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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union -
Tasmanian Branch**

(T11412 of 2004)

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER J P McALPINE

Award variation – union name change - application approved

BAKING INDUSTRY AWARD

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

CLAUSES 4, 5, 6, 8, 16 and 22 ARE VARIED, AND THE AWARD IS CONSOLIDATED:

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1. TITLE

This award shall be known as the "Baking Industry Award".

2. SCOPE

This award is established in respect of the Baking Industry (as defined).

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall be operative from the first full pay period commencing on or after 1 August 2004.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Baking Industry Award No. 1 of 2003 (Consolidated) and No. 2 of 2003.

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 AND PARTIES BOUND

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

- (i) the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch;
- (ii) the 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 Act:

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 Act:

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 Act:

the Tasmanian Trades and Labor Council.

7. DEFINITIONS

GENERAL DEFINITIONS

'Baking Industry' for the purposes of this Award shall mean the industry of:

- (a) the making and/or baking and/or distributing of bread, bread rolls and other yeast raised products, crumpets, cakes, biscuits, pies, pastries, sausage rolls, savoury rolls and/or other similar products however described; and

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(b) the sale by retail and/or wholesale of such products; and

(c) may include the serving of such products for consumption on the premises.

'Casual employee' means any person who is employed on an irregular basis as and when required by the employer and by mutual consent between the employer and employee and includes any employee employed for a period not exceeding 5 days at any one time.

'Merchandising' means providing and maintaining a display of product in a client's premises.

'Part-time employee' means a person engaged to regularly work for less hours per day or week than those prescribed for full-time employees in Clause 20 - Hours of Work.

'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.

CLASSIFICATION DEFINITIONS

BAKERY EMPLOYEE

Level One

Proposed Relativity 78%

Production/Distribution

An employee on entry to the industry and without relevant work experience who undertakes induction training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance.

An employee at this level performs routine duties essentially of a manual nature and to the level of their training:

1. exercises minimal judgement
2. works under direct supervision

An employee at this level is undertaking structured training so as to enable them to work at Bakery Employee Level Two.

Promotional Criteria

An employee shall remain at this Level until he or she is capable of effectively performing the tasks required at this level through assessment or appropriate certification. Once so assessed or certified an employee shall progress to Level 2.

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**BAKERY EMPLOYEE
Level Two
Production/Distribution**

Proposed Relativity 82%

Includes an employee who has completed up to three months structured training so as to enable the employee to perform work within the scope of this level or who has completed a relevant traineeship.

An employee at this level undertakes elementary tasks under routine supervision associated with the production of bread or other products including:-

1. loading and/or unloading product from machines
2. housekeeping duties including the cleaning and storage of bakery equipment
3. maintaining simple records
4. understand basic concepts of quality as they relate to the preparation of food products
5. understands and works from basic written and/or spoken instructions
6. is able to, where relevant, store, check, pack, dispatch, document, invoice and store goods and / or materials as required;

Sales

Includes an employee with less than 6 months relevant experience in the retail industry as a junior or an adult. An employee at this level performs, under direct supervision, basic sales and customer service and liaison duties requiring the exercise of little or no discretion. Duties may include:-

- operation of cash register
- preparation of food including salad rolls etc
- visual merchandising
- sales and customer assistance
- general cleaning

Promotional Criteria (Sales)

An employee shall progress to a Level 4 (Sales) position after 6 months service. This shall mean 830 hours actual service.

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PROVIDED that an employee engaged predominantly on cleaning duties will remain at this level until required by the employer to perform duties at the next level for which the employee is qualified by virtue of training or experience other than as required by Clause 18 - Higher Duties

Promotional Criteria (All other employees)

An employee will remain at this level until required by the employer to perform duties at the next level for which the employee is qualified by virtue of training or experience other than as required by Clause 18 - Higher Duties.

**BAKERY EMPLOYEE
Level Three
Production/Distribution**

Proposed Relativity 87.4%

Includes an employee working above the skills of an employee at level two and to the level of their training and :-

1. Is responsible for the quality of their own work.
2. Works under routine supervision either individually or in a team environment.
3. Exercises discretion within the level of their skills and training.

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

- operates with flexibility between tasks and/or production processes;
- operates machinery and equipment requiring the exercise of discretion, knowledge and skill beyond that of an employee at Level Two;
- operates a fork lift up to 5000 kg lifting capacity for which a licence is required;
- merchandising skills after 3 months (but not less than 260 working hours) of experience;
- maintain records;
- understands and applies basic quality control / assurance techniques and initiates remedial action;
- use of basic keyboard skills;
- driver of a motor vehicle up to and including 4.5 GVM.

Clerical (Adult Entry Level)

Includes an employee who works within established procedures and under direct supervision and who uses one or more of the following skills to the standard described:-

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1. Machine Operation

Operating telephone/intercom systems, telephone answering machines, facsimile machines, photocopiers, franking machines, guillotine.

2. Information Handling

Sorting, opening, and distributing incoming mail, processing outgoing mail, maintaining a mail register, receiving incoming and dispatching outgoing courier mail, delivering messages and documents to the appropriate person and/or location, preparing and collating simple documents, sorting and filing documents and records in an established paper filing system, taking telephone messages.

