, the time in excess of 38 hours shall be kept in hand and paid to the employee in the pay week(s) that the rostered day(s) off occur; to enable an averaging of payments for ordinary time to occur over the particular work cycle.
- (vii) Where the method of implementation entitles an employee to a rostered day off and such rostered day off fails during annual leave, long service leave or during a period of workers' compensation then that rostered day off is lost by the employee.

17. LEAVE

ANNUAL LEAVE

- (a) Period of Leave
- (i) Dayworkers

For employees other than casual, or part-time employees, 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).

(ii) Shiftworkers

In addition to the leave prescribed in paragraph (i) above, seven day shiftworkers, who are rostered to work regularly on Sundays and holidays, shall be allowed seven consecutive days' leave including non-working days.

Where an employee with 12 month's continuous service is engaged for part of the 12 monthly period as a seven day shiftworker, the employee shall be entitled to have the period of annual leave prescribed in paragraph (i) increased by one half a day for each month the employee is continuously engaged.

(b) Annual Leave Exclusive of Holidays with Pay.

(i) Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed in Clause 15 - Holidays with Pay, and if any such holidays fall within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

(ii) Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon the employee, to attend for work at the employee's ordinary starting time on the working day immediately following that last day of the period of the employee's annual leave the employee 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 termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence.

(ii) Any absence from work on account of personal sickness or accident and in calculating the period of 12 months' continuous service any such absence as aforesaid shall not, except to the extent of 91 days in any 12 monthly period be taken into account in calculating the period of 12 months' 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 38 hours continuous service excluding overtime in any qualifying 12 monthly period an employee lawfully leaves that employment or the employee's employment is terminated by the employer, through no fault of the employee, the employee shall be paid pro rata for the leave for which the employee was qualified on the following basis:

One-twelfth of a week's wages in respect of each completed 38 hours of continuous service.

(e) Payment in Lieu Prohibited

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

(f) Payment for Period of Leave

(i) All employees, before going on annual leave, other than casual employees or Part-time employees who attract a 20 percent loading in lieu of annual leave, personal leave and holidays with pay shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.

(ii) In addition thereto, all full-time employees, shall be paid an annual leave loading which shall be 17.5%.

(iii) Employees who are not in receipt of a 20 percent loading in lieu of annual leave, personal leave and holidays with pay shall have an entitlement based on the average weekly hours worked in the previous three months divided by 38 multiplied by 17.5% of their fulltime weekly rate.

(g) Calculation of Service

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

(h) Leave Allowed Before Due Date

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

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may for each completed month of the qualifying period of twelve months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of the wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 15 - Holidays with Pay.

(i) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding three months from the date when the right to annual leave accrued.

Annual leave shall be taken in one consecutive period except at the instigation of the employee and with the agreement of the employer leave may be taken in any combination of periods.

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

(i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.

(ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.

(iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.

(v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(vi) An employer shall record these short term annual leave arrangements in the time and wages book as prescribed in this award.

BEREAVEMENT LEAVE

- (a) An employee shall on the death of a wife, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, grandchild, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will 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 FURTHER** that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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

- (b) Unpaid Bereavement Leave

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

- (c) Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave

- (i) Subject to the evidentiary requirements in subclause (a), casual employees and employees in receipt of a loading in lieu of paid leave are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.
- (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees and employees in receipt of a loading in lieu of paid leave are not entitled to any payment for the period of non-attendance.
- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

LEAVE TO ATTEND UNION BUSINESS

Leave of absence from work to attend union business shall be allowed by the employer to any employee member of the union respondent to this award named by such union provided fair and reasonable notice is given to the employer.

PROVIDED that such leave shall be restricted to one employee at a time in the employment of any one employer and such employee shall not be entitled to payment for the time the employee is so absent from work.

