

**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**

**RETAIL PHARMACY AWARD**

**ORDER -**

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

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

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

### **1. TITLE**

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

### **2. INDEX**

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## **3. SCOPE**

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

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

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

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

## **4. DATE OF OPERATION**

This award shall come into operation from the first full pay period to commence on or after 1 August 2009.

## **5. AWARD INTEREST**

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

- (i) The Association of Professional Engineers, Scientists and Managers, Australia;
- (ii) Shop, Distributive and Allied Employees Association, Tasmanian Branch

(b) The following employer organisation has an interest in this award under Section 63(10) of the *Industrial Relations Act 1984*:

The Pharmacy Guild of Australia, Tasmanian Branch;

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

the Tasmanian Chamber of Commerce and Industry Limited;

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

the Tasmanian Trades and Labor Council.

## **6. SUPERSESSION**

This award incorporates and supersedes the Retail Pharmacy Award No. 1 of 2008 (Consolidated).

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

## **7. GENERAL DEFINITIONS**

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

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

'**The Act**' shall mean the *Pharmacy Act 1908* as amended.

## PART II - EMPLOYMENT RELATIONSHIP AND ASSOCIATED MATTERS

### 1. DEFINITIONS

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

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

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

### 2. EMPLOYMENT CATEGORIES

#### (a) General

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

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

#### (b) Casual

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

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

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

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

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

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

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

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

(c) Part-time

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

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

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

(d) Employer Obligation

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

- (i) the commencement date of employment;
- (ii) whether the contract of employment is full-time or part-time; and
- (iii) the classification and wage rate of the employee at commencement

(e) Job Description

- (i) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award **PROVIDED** that such duties are not designed to promote de-skilling.
- (ii) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required **PROVIDED** that the employee has been properly trained in the use of such tools and equipment.

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

- (iii) Any direction issued by an employer pursuant to subclause (g) and (h) hereof shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

### **3. TERMINATION**

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

- (ii) Further to paragraph (i) of this subclause, employment may be terminated by either side by the giving of notice in accordance with the following table:

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

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

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

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



## PART III - WAGES AND RELATED MATTERS

### 1. WAGE RATES

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

	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
Pharmacist Manager (as defined)	%	\$	\$	\$
Grade 1	180	751.00	228.70	979.70
Grade 2	195	813.50	228.70	1042.20
Grade 3	210	876.10	228.70	1104.80
Pharmacist-in-charge (as defined)				
Grade 1	160	667.50	228.70	896.20
Grade 2	170	709.20	228.70	937.90
Grade 3	180	751.00	228.70	979.70
Pharmacist (as defined)				
1st year experience	140	584.10	232.70	816.80
Thereafter	150	625.80	232.70	858.50
Student				
First year	70	292.00	232.70	524.70
Second year	80	333.80	232.70	566.50
Third year	90	375.50	232.70	608.20
Fourth year Trainee	95	396.30	232.70	629.00
1st half of traineeship	100	417.20	232.70	649.90
2nd half of traineeship	115	479.80	232.70	712.50

Pharmacy Assistant	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Grade 1 - unqualified	92	366.00	232.70	598.70
- qualified	97	386.00	232.70	618.70
Grade 2	102	406.00	232.70	638.70
Grade 3	106	426.00	234.70	660.70
Grade 4	111	446.00	234.70	680.70

(b) Junior Pharmacy Assistants

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

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

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

**2. SUPPORTED WAGE SYSTEM**

(a) Eligibility criteria

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

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

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

(b) For the purposes of this subclause:

- (i) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **'Accredited Assessor'** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (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 \$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 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.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (iv) and (v).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$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 paragraph (iii) hereof.

### **3. CLASSIFICATION DESCRIPTORS**

#### **PHARMACISTS:**

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

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

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

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

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

- (a) A pharmacist-in-charge is employed as the pharmacist in charge of a retail pharmacy, either as the sole pharmacist (as defined) employed in the business or as a pharmacist in charge of other employed pharmacists and is responsible for both front-of-shop and dispensary supervision. A pharmacist-in-charge (as defined) is subject to the overall direction of a proprietor or a pharmacist manager (as defined).