3. General

Acquiring and applying a limited knowledge of simple office procedures and requirements.

Promotional Criteria

An employee will remain at this level until required by the employer to perform duties at the next level for which the employee is qualified by virtue of training or experience other than as required by Clause 18 - Higher Duties.

BAKERY EMPLOYEE

Level Four

Proposed Relativity 92.4%

Production/Distribution

Includes an employee who works above and beyond the skills of an employee at Level Three and to the level of their training and who:-

1. co-ordinates work in a team environment or works individually under general supervision
2. assists in the provision of on-the-job training to the limit of their training and experience
3. is responsible for assuring the quality of their own work
4. works from relatively complex instructions and procedures and exercises discretion within the limit of their skills

Indicative tasks which an employee at this level may perform are:-

- operating a variety of baking and other equipment requiring diverse skills and/or knowledge
- driver of a motor vehicle in excess of 4.5 but not exceeding 15 GVM
- detailed knowledge of the production and/or distribution process of the business

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- devising and/or providing in-store display and product demonstration and have appropriate product knowledge
- lubrication and basic non trade maintenance of bakery equipment
- intermediate keyboard skills

Sales

Includes an employee who works beyond the level of skill of a Bakery Employee Level Two (Sales). Employees at this level work under general supervision and exercise discretion within the scope of this grade.

Indicative tasks which an employee at this level may perform are:-

- sales techniques
- general product knowledge
- loss prevention
- general cleaning
- wrapping and packaging of goods
- interpretation of detailed instructions and work procedures
- assistance to a limited degree in on-the-job training
- reconciliation of cash register
- maintain/establish paper-based filing/ records systems in accordance with set procedures
- sales and customer assistance
- interpersonal communication
- pricing and ticketing
- information technology
- stock display
- slicing of bread
- handling cash including security measures
- stocktaking
- ordering of stock not requiring the exercise of discretion

Clerical

Includes an employee who works beyond the level of skill of a Bakery Employee Level Three (Clerical). They are responsible and accountable for their own work within established routines, methods and procedures and work under routine supervision.

An employee at this level is able to utilise one or more of the skills listed below to the skill level described.

1. Machine Operation:-

- Operating adding machine, switchboard, paging system, telex machine, typewriter, calculator.
- Using knowledge of keyboard and function keys to enter and retrieve data through computer terminal.
- Copy typing at 25 words per minute with 98% accuracy.

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2. Information:

- Maintaining mail register and records, maintaining established paper based filing/records systems in accordance with set procedures including creating and indexing new files/distributing files within the organisation as requested, monitoring file locations, transcribing information into records, completing forms and taking telephone messages

3. General:-

- Acquiring and applying a working knowledge of office or sectional operating procedures and requirements.
- Acquiring and applying a basic working knowledge of the organisational structure, company products and services and personnel in order to deal with initial staff enquiries, locating appropriate staff in different sections, relaying internal information, responding to or redirecting visitors etc.
- Keeping appropriate records.
- Preparing and recording petty cash transactions, undertake basic banking.

Promotional Criteria

An employee will remain at this level until required by the employer to perform duties at the next level for which the employee is qualified by virtue of training or experience other than as required by Clause 18 - Higher Duties.

BAKERY EMPLOYEE

Level Five

Proposed Relativity 100%

Production/Distribution

An employee at this level performs work above and beyond the skills of an employee at Production/Distribution Level Four and to the level of their training and qualifications, applies skills acquired through the successful completion of a trade certificate level in baking or through equivalent qualification. They :-

1. Understand and apply quality control techniques.
2. Exercise discretion within the scope of this level.
3. Perform work under general supervision either individually or in a team environment.
4. Exercise good interpersonal and communication skills

Indicative tasks which an employee at this level may perform are as follows:-

- mixes and makes doughs;

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- prepares sugar products for ornamental purposes;
- inspects and approves product to established standards;
- assists and/or provides on-the-job training;
- supervises the work of production/distribution employees;
- operate any relevant lifting equipment;

Maintenance

An employee at this level will possess a trade certificate or tradesperson's rights certificate in any one of the following trades:

- electronic/electrical trades;
- mechanical trades;
- painting;
- carpentry.

and is able to exercise the skills and knowledge of that trade. They:

1. Understand and apply quality control techniques.
2. Exercise good interpersonal and communications skills.
3. Exercise discretion within the scope of this level.
4. Work under limited supervision either individually or in a team environment.

Indicative tasks which an employee at this level may perform are as follows:

- operate all lifting equipment incidental to their work;
- exercise good hygiene practices consistent with working in the bakery industry;
- exercise clean-up skills consistent with the health and hygiene requirements of the bakery industry;
- maintain plant and equipment or buildings to maximum efficiency levels;
- participate in installation and/or repositioning of plant or equipment.

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Sales

Includes an employee who works beyond the skill level of a Bakery Employee Level Four - Sales. In most cases employees at this level will be in supervisory positions and be required to exercise both discretion and initiative.