PARENTAL LEAVE

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

(a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six 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:
 - (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.
 - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
 - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.
- (vii) Transfer to a safe job
 - (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
 - (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.
- (d) Paternity Leave
 - (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
 - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and

- (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
- (3) a statutory declaration stating:
 - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by the mother, and
 - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
- (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

(e) Adoption leave

- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
 - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

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

(g) Part time work

(i) Entitlement

With the agreement of the employer:

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

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

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

(iii) Pro Rata Entitlements

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

(iv) Transitional Arrangements - Annual Leave

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

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

(v) Transitional Arrangements - Personal Leave

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

(vi) Part-time Work Agreement

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

(vii) Termination of Employment

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

(viii) Extension of Hours of Work

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

(ix) Nature of Part-time Work

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

(x) Inconsistent Award Provisions

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

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

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

(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.
- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

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

Unless 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) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, **PROVIDED** that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, **PROVIDED** that the employer may require notice of not more than four weeks.

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

(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(k) Right To Request Variation To Parental Leave Provision

- (i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:
 - (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
 - (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
 - (3) to return from a period of parental leave on a part-time basis until the child reaches school age,to assist the employee in reconciling work and parental responsibilities.
- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

- (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

PERSONAL LEAVE

The provisions of this clause apply to an employee, other than one engaged as a casual or part-time employee in receipt of a loading in lieu of an entitlement to paid leave as specified in Clause 12 – Contract of Employment, subclause (c) – Part-time Employees, paragraph (i). The entitlements of casual employees and employees in receipt of a loading in lieu of an entitlement to paid leave are set out in subclause (m) – Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave – Caring Responsibilities.

(a) Definitions

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

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and
- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.

- (ii) The employee shall be entitled to paid personal leave on the basis of 6.33 hours for each month of continuous service with an employer.
 - (iii) The employee shall not be entitled to personal leave credit in excess of 10 days in any 1 year of employment with an employer.
 - (iv) Payment for such personal leave credits shall be made at the ordinary time work rate of pay.
- (c) An employee, who shall have been employed on or before 1 September 1973 shall accumulate 76 hours personal leave entitlement from such date on the basis of 6.33 hours for each month of continuous service and thereafter at the applicable date in pursuant years, the employee shall be paid the cash equivalent, to a maximum of 76 hours, of any personal leave entitlement in excess of 76 hours.
- (d) An employee, who is engaged after 1 September 1973 shall accumulate 76 hours personal leave from the date of the employee's engagement on the basis of 6.33 hours for each month of continuous service and thereafter at 1 September in pursuant years shall be paid the cash equivalent, to a maximum of 76 hours, of any personal leave entitlement in excess of 76 hours on the basis of 6.33 hours for each month of continuous service with an employer.
- (e) An employee engaged for a continuous period of one month who terminates his/her service or is dismissed by the employer for reasons other than misconduct or neglect of duty shall be paid for all such personal leave entitlements accrued after 1 September 1973 which the employee has to the employee's credit on the basis of 6.33 hours for each one month of his employment with the employer.
- (f) An employee, who has an amount of accumulated personal leave entitlement as at 1 September 1973 shall be paid for such entitlement in the following manner:
- Where the employee has been absent by reason of illness or injury (not being covered by workers' compensation) for more than 38 hours in any one year, the employee shall draw such extra days from the employee's leave credits which were accumulated prior to 1 September 1973.
- (g) Any dispute arising out of the provisions of this clause shall be referred to the Tasmanian Industrial Commission for determination.
- (h) Personal Leave for Personal Injury or Sickness

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

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

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

Leave may be taken for part of a single day.

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

(j) Employee Must Give Notice

The employee shall, as soon as possible and where practicable inform the employer of the employee's inability to attend for work prior to the commencement of the employee's normal working day, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the absence.

(k) Evidence Supporting Claim

- (i) The employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that the employee was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed.
- (ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(l) Unpaid Personal Leave

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

(m) Casual Employees and Employees in Receipt of a Loading in lieu of Paid Leave – Caring Responsibilities

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

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. Casual employees and employees in receipt of a loading in lieu of paid leave are not entitled to any payment for the period of non-attendance.

