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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

SHIPPING AWARD

No. 1 of 2004

(Consolidated)

CLAUSES 4, 5, 6, 8, 17, 19, 22, 34 and 48 ARE VARIED AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the "Shipping Award".

2. SCOPE

This award is established in respect of the industries of:

- (a) Shipping, including the operation of ferries, barges, cruise vessels and charter vessels; and
- (b) Stevedoring.

3. ARRANGEMENT

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4. DATE OF OPERATION

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

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5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Shipping Award No. 1 of 2003 (Consolidated), No. 2 of 2003 and No. 3 of 2003.

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

6. PARTIES AND PERSONS BOUND

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

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) The Australian Institute of Marine and Power Engineers and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
 - (ii) the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (iii) The Australian Maritime Officers' Union Victoria Tasmanian Area, and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;
 - (iv) the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:
 - the Tasmanian Chamber of Commerce and Industry Limited.

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7. DEFINITIONS

DIVISION A

'**Afternoon shift**' means any shift finishing after 6.00pm and at or before midnight.

'**Continuous work**' means work carried on with consecutive shifts of men throughout the 24 hours of at least six consecutive days without interruptions except during breakdowns or meal breaks, or due to unavoidable causes beyond the control of the employer.

'**Night shift**' means any shift finishing subsequent to midnight and at or before 8.00am.

'**Broken shift**' means a shift worked in two parts excluding a meal break of not more than one hour.

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

DIVISION B

'**Clerk**' includes book-keepers, timekeepers, cashiers, typists and/or stenographers, calculating and/or accounting machine operators.

8. WAGE RATES

DIVISION A - FERRY BOATS AND RIVER AND HARBOUR TRADE

1. WAGE RATES

Adult employees of a classification hereunder mentioned shall be alive paid the weekly wage rate assigned opposite that classification:

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(a) Vessels operating as Tugs -			
'Maydena', 'Boyer' -			
Master	313.60	142.00	455.60
Engineer	310.90	142.00	452.90
Deck Hand	266.20	142.00	408.20

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(b) Ferries and other vessels

(i) Passenger Ferries under 21.3 metres and other vessels

Master	389.10	142.00	531.10
Engineer	389.10	142.00	531.10
Coxswain (work boats)	359.50	142.00	501.50
Fireman	330.60	142.00	472.60
Deck hand (required to collect fares) and/or bar attendant	336.50	142.00	478.50
Deck hand and/or linesman	327.90	142.00	469.90

(ii) Passenger Ferries over 21.3 metres but under 38.1 metres (Cartela).

Master	395.50	142.00	537.50
Engineer	395.50	142.00	537.50
Deck hand (required to collect fares) and/or bar attendant	336.50	142.00	478.50
Deck hand and/or linesman	327.90	142.00	469.90

(iii) Vehicular Ferries; and Passenger Ferries over 38.1 metres

Senior Master	418.90	144.00	562.90
Master (Other)	412.60	142.00	554.60
Senior Engineer	416.30	144.00	560.30
Engineer (Other)	412.60	142.00	554.60
Deck hand (required to collect fares) and/or bar attendant	336.50	142.00	478.50
Deck hand and/or linesman	327.90	142.00	469.90

(iv) Bruny Island Ferry

Senior Master	482.90	142.00	624.90
Master (Other)	474.90	142.00	616.90
Senior Engineer	479.60	142.00	621.60
Engineer (Other)	474.90	142.00	616.90
Deck hand (required to collect fares) and/or bar attendant	389.40	142.00	531.40
Deck hand and/or linesman	373.40	142.00	515.40

(c) Hopper Barge (Self-Propelled) M.V. 'Anson'

Master	400.80	142.00	542.80
Mate	331.00	142.00	473.00
Engineer	353.30	142.00	495.30
Greaser/deck hand	301.00	142.00	443.00
Deck hand	282.10	142.00	424.10

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(d) Juniors	Percentage of the total wage for Deck Hand and/or linesman subclause (b)(i) hereof
	%
Under 19 years of age	70
19 years of age	90
20 years of age	Adult Rate

On vessels where only one deck hand is permanently employed the deck hand shall be over 21 years of age, or if a junior is employed he/she shall be paid the adult rate.

In all cases where keep is provided by the employer the abovementioned wage rate may be respectively reduced by \$8.45 per week.

DIVISION B - CLERKS

1. WAGE RATES

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate assigned opposite that classification.

Classification	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(a) First year's adult experience	268.30	142.00	410.30
Second year's adult experience	288.50	142.00	430.50
Third year's adult experience and thereafter	315.50	142.00	457.50
(b) An accountant or chief clerk wholly responsible for the office work and who prepares the balance sheet and profit and loss account	424.40	144.00	568.40
(c) A clerk who is in charge of and responsible for the work of -			
(i) Five or more employees	374.60	142.00	516.60
(ii) Three or four employees	356.30	142.00	498.30
(iii) Two employees	336.80	142.00	478.80

'Employees' in this subsection shall mean any male or female clerk, typist or stenographer and shall include the clerk-in-charge.

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2. JUNIORS

The minimum weekly wage rates that may be paid to juniors shall be the undermentioned percentages of the second year adult rate adjusted to the nearest 10 cents:

	Percentage of Second Year Adult Weekly %
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

(a) Proviso

When determining the amount payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trade or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established, experience obtained after reaching the age of 18 years shall be counted as adult experience.