Indicative tasks which an employee at this level may perform are:-

- management of a defined section;
- supervision of other sales staff
- sole responsibility for the shop front area on a regular basis for the major part of the trading day
- ordering stock
- use of a visual display unit
- detailed product knowledge
- detailed visual merchandising skills
- training of other sales staff
- opening and closing of premises and associated security

Clerical

Includes an employee who works beyond the skill level of a Bakery Employee Level Four - Clerical. An employee at this level is responsible and accountable for their own work within established guidelines and under general supervision. The employee exercises discretion within the range of the employee's skills and is able to utilise one or more of the skills listed below:-

1. Machine Operation:-

Operating computerised radio telephone equipment, micro/personal computer printing devices, dictaphones and typewriters;

Producing documents and correspondence using knowledge of standard formats, touch typing at 50 words per minute with 98% accuracy and audio typing;

Using one software application package developed for a micro/personal computer to create a database file structure, a spreadsheet/worksheet or a graphic; or an accounting payroll file following standard procedures and using existing models/fields of information;

Using a central computer resource to an equivalent standard;

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Using one software package to create, format, edit, proof read, correct, print and save text documents.

2. Information Handling:-

Employees at this level use computer based or other record management systems to file and retrieve records such as accounts, stock inventory, finance and personnel records.

3. Business/Financial:-

Maintaining records and journals, sorting, processing and recording transactions such as incoming/outgoing cheques, invoices, debit/ credit items, payroll data, establish petty cash imprest system.

4. General:-

Acquisition of a working knowledge of the organisations products/services, functions, locations and clients;

Responding to and acting upon most enquiries within their own function area.

Promotional Criteria

An employee will remain at this level until required by the employer to perform duties at the next level for which the employee is qualified by virtue of training or experience other than as required by Clause 18 - Higher Duties.

BAKERY EMPLOYEE

Level Six

Proposed Relativity 105%

Production/Distribution

An employee at this level works above and beyond the skills of an employee at level Five and:-

- is capable of basic fault finding and minor maintenance of baking machinery, etc;

In the performance of these duties such an employee:

- is responsible for the efficient operation of a designated work area;
- is responsible for the work of other employees;
- may provide trade training;
- possesses a sound knowledge of the employers operation;
- understands and implements safety, quality control and hygiene, etc, techniques;
- is responsible for the quality of the product.

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Maintenance

An employee at this level works above and beyond the skills of an employee at Bakery Employee Level 5 - Maintenance and to the level of their training.

Has completed 33% of an appropriate post-trade certificate and is required to undertake work requiring the utilisation of skills acquired in that certificate.

- exercises trade skills relevant to the specific requirements of the enterprise at a level higher than a Bakery Employee Level 5 - Maintenance;
- provides trade guidance and assistance as part of a work team;
- understands and implements quality control techniques;
- works under general supervision;
- exercises discretion within the scope of this level;
- exercises supervisory skills;
- exercises good interpersonal and communication skills.

Promotional Criteria

An employee will remain at this level until required by the employer to perform duties at the next level for which the employee is qualified by virtue of training or experience other than as required by Clause 18 - Higher Duties.

BAKERY EMPLOYEE Level Seven Production/Distribution

Proposed Relativity 110%

An employee at this level works above and beyond the skill and/or responsibility level of all other Production / Distribution employees. Such an employee is:-

- responsible for the overall manufacturing process of the enterprise including quality and hygiene techniques;
- responsible for the supervision of all employees in any designated work area and provides relevant guidance and on the job training;
- required to liaise with management regarding production requirements;
- responsible for inventory and stock controls as well as receipt of raw materials and dispatch of finished product;
- sometimes involved in determining daily or weekly work schedules;

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- required to furnish regular reports on production activities and other relevant information.

Maintenance

An employee at this level is a special class tradesperson and possesses appropriate certification.

In addition to the tasks of an employee at Bakery Employee Level 7 - Maintenance an employee at this level:

1. Works under limited supervision either individually or in a team environment.
2. Assists in the provision of training in conjunction with supervisors and trainers.

Indicative tasks at this level may include:

- exercising high precision trade skills using various materials and/or specialised techniques;
- working on complex or intricate circuitry;
- installing, repairing, maintaining, testing etc complex, machinery and equipment which utilise hydraulic and pneumatic principles.

Clerical

Employees at this Level perform clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required in Level 5. They are responsible and accountable for their own work. They exercise initiative, discretion and judgement within the range of their skills and knowledge. Supervision is minimal.

In addition they may be required to supervise and be responsible for the work of five or more clerical employees.

8. WAGE RATES

- (a) Adult employees shall be paid in accordance with the following classification structure which shall be read in conjunction with the classification definitions contained in Clause 7 - Definitions.

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Bakery Employee Level One	78.00	325.40	142.00	467.40

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Level Two	82.00	342.10	142.00	484.10
Level Three	87.40	364.60	142.00	506.60
Level Four	92.40	385.50	142.00	527.50
Level Five	100.00	417.20	144.00	561.20
Level Six	105.00	438.10	144.00	582.10
Level Seven	110.00	458.90	144.00	602.90

(b) Junior Employees - Production/Distribution/Transport

The minimum weekly wage rates that shall be paid to junior employees shall be the undermentioned percentages of the adult weekly wage rate for a Bakery Employee - Level 2.