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

18. MATERIALS

- (a) Shop Butchers shall be issued annually with three coats, three aprons, three caps and five bibs, free of cost, such garments to be returned to the employer if the employee leaves that employment during the current year of issue.

An employer who does not supply such articles of clothing shall pay to each such employee an amount of \$3.30 per week.

- (b) Employees shall be issued by the employer with two suitable uniforms per annum free of cost, such garments to be returned to the employer if the employee leaves that employment during the current year of issue.
- (c) The laundering of the clothing supplied in accordance with subclause (a) hereof shall be the responsibility of individual employees.
- (d) Employees shall attend for work in an acceptable condition. Any employee failing to meet the dress standards required by the employer may be sent home without pay until he presents in an acceptable condition.
- (e) An employer shall provide each apprentice with such tools as are customarily used in the trade, such tools to remain the property of the employer.
- (f) The following items which shall remain the property of the employer shall be provided to the following employees in all divisions free of cost:
 - (i) Protective clothing, i.e. waterproof aprons, leggings and boots, to employees working under dirty, greasy or wet conditions; and

- (ii) Such tools and/or equipment specified by an employer and/or any other authority to be used by employees or are necessary for the use of employees in the performance of their duties.
- (g) The clothing provided under this clause shall be in good repair and shall be worn by the employee and must be kept in clean condition. Employees shall make every endeavour to keep the clothing and equipment supplied in good order and condition.
- (h) The provisions of the *Public Health Act* and its amendments shall apply to the materials provided in accordance with this clause.

19. MEAL HOURS

- (a) Employees shall be granted a meal period of not less than 30 minutes nor more than 60 minutes on each working day between noon and 2.00 pm and each daily period of work shall be unbroken except by the prescribed meal period or rest period. Meal periods shall not be counted as part of the daily hours worked.
- (b) An employee who is required to start work more at or before 4.00 am shall be allowed a break for breakfast in the employer's time of half an hour.
- (c) All employees shall be allowed rest periods to a total of 20 minutes per day.

Such rest periods shall be taken as either one 20 minute break or two 10 minute breaks.

If agreement cannot be reached as to the method of taking the rest period, they shall be taken to meet the employers requirements.

- (d) An employee who is required to work more than one and one half hours overtime on any day shall be permitted an unpaid meal break of 30 minutes. Such meal break to be commenced not later than five hours from the conclusion of the previous meal break.

20. MEAL ROOM

A meal room with ample accommodation will be provided for the use of employees. Such meal room shall be properly cleansed at least once daily. The employer shall provide a sufficient supply of hot water for the use of employees.

21. MIXED FUNCTIONS

When an employee performs work in a higher classification level for two hours or more on any day the employee shall be paid at that level for the day except for employees undergoing training for a higher classification who shall continue to receive the wage rate applicable to their existing classification.

It is envisaged that such training would not normally exceed a period of eight weeks.

22. OVERTIME

- (a) Any time worked by an employee, beyond 10 hours per day or outside the normal core hours noted in Clause 16 - Hours, shall be considered overtime and either paid at the rate of time and one half (50 percent loading) for the first two hours and double time (100 percent loading) thereafter or taken as time off in lieu at any time agreeable to both parties.

PROVIDED that penalty rates as prescribed are applicable to casual employees BUT the twenty per cent loading payable to casual employees shall be paid for all hours worked including times when penalty rates are paid and with the further proviso that all penalty additions shall be calculated on the ordinary time rate excluding this loading. Viz: -

Time and one half	equates to 1.7)	of the ordinary time rate
Double time	equates to 2.2)	without the 20 percent
Double time and one half	equates to 2.7)	loading.

In computing overtime each days work shall stand alone.