(b) Duties and responsibilities shall include, but are not limited to:

- (i) Performing all the duties of a pharmacist (as defined);
- (ii) Locking and unlocking of the pharmacy (as defined), lunchtime supervision arrangements, debtor control, rostering of staff, banking preparation, delivery supervision, repairs and maintenance, public relations and in-store promotions.

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

(c) A Pharmacist-in-charge (as defined) will be graded as follows:

- (i) Grade 1 - in charge of or manages a small pharmacy (as defined) where the equivalent full-time staff (EFTS) is less than 2.
- (ii) Grade 2 - in charge of or manages a large pharmacy (as defined) where the EFTS is 2 (or greater) but less than 4.
- (iii) Grade 3 - in charge of or manages a large pharmacy (as defined) where the EFTS is 4 or more.
- (iv) The number of Equivalent Full-Time Staff (EFTS) is calculated as follows:  $a/b = c$

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

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

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

Staff = Pharmacy Assistants (as defined)

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

(a) A pharmacist manager is employed as the pharmacist in control of the business. Pharmacist managers are totally responsible to the proprietor for all aspects of the business.

(b) A Pharmacist Manager (as defined) will be graded as follows:

- (i) Grade 1 - in charge of or manages a small pharmacy (as defined) where the equivalent full-time staff (EFTS) is less than 2.

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

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

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

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

Staff = Pharmacy Assistants (as defined)

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

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

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

## **PHARMACY ASSISTANTS:**

### **Pharmacy Assistant Grade 1 - Unqualified**

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

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

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

### **Pharmacy Assistant Grade 1 - Qualified**

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

- possesses an accredited Pharmacy Assistant Grade 1 certificate

(b) Competency Standards and Product Knowledge

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

(i) Competency Standards (as defined):

- Units 2, 4 and 10
- Elements 1.1, 1.2, 1.5 and 1.6
- Elements 9.1, 9.2 and 9.3
- Element 14.1

(ii) Product Knowledge (as defined):

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

(c) Training

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

(d) Progression:

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

**Pharmacy Assistant Grade 2**

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

- possesses an accredited Pharmacy Assistant Grade 2 certificate

(b) Competency Standards and Product Knowledge

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

(i) Competency Standards (as defined):

Includes Grade 1 competency standards, plus:

- Units 5, 6



- Elements 1.3, 1.4
- Element 9.4
- Elements 14.2, 14.3

(ii) Product Knowledge (as defined):

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

(c) Training

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

(d) Progression:

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

**Pharmacy Assistant Grade 3**

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

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

(b) Competency Standards and Product Knowledge

(i) Assisting in the dispensary, includes Grade 1 and Grade 2 competency standards, plus:

- Unit 15; or

(ii) Mini-lab Operator

- specialised knowledge and high proficiency in the operation of a mini-lab; or

(iii) Information Systems Management:

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

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

(A) Competency Standards:

- units 3, 7, 11

(B) Product Knowledge:

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

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

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

(d) Training

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

(e) Progression:

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

## **Pharmacy Assistant Grade 4**

- (a) An employee will be appointed to this grade if either:
  - (i) the employee is specifically engaged to supervise the operations of a mini-lab photographic processing unit; or
  - (ii) is required, by the employer, to perform any one of the requirements in subclause (b) herein; and if he or she:
    - possesses an accredited Pharmacy Assistant Grade 4 certificate
- (b) Competency Standards
  - (i) Dispensing, includes Grades 1, 2 and 3 competency standards, plus competence demonstrated by completion of a recognised dispensing course.
  - (ii) Marketing, includes Grades 1, 2 and 3 competency standards, plus:  
Competency Standards Unit 8
  - (iii) Operations Supervision, includes Grades 1, 2 and 3 competency standards, plus:  
Competency Standards Units 12 and 13
- (c) A Pharmacy Assistant, Grade 4 may be required to supervise Pharmacy Assistants, Grades 1, 2 and 3.