	% of Weekly Wage Rate for a Bakery Employee Level 2
Under 17 years of age	50
17 to 18 years of age	60
18 to 19 years of age	70
19 years of age and over	100

(c) Junior Employees - Sales

The minimum weekly wage rate that shall be paid to junior employees shall be the undermentioned percentages of the adult weekly wage rate for a Bakery Employee Level - 4:-

	% of Weekly Wage Rate for a Bakery Employee Level 4
Under 17 years of age	54
17 to 18 years of age	59
18 to 19 years of age	73
19 to 20 years of age	86
20 to 21 years of age	90

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(d) Junior Employees - Clerical

The minimum weekly wage rate that shall be paid to junior employees shall be the undermentioned percentages of the adult weekly wage rate for a Bakery Employee - Level 3.

	% of Weekly Wage Rate for a Bakery Employee Level 3
Under 16 years of age	40
16 to 17 years of age	45
17 to 18 years of age	55
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(e) Apprentices

The minimum weekly wage rate that shall be paid to apprentices shall be the undermentioned percentages of the adult weekly wage rate for a Bakery Employee Level 5:

	% of Weekly Wage Rate for a Bakery Employee Level 5
1st year	50
2nd year	60
3rd year	75
4th year	90

(f) Adult Apprentices

The minimum weekly wage rate that shall be paid to apprentices shall be the undermentioned percentages of the adult weekly wage rate for a Bakery Employee Level 5:

	% of Weekly Wage Rate for a Bakery Employee Level 5
1st year	78
2nd year	87.4
3rd year	92.4

(g) Supported Wage System

(i) Eligibility criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (iii) of this subclause) who meet the impairment criteria for receipt of a Disability Support Pension and who,

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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 ALWAYS 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.

(ii) For the purposes of this subclause:

- (1) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (2) **'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.
- (3) **'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.
- (4) **'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.

(iii) Supported wage rates

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

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

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

(iv) 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:

- (1) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (2) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(v) Lodgment of assessment instrument

- (1) 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.
- (2) 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.

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(vi) 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.

(vii) 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.

(viii) 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.

(ix) Trial Period

- (1) 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.
- (2) 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).
- (3) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (4) Work trials should include induction or training as appropriate to the job being trialed.
- (5) 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.

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(h) Minimum Wage

(i) Minimum Wage

No employee shall be paid less than the minimum wage.

(ii) Amount of Adult Minimum Wage

(1) The minimum wage for full-time adult employees not covered by subclause (g) - Supported Wage System is \$467.40 per week.

(2) 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 (ii)(1).

(3) 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 (ii)(1) according to the number of hours worked.

(iii) How the Minimum Wage Applies to Juniors

(1) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (iii)(2) is greater.

(2) 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 (ii)(1).

(iv) 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.

(v) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

(1) applies to all work in ordinary hours;

(2) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and

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- (3) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T.11548 of 2004) and all previous safety net and state wage case adjustments.

9. ANNUAL LEAVE

(a) Period of Leave

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

This period of leave shall be known as annual leave for the purposes of this award.

(b) Annual Leave Exclusive of Holidays

If any of the holidays referred to in Clause 19 - Holidays with Pay fall during an employee's period of annual leave and falls on a day which, for that employee, would have been an ordinary working day, the employee shall be credited with one additional day for such holiday.

(c) Payment in Lieu Prohibited

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

(d) Broken Leave

Annual Leave shall be taken in one or two continuous periods. Where annual leave is taken in two continuous periods, one period shall be of at least 21 consecutive days, including non-working days.

PROVIDED that the employer and employee may agree that annual leave may be taken in two periods neither of which is 21 consecutive days or in three separate periods.

Agreement reached in accordance with this subclause shall only apply in respect of one year's annual leave entitlement and new agreements will be required in future years.

PROVIDED ALWAYS that an employee may, with the consent of the employer take short-term annual leave not exceeding five days in any calendar year at a time or times separate from any of the periods determined in accordance with this subclause.

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(e) Time of Taking Leave

Annual Leave shall be given and taken at a time fixed by the employer within a period not exceeding 6 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) All employees before going on leave shall be paid the amount of wages they would have received in respect of the ordinary time which they would have worked had they not been on leave during the relevant period.
- (ii) In addition, all employees (including part-time employees [as defined]) shall receive a loading of 17.1/2% on payments made for annual leave as prescribed in paragraph (i) for annual leave falling due. Such loading shall not apply to proportionate leave on termination of service.
- (iii) Part-time employees who agree to receive payment in lieu of pro rata entitlements to annual leave, sick leave and holidays with pay, shall be paid a loading on each anniversary date of employment. Such loading shall be calculated in the following manner.
- (iv) 70% of the average weekly wage for the 3 months prior to the anniversary date falling due. This average weekly wage is to exclude the 20% loading paid in lieu of annual leave, sick leave and holidays with pay.