To compute the hourly rates for overtime payments prescribed in subclause (a) hereof, the appropriate weekly wage shall be divided by 38.

An employer, or his representative may require any employee to work overtime at overtime rates and such employee will work overtime in accordance with such requirements. The overtime required to be worked will not be unreasonable.

- (b) Clerks and sales assistants under the age of 18 years shall not be required to work overtime unless they so desire.
- (c) Apprentices under the age of 19 years shall not be required to work more than four hours' overtime in any week and apprentices 19 years of age and over shall not be required to work more than six hours' overtime in any week.
- (d) Employees called back to work overtime shall be paid for a minimum of two hours at the appropriate overtime rates.

PROVIDED that except in the case of unforeseen circumstances arising, the employees shall not be required to work the full two hours if the job they were so recalled to perform is completed within a shorter period.

- (e) Paid time off in lieu of overtime shall not be given or taken unless the employee has agreed to do so in writing.
 - (i) Such agreement shall be signed by the employee and must form part of the time and wages records of the employer and shall be kept for not less than six years. The agreements shall be available for inspection by the appropriate authority including a properly accredited union representative.
 - (ii) The method of taking paid time off in lieu of overtime shall be agreed between the employee and the employer.
 - (iii) Paid time off in lieu shall be calculated so as to ensure that it corresponds to not less than the money that would have been paid if payment in money had been required for the overtime worked.
 - (iv) Unless an employee agrees in writing, the accumulation of paid time off in lieu of overtime worked shall be taken within three months from the date of accrual.
 - (v) Paid time in lieu of overtime payment shall be regarded as time worked for the purpose of accumulating employees entitlements under this award.
 - (vi) This clause shall not be used to discriminate against particular employees with respect to the allocation of overtime to those employees at a particular establishment.
- (f) Time off in Lieu of Payment

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

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked (unless otherwise provided elsewhere in the award.)
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record time off in lieu arrangements in the time and wages book each time this provision is used.

23. PAYMENT OF WAGES

Payment of wages shall be made by Electronic Funds Transfer, cash or cheque at the employer's discretion not later than Thursday in each week.

24. RIGHT OF ENTRY

A duly accredited representative of a union prescribed in Clause 6 - Award Interest, of this award, shall have right of entry in accordance with Section 77 of the *Industrial Relations Act 1984*.

25. SATURDAY WORK

All time worked on Saturday for all classifications shall be paid as follows:

- (a) 6.00 am and 12 noon - time and one quarter
- (b) 12 noon to 6.00 pm - time and one half

With a minimum payment for three hours work.

26. SHARPENING OF KNIVES

The employer shall provide reasonable facilities for the sharpening of knives. Any employee required to use a knife in any of the occupation in respect of which this award is made shall be allowed reasonable time within the working hours for the sharpening of same.

27. SUNDAYS AND HOLIDAY WORK

- (a) For all work performed by employees on a Sunday, payment shall be made at the rate of double time, with a minimum payment for three hours' work at appropriate rate.
- (b) For all work performed by employees on any of the holidays mentioned in Clause 15 - Holidays With Pay, payment shall be made at the rate of double time and one half, with a minimum payment for three hours' work at the appropriate rate.

28. SUPERANNUATION

An employer shall provide superannuation in accordance with the following Commonwealth legislation: *the Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

James P McAlpine
COMMISSIONER

3 August 2009

APPENDIX A

Translation of Old Classification Structure To New Broadband Structure

Old Classification Level	New
All others	1
Butcher	4
Butcher in charge of Branch Shop	5
Driver of motor vehicle up to 4.5 tonnes GVM	2
Driver of motor vehicle over 4.5 tonnes but not exceeding 15 tonnes GVM	3
General assistants, cutters up, rollers, bacon trimmers in bacon curing dept.	4
Sales assistant	1,2,3
Shop Cashier	1,2,3
Slaughterer in connection with Butcher Shop	4
Smallgoods maker in butchers shop	4