## **4. HIGHER DUTIES**

- (a) Pharmacy Assistants

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

- (b) Pharmacists

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

## **5. PHARMACISTS REMUNERATION PACKAGING**

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

## **6. PAYMENT OF WAGES**

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

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

## **7. OCCUPATIONAL SUPERANNUATION**

- (a) Definition

**'Fund'** means a Superannuation Fund as defined in the *Occupational Superannuation Standards Act 1987*.

- (b) An employer shall make a superannuation contribution on behalf of all eligible employees at a rate consistent with the requirements of the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Occupational Superannuation Standards Act 1987* into a fund (as defined).
- (c) The employer shall not be required to make contributions into more than one fund (as defined).
- (d) The employer shall consult as may be necessary to facilitate the selection by a majority of employees of an appropriate fund within the meaning of subclause (a) herein.
- (e) Notwithstanding the provisions of this clause, an employer shall continue to make contributions into the fund applying as at the date of the making of this award until such time as an alternate fund is selected in accordance with subclause (d) of this clause.
- (f) **Additional Employee Contributions**
  - (i) An employee may make contributions to the fund in addition to those made by the employer.
  - (ii) An employee who wishes to make additional contributions must authorise the employer in writing to pay into the fund, from the employee's wages, a specified amount in accordance with the fund trust deed and rules.
  - (iii) An employer who receives written authorisation from the employee, must commence making payments into the fund on behalf of the employee, in accordance with subclause (g) within fourteen days of receipt of the authorisation.
  - (iv) An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions, in accordance with subclause (g), within fourteen days of receipt of the authorisation.

(g) **Frequency of Payment**

Employer and employee contributions shall be paid to the fund monthly.

(h) **Statement of Contributions**

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

## **8. COMPETENCY STANDARDS**

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

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

- (a) the parties will initially meet to review the competency-based career paths and associated wage rates in light of the variation/s made; and
- (b) refer the matter to the Tasmanian Industrial Commission should any variation to the award be necessary.

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

## **9. TRAINING**

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

## **10. MINIMUM WAGE**

- (a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Part III – Wages and Related Matters, Clause 2 - Supported Wage System is \$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.

## PART IV - ALLOWANCES

### 1. CLOTHING AND CLOTHING ALLOWANCE

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

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

### 2. EXPENSES AND ACCOMMODATION

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

2 litres and above      39.7 cents per kilometre

Less than 2 litres      34.15 cents per kilometre

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



### **3. MEAL BREAKS, REST PERIODS AND MEAL ALLOWANCES**

(a) Meal Break

- (i) An employee engaged to work at least six consecutive hours in any one day, Monday to Sunday, shall be allowed an unpaid meal break of 30 minutes. The meal break shall be taken after not less than 3 hours nor more than 5 hours after the commencement of duty.
- (ii) Except where overtime is worked for a period not exceeding one hour after normal finishing time, no employee shall work for more than 5 hours in any one day, Monday to Friday, without a break of not less than 30 minutes for a meal.
- (iii) In circumstances where a second meal break is required on any one day such break shall not be less than 30 minutes.

(b) Meal Allowance

- (i) An employee who has worked six hours or more during ordinary time and who is required to work overtime for more than one and a half hours shall be either supplied with an adequate meal by the employer or be paid \$15.40 meal money.

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

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

(c) Rest Period

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

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

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

#### **4. MEAL BREAK AVAILABILITY ALLOWANCE**

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

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

## PART V - HOURS OF WORK, PENALTY PAYMENTS AND OVERTIME

### 1. HOURS OF WORK

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

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

(b) Rosters

(i) Pharmacy Assistants

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

(ii) Pharmacists

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

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

(iii) General

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

(c) Make Up Time

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

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

(d) Rostered Days Off

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

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set on in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record RDO arrangements in the time and wages book.

## **2. OVERTIME**

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

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

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.

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

### **3. PENALTY PAYMENTS**

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

(A) between 6.00 am and 8.00 am	25%
(B) between 9.00 pm to midnight	25%
  - (ii) On Saturday
 

Between 6.00 am and midnight	25%
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  - (iii) On Sunday - 50% with a minimum payment as for three hours worked.
  - (iv) On a holiday with pay - 50% of the relevant hourly classification rate.