(g) Leave Allowed Before Due Date

- (i) An employer may allow annual to an employee before the right thereto has accrued, however, where it is taken in such a case a further period of annual leave will not commence to accrue until after the end of the 12 months in respect of which annual leave has been taken before it accrued.
- (ii) Where leave has been granted to an employee under this subclause and the employee subsequently leaves or is dismissed 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 on termination, one twelfth of the amount of wages paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 19 - Holidays with Pay.

(h) Proportionate Leave on Termination of Service

Except as otherwise provided by this clause, if after 1 completed month of service in any 12 monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee, the employee shall be paid the pro-rata leave at the ordinary rate of wage as follows:

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12.66 hours for each completed month of continuous service, the service being in respect of which leave has not been granted.

- (i) 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 Clause 29 - Time and Wages Book of this award.

10. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 26 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

For the purposes of this clause part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement.

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Where a part-time employee's hours of work are not constant the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
 - (1) a member of the employee's immediate family, or
 - (2) a member of the employee's household.

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

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.
- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
 - (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

(c) Grievance Process

Clause 15 - Disputes Procedure also applies to a dispute about the operation or effect of this clause.

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11. CASUAL AND PART-TIME EMPLOYEES

(a) Part Time employees (as defined) and Casual employees (as defined) shall be employed in accordance with this clause to the extent that provisions of this clause differ with other provisions of this award. Where this clause is silent other provisions of this award shall apply.

(b) Ordinary Hours of Employment

(i) Part Time Employees

A part time employees constant number of hours per week shall be as determined between the employer and the employee pursuant to the contract of service. Once established they shall not be varied by either party otherwise than by:

- (1) the giving of at least one weeks notice; or
- (2) by mutual consent

The ordinary hours of work for a part time employee shall not exceed 7 hours and 36 minutes on any shift and shall be worked continuously excepting for meal breaks. Such meal breaks shall be of no less than 30 minutes nor more than one hour in duration and be taken no less than 3 hours and not more than 6 hours after the commencement of the shift.

A part time employee may be engaged to work on up to five consecutive days in any week.

(ii) Casual Employees

A casual employee shall be engaged by the hour provided that the employee shall not be required to work ordinary time on more than 5 consecutive days. Casual employees shall not be required to work more than 38 ordinary time hours per week nor more than 7 hours and 36 minutes ordinary time on any shift.

(c) Payment for Ordinary Hours

(i) Part Time employees shall be paid the wage prescribed for the employees constant number of hours for each week that the employee is ready, willing and available for work during the hours prescribed by the contract of service and in addition such overtime payments to which the employee may have become entitled during the relevant period.

(ii) Casual employees shall be paid the wage prescribed for the ordinary time hours worked and in addition such overtime payments to which the employee may have become entitled during the relevant period.

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(iii) Subject to subclause (b) of this clause a part time or casual employee for working ordinary hours shall be paid per hour the following percentages of the appropriate classification level contained in Clause 8 - Wage Rates for the work performed:-

Day and time	Part Time Employees	Casual Employees
	Percentage of the appropriate weekly wage rate	
	%	%
Monday to Friday between 3 am and 8 pm	2.63	3.16
Monday to Friday between 8 pm and 3 am	3.29	3.95
Saturday	3.95	4.74
Sunday	4.61	5.53
Sunday (where production solely for distribution and sale on Monday)	3.95	4.74
Holiday where day before off in lieu occurs	3.95	4.74
Holiday where day before in lieu does not occur	6.58	7.89

PROVIDED that hourly rates are to be calculated to the nearest whole cent with fractions less than 0.5 cents being disregarded.

PROVIDED ALWAYS that a part time employee may, with the agreement of the employer on an annual basis, elect to be paid at the rate of pay applicable to casual employees in lieu of paid sick leave, annual leave and payment for Holidays in accordance with Clause 19 - Holidays with Pay.

(d) Minimum Engagement

A part time or casual employee shall be engaged for a minimum period of three hours for each separate engagement at the appropriate rate of pay.

(e) Overtime - Part Time and Casual Employees

A part time or casual employee required to work in excess of the ordinary hours of work specified in subclause (b) of this clause or in excess of five consecutive days in one week shall be paid per hour the following percentages of the appropriate classification level contained in Clause 8 - Wage Rates for the work performed.

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Day	Part Time Employees	Casual Employees
	Percentage of the appropriate weekly wage rate	
	%	%
Monday to Saturday first two hours	3.95	4.47
Monday to Saturday third and subsequent hours	5.26	5.79
Sunday	5.26	5.79
Holidays with Pay	6.58	7.11

For the purpose of determining overtime entitlements, any employee who works ten minutes or more past the time fixed for ceasing work shall be paid overtime for all time worked after the time fixed for ceasing work. In computing overtime each days work shall stand alone.

12. CLOTHING

Where an employee is required to wear a washable outer garment, the employer shall supply same, and it shall be the responsibility of the employer to make arrangements to have such garment laundered or, alternatively, pay to the employee, the sum of \$3.85 per week extra for such laundering.

13. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother or 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 3 ordinary days.

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

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

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14. CONTRACT OF EMPLOYMENT

- (a) All employees, other than casuals, shall be employed by the week.
- (b) An employer may engage an employee initially for a one month probationary period during which time the employer or the employee may terminate the employment contract by the giving of one day's notice or payment or forfeiture of one day's wages as the case may be.
- (c) Except as provided for in subclause (e) employment may be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be.

This shall not affect the right of an employer to dismiss an employee without notice for neglect of duty or misconduct and in such cases wages shall be paid up to the time of dismissal only.

- (d) The employer in the event of misconduct may suspend an employee without pay. The maximum period of suspension shall be one week. Should the employee not agree to the suspension the union may 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.

Prior to the implementation of the suspension the matter shall be discussed with an official of the union, or written notification shall be provided to the union. Where written means of notifying the employer's intention is used the employer shall not implement the suspension until 24 hours (excluding weekends and public holidays) after the union would reasonably have been expected to receive such notification. Provided that in exceptional circumstances the suspension may be implemented immediately.

- (e) Stand Down
 - (i) An employer may deduct payment for any time an employee cannot be usefully employed because of any stoppage of work or breakdown of machinery of at least 24 consecutive hours for which the employer cannot reasonably be held responsible.
 - (ii) The employer shall provide to each affected employee written notice of the stand down period.
 - (iii) After advising the employer, an employee who has been stood down may leave his or her employment without providing the period of notice required in subclause (c) herein.
 - (iv) An employee shall be paid for any of the holidays specified in Clause 19 - Holidays with Pay which occur during the stand down period.

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- (f) (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.
- (iii) Any direction issued by an employer pursuant to paragraphs (i) and (ii) herein shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

15. DISPUTES PROCEDURE

The following procedure shall be observed in the resolution of grievances and/or disputes which may arise.

- (a) An employee shall first discuss the grievance and/or dispute with the employee's immediate supervisor.
- (b) Should the matter remain unresolved following the procedure outlined in subclause (a) the matter shall be referred to the relevant union shop steward who shall take the matter up with the employer.
- (c) Should the matter remain unresolved it shall be referred to an official of the relevant union who shall discuss the matter with the employer who may elect to be represented by his or her industrial relations adviser.
- (d) Should the above procedure fail to resolve the grievance and/or dispute either party may elect to refer the matter to the Tasmanian Industrial Commission for conciliation and/or arbitration.
- (e) Whilst the above procedure is being observed all work shall continue normally without disruption of any kind.
- (f) In the event of a stoppage of work through a strike or stop work meeting the plant shall be left in a safe and hygienic condition.

16. FIRST AID ALLOWANCE

An employee holding current first aid qualifications from St John Ambulance, Red Cross Society or other similar and/or accredited body, who is appointed by the employer to perform first aid duty, shall receive an additional \$6.60 per week.

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17. FULL WEEKS WAGES TO BE PAID

Except as provided in Clause 14 - Contract of Employment, all employees, other than those engaged on a part-time or casual basis, shall be paid the weekly wage rate and any overtime or other penalty rates for each week that the employee is ready, willing and available for work.

18. HIGHER DUTIES

- (a) An employee required to temporarily perform the work of a higher graded position shall be paid the higher rate while so engaged.
- (b) An employee required to act in a higher graded position for a period in excess of 3 months in any calendar year or for an unbroken period of more than 3 calendar months, shall be regraded to the higher level.

PROVIDED that an employee will not be regraded to the higher level if the employee has been acting as relief for an employee on workers compensation or parental leave. In these circumstances, the employer shall regularly consult with the relief employee and advise, wherever reasonably practicable, the date upon which the period of relief employment is expected to end.

- (c) While undertaking training, an employee may be required to undertake higher graded work without additional payment.

19. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:

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

- (b) Payment for the holidays mentioned in subclause (a) of this clause which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holidays, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) of this clause shall be at the rates prescribed elsewhere in this award.

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20. HOURS OF WORK

(a) Ordinary hours of work shall not exceed 38 per week to be worked in any 5 days of 7 hours and 36 minutes (excluding the meal break specified in subclause (b) of this clause) Monday to Sunday inclusive.

(b) Meal Breaks

A meal break of not less than 30 minutes shall be allowed after not less than three hours nor more than six hours work to be arranged by agreement between the employer and employee.

(c) Rosters

(i) Rostered hours of work shall be fixed by the employer and provided to the employees at least one week in advance.

(ii) Rostered hours of work shall not be changed by the employer without the giving at least 7 day's notice or by agreement between the employer and the employee.

PROVIDED that in exceptional circumstances beyond the control of the employer, the employee may be advised of a change in his or her rostered hours of work on the previous working day.

(d) Rest Break Between Shifts

(i) An employee (other than a casual) shall be entitled to not less than 10 consecutive hours off duty between the end of the employee's ordinary day or shift and the commencement of the employee's ordinary work on the next day or shift

PROVIDED that in exceptional circumstances such as the breakdown of machinery the rest break shall be 8 hours in lieu of 10 hours

(ii) An employee required to commence work without having had such 10 or 8 hour break as specified in subclause (d)(i) shall be paid at overtime rates until the break is allowed.