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

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

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

(d) Casual Pharmacists

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

(i) Monday to Friday 6.00 pm - 9.00 pm

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

(ii) Saturday:

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

#### **4. REQUIREMENT TO WORK REASONABLE OVERTIME**

(a) Subject to subclause (b) an employer may require an employee to work reasonable overtime at overtime rates or with time off in lieu in accordance with Part V - Hours Of Work, Penalty Payments And Overtime, Clause 2 – Overtime, subclause (e).

(b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

(i) any risk to employee health and safety;

(ii) the employee's personal circumstances including any family responsibilities;

(iii) the needs of the workplace or enterprise;

(iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

(v) any other relevant matter.

## PART VI - LEAVE AND HOLIDAYS WITH PAY

### 1. ANNUAL LEAVE

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

(b) Broken Leave

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

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

(c) Annual Leave Exclusive of Holidays With Pay

If any of the holidays prescribed by Part VI – Leave And Holidays With Pay, Clause 3 - Holidays with Pay hereof fall within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to the period of annual leave one day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

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

(e) Time of Taking Leave

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

(f) Payment for Period of Leave

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



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

(g) Leave Allowed before Due Date

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

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Part VI – Leave And Holidays With Pay, Clause 3- Holidays With Pay hereof.

(h) Proportionate Leave on Termination of Service

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

12.67 hours for each completed month of continuous service.

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

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

- (iii) Calculation of Continuous Service

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

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

(i) Flexibility

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

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993
- (vi) An employer shall record these short term annual leave arrangements in the time and wages book.

**2. BEREAVEMENT LEAVE**

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

**PROVIDED** that no such payment shall be made in respect of an employee's rostered days off (as defined) 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 subclause 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) of this clause, 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.

### **3. HOLIDAYS WITH PAY**

(a) Definition

**'Show day'** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed, or such other day which, in the absence of such a local show day (as defined), is agreed on by the employee and the employer.

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

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

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

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

#### **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.

##### (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six month or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
  - (1) any period of leave taken in accordance with this clause;
  - (2) any period of part-time employment worked in accordance with this clause; or

- (3) any period of leave or absence authorised by the employer or by the award.
  - (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
  - (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
  - (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
  - (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
  - (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 other wise agreed between employee and employer, and consistent with the provisions of this clause

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c)(vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.

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

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

(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).

**5. PERSONAL LEAVE**

- (a) The provisions of this clause apply to employees, other than one engaged as a casual employee or a part-time employee in receipt of the 20 per cent loading as prescribed in Part II – Employment Relationship And Associated Matters, Clause 2 - Employment Categories, subclause (c) - Part-time, who are 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. 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 (i) - Casual Employees or part-time employees who receive a loading in lieu of paid leave – Caring responsibilities.

(i) Definitions

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

- (1) 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

- (2) 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.

(ii) Amount of Paid Personal Leave

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.
- (iii) An employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation.
- (iv) An employee shall not be entitled in any year to personal leave in excess of seventy-six hours of ordinary working time.

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

(b) 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.

(c) 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 (c)(i), beyond the limit set out in paragraph (c)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(d) Employee Must Give Notice

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

(e) Evidence Supporting Claim

(i) An 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.

(f) Personal leave shall accumulate from year to year so that any balance of the period specified in subclause (a) of this clause which has in any year not been allowed to an employee by an employer as paid personal leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by the employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.

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

(h) 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 (d) and (e) are met.

(i) Casual Employees or part-time employees who receive a loading in lieu of paid leave – Caring responsibilities

Subject to the evidentiary and notice requirements in subclauses (d) and (e) casual employees or part-time employees who receive 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 or part-time employees who receive 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.



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

### **1. SETTLEMENT OF DISPUTES**

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

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

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

### **2. STRUCTURAL EFFICIENCY**

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

- (d) An appropriate classification structure shall be an issue for on-going consultation between the parties to the award.

James P McAlpine  
**COMMISSIONER**

3 August 2009