(e) Ordinary Time Loadings and Penalty Rates

In addition to the hourly wage rates calculated as one thirty-eighth of the weekly wage rates specified in Clause 8 - Wage Rates, an employee performing ordinary time work in accordance with this clause shall be paid the following loadings:

(i) Work Performed between 8.00 pm and 3.00 am - 25% for each hour worked.

(ii) Saturday Work - 50% for each hour worked.

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(iii) Sunday Work - 75% for each hour worked.

PROVIDED that where the purpose of work on a Sunday is solely for the production of product for distribution and sale on Monday the loading shall be 50% for each hour worked.

(iv) Holidays with Pay

An employee required to work on any of the holidays referred to in Clause 19 - Holidays with Pay shall either, as agreed between the employer and the employee:

(A) be paid at double time and a half for all hours worked; or

(B) be allowed the day off before the holiday and, in addition, be paid at the rate of time and a half for all hours worked.

PROVIDED that agreements reached in accordance with this paragraph are to be reduced to writing and kept as part of the employment records required by Section 75 of the *Industrial Relations Act 1984*.

(f) 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 working hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

(ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.

(iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations 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 record kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.

(v) An employer shall record these make up time arrangements in the time and wages records kept as prescribed in clause 29 - Time and Wages Book of this award.

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(g) 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 provided 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 negotiations 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 out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these RDO arrangements in the time and wages book, as prescribed in Clause 29 - Time and Wages Book of this award.

21. NOTICE BOARD

The employer shall provide a notice board of reasonable dimensions to be erected in the establishment upon which accredited union representatives shall be permitted to post formal union notices signed or countersigned by the representative posting them.

Any notice posted on a noticeboard not signed or countersigned may be removed by an accredited union representative or by the employer.

PROVIDED that a copy of all notices shall be provided to the employer.

22. OVERTIME

- (a) All work performed in excess of ordinary hours shall be deemed to be overtime and shall be paid in accordance with this clause.

An employee may be required to work reasonable overtime in accordance with the employer's requirements.

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(b) Monday to Saturday

The rate of pay for overtime performed on any day Monday to Saturday inclusive shall be at time and one half for the first two hours, and double time thereafter.

(c) Sunday

The rate of pay for overtime worked on a Sunday shall be double time for all hours so worked.

(d) Holidays with Pay

The rate of pay for overtime worked on any of the holidays with pay specified in Clause 19 - Holidays with Pay shall be double time and one half for all hours so worked.

(e) Meal Money

An employee required to work overtime for at least 2 hours beyond the employee's normal finishing time shall either be supplied with an adequate meal or be paid a meal allowance of \$12.70.

PROVIDED that this provision shall not apply in circumstances where the employer has provided a minimum of 8 hours notice of the requirement to work overtime.

(f) Rest Period

(i) An employee (other than a casual employee) who works so much overtime between the termination of the ordinary work on one day and the commencement of their ordinary work on the next day that the employee did not have at least 10 consecutive hours off duty between those times shall be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary time work occurring during such absence.

PROVIDED that in exceptional circumstances such as the breakdown of machinery the rest break shall be of 8 hours in lieu of 10 hours

(ii) An employee required to commence work without having had such 10 or 8 hour break as specified in subclause (d)(i) shall be paid at overtime rates until the break is allowed.

(g) Call Back

An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of 4 hours' work at the appropriate rate for each time the employee is so recalled.

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PROVIDED that except in the case of unforeseen circumstances arising, the employee shall not be required to work the full 4 hours if the job the employee was recalled to perform is completed within a shorter period.

This subclause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause (b) of this clause where the actual time worked is less than 2 hours on such recall or on each of such recalls.

(h) 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 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 negotiations 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 these time off in lieu arrangements in the time and wages book as prescribed in Clause 29 - Time and Wages Book of this award.
- (i) Requirement to work reasonable overtime
- (i) Subject to paragraph (ii) of this subclause and subclause (h) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.

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- (ii) 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:
 - (1) any risk to employee health and safety;
 - (2) the employee's personal circumstances including any family responsibilities;
 - (3) the needs of the workplace or enterprise;
 - (4) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (5) any other relevant matter.

23. PARENTAL LEAVE

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

PART A - MATERNITY LEAVE

- (a) Nature of Leave

Maternity leave is unpaid leave.

- (b) Definitions

For the purpose of this part:

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

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

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

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

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

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(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

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

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).
- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

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(f) Transfer to a safe job

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

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

(g) Variation of Period of Maternity Leave

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

- (1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
- (2) The period may be further lengthened by agreement between the employer and the employee.

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

(h) Cancellation of Maternity Leave

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

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

(i) Special Maternity Leave and Sick Leave

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

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

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- (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
- (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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

(j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(k) Effect of Maternity Leave on Employment

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

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(l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

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PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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

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

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

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

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for Paternity Leave

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

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

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

(d) Certification

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

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of the child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and
 - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (1) the birth occurring earlier than the expected date; or
 - (2) the death of the mother or the child; or
 - (3) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

(f) Variation of Period of Paternity Leave

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

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- (1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and the employee.
 - (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
 - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this part, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
 - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

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(k) Return to Work after Paternity Leave

- (i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

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'Child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

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

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

'Spouse' includes a de facto spouse.

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause, or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility

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

- (i) an unbroken period of up to three weeks at the time of the placement of the child;
- (ii) an unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
 - (1) any period of leave taken pursuant to paragraph (i) hereof; and
 - (2) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

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

(d) Certification

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

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- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (2) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
 - (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.
- (e) Notice Requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
 - (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
 - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
 - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

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- (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
 - (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.
 - (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
 - (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
 - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Entitlements
 - (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.

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

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

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- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

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

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

'Spouse' includes a de facto spouse.

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

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

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(b) Entitlement

With the agreement of the employer:

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

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- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
 - (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
 - (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.
- (c) Return to Former Position
- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
 - (ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.
- (d) Effect of Part-time Employment on Continuous Service
- Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.
- (e) Pro Rata Entitlements
- Subject to the provisions of this part and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.
- (f) Transitional Arrangements - Annual Leave
- (i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.
 - (ii) (1) a full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

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

(g) Transitional Arrangements - Sick Leave

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

(h) Part-time Work Agreement

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

(i) Termination of Employment

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

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termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(j) Extension of Hours of Work

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

(k) Nature of Part-time Work

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

(l) Inconsistent Award Provisions

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

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

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

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (a)(v) hereof.

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

24. PAYMENT OF WAGES

Wages shall be paid weekly no later than Thursday in each week.

PROVIDED that by mutual agreement between the employer and the majority of employees, wages may be paid in a manner otherwise than as specified above.

25. RIGHT OF ENTRY OF UNION OFFICIALS

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

26. SICK LEAVE

- (a) An employee, other than one engaged as a casual or a part-time employee in receipt of a loading, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to paid sick leave subject to the following conditions:

- (i) the employee shall not be entitled to sick leave for any period in which the employee is entitled to worker's compensation;
- (ii) the employee shall, prior to the commencement of the sick leave, inform the employer of the inability to attend for work, and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.

Where such notification is not given, the employer shall be entitled to require, as proof in accordance with paragraph (iii) herein, a certificate signed by a medical practitioner.

PROVIDED that where the employee is genuinely unable to give notification prior to the commencement of the shift, the requirements of paragraph (iii) herein shall apply.

- (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission) that he or she was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed.
- (iv) an employee shall be entitled to a sick leave credit of 76 hours of ordinary working time (whether in the employment of one employer or of more) in any 12 monthly period.

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PROVIDED that in the first 3 months of employment sick leave shall accumulate on the basis of 6.33 hours for each completed month of continuous service. Provided that following completion of three months service an employee shall receive payment for any sick leave taken during the three months but not paid.

- (v) for the purpose of administering paragraph (iv) of this subclause, an employer may, within 2 weeks of the employee commencing employment, require the employee to provide a written statement of any sick leave he or she has had from an employer during the current year.
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in paragraph (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee, and subject to the conditions set out in this clause shall be allowed by that employer in a subsequent year without reduction of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves the employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

27. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to cooperating positively to increase the efficiency, productivity and competitiveness of the Wholesale Plant Baking Industry and to enhance the career opportunities and job security of employees in the industry.
- (b) At each plant or enterprise, the employer, the employees and the union may establish a consultative mechanism and procedures appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or union for consideration consistent with the objectives of subclause (a) of this clause shall be processed through the consultative mechanism and procedure.
- (c) Measures raised for consideration consistent with subclause (b) of this clause shall be related to implementation of the new classification structure, the facilitative provisions contained in this award, structural efficiency issues and matters concerning training.
- (d) Enterprise Flexibility
 - (i) Notwithstanding anything contained in this award, but subject to the provisions of this subclause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.

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- (ii) An agreement shall be subject to the following requirements:
 - (A) The majority of employees affected by the change must genuinely agree to the change.
 - (B) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (C) The union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (D) The union must be a party to the Agreement.
 - (E) The union shall not unreasonably oppose any agreement.
- (iii) Any enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:
 - (A) The term of the agreement.
 - (B) The parties covered by the agreement.
 - (C) The classes of employees covered by the agreement.
 - (D) The means by which a party may retire from the agreement.
 - (E) The means by which the agreement may be varied.
 - (F) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (iv) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

28. SUPERANNUATION

- (a) Contribution
 - (i) An employer shall make a contribution consistent with the requirements of the relevant legislation of the Federal Parliament for eligible employees into an approved fund (as defined).
 - (ii) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

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(b) Definitions

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

29. TIME AND WAGES BOOK

Each employer shall keep a time and wages book or other suitable record which complies with the requirements of Section 75 of the *Industrial Relations Act 1984*.

30. UNION DELEGATE

An employee appointed union delegate at the workplace at which the employee is employed shall, after written notice to the employer, be recognised as an accredited representative of the union to which the employee belongs and shall be allowed the necessary time during work hours to interview the employer or the employer's representative on matters affecting employees whom the employee represents.

PROVIDED that if requested the delegate may be accompanied at such interview by another employee or a union official.

James P McAlpine
COMMISSIONER

12 August 2004