(b) Additional Payments

In addition to the weekly rates prescribed herein the following additional amounts per week shall be paid to stenographers, audio-typists, teletypists, accounting machine, computer, data processing, tabulating machine, card punch and verifier operators.

	Amount \$
Under 16 years of age	1.10
16 to 17 years of age	1.30
17 to 18 years of age	1.40
18 to 19 years of age	2.10
19 to 20 years of age	2.70
20 to 21 years of age	2.80
21 years of age and over	3.50

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DIVISION C - INTRASTATE AND COASTAL VESSELS

1. WAGE RATES

Employees of a classification hereunder mentioned shall be paid the weekly wage rate assigned opposite that classification for the following vessel:

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
(a) M V 'Flinders Trader'			
Classification			
Mate	302.80	142.00	444.80
Engineer	302.80	142.00	444.80
Second Mate	267.90	142.00	409.90
Second Engineer	267.90	142.00	409.90
Boatswain	250.20	142.00	392.20
Deck Hand	240.40	142.00	382.40
Cook	240.40	142.00	382.40
Deck boy -	Percentage of the total weekly wage for Deck Hand in subclause (a) of this division %		
Under 19 years		60	
At 19 years		80	
At 20 years		90	

(b) M V 'Emu Bay'

The wage rates and conditions of work applicable to employees engaged on the aforementioned vessels shall be in accordance with those set out in the terms of a written agreement reached between the operators of the said vessels and the Merchant Service Guild (Tasmanian Branch).

The form of the agreement shall be subject to the approval of the Tasmanian Industrial Commission and shall include a provision for the reference of all disputes to the President of the Tasmanian Industrial Commission for determination.

(c) M.V. 'Roger Rougier'

	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Classification			
Master	438.30	144.00	582.30
Mate	389.00	142.00	531.00
First Engineer	430.10	144.00	574.10
Second Engineer	389.00	142.00	531.00
Deck Hand	240.40	142.00	382.40
Deck Hand/Cook	240.40	142.00	382.40

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2. MINIMUM WAGE

Notwithstanding the provisions of subclause 1 of this clause, no adult employee shall be paid less than the rate of \$359.10 per week.

PROVIDED that payments for overtime, special rates, holiday and weekend penalties, and shift allowances prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

PROVIDED ALWAYS where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates, payments during sick leave and annual leave, and for all other purposes of this award.

DIVISION D - SUPPORTED WAGE SYSTEM

(a) Eligibility criteria

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

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

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

(b) For the purposes of this division:

- (i) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **'Accredited Assessor'** means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

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- (iii) **'Disability Support Pension'** means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.
- (iv) **'Assessment instrument'** means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(c) Supported wage rates

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

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

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

(d) Assessment of capacity

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

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

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(e) Lodgment of assessment instrument

- (i) All assessment instruments under the conditions of this division, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other terms and conditions of employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this division shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace adjustment

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

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this division for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).

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- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

CONDITIONS FOR EMPLOYEES IN DIVISION A

9. ANNUAL LEAVE

(a) Period of Leave

(i) Dayworkers and Shiftworkers

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

(ii) Continuous Shift Workers

In addition to the leave prescribed in Section (i) of this clause, continuous shiftworkers, shall be allowed 7 consecutive days' leave including non-working days.

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

For the purpose of this clause, employees employed on the Bruny Ferry shall be deemed to be shift workers and shall qualify for the additional leave prescribed by this subclause.

PROVIDED that such employee has been rostered to perform and actually carried out work on not less than 10 Saturdays and not less than 10 Sundays during any one leave year.

(b) Annual Leave Exclusive of Public Holidays

- (i) The annual leave prescribed by subclause (a) of this clause shall be exclusive of any of the holidays prescribed by Clause 15 - Holidays with Pay of this Division.

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(ii) Where a public holiday occurs on a day on which an employee is "rostered off" an additional day shall be added to such employee's annual leave. The provisions of this subclause shall not apply when a public holiday falls and is observed on a Saturday or on a Sunday.

(c) Leave to be Taken and Given

The leave prescribed in this clause shall be given and taken within six months of becoming due.

(d) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees other than casual employees, shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates - Division C - Intrastate and Coastal Vessels - subclause 2 - Minimum Wage. This amount shall apply to all leave taken on and from the 1st day of July 1975.

(e) Proportionate Leave on Termination of Service

If after one completed month of service in any twelve-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 at his ordinary rate of wage as follows:

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

(f) 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.

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- (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 37 - Time and Wages Record 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 33 - Sick Leave, of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

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

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

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (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:

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- (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 30 - Reference of Disputes, of this award also applies to a dispute about the operation or effect of this clause.

11. CASUAL RATES

Casual employees, viz. employees who are engaged as such, and whose employment is of a casual nature shall be paid per hour one fortieth of the weekly rates prescribed for the work performed and in addition thereto an amount representative of a loading of 20%.

PROVIDED that from 1 November 1989 the divisor shall be one thirty- eighth.

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12. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 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 that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

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

13. CONTRACT OF EMPLOYMENT

Employment shall be by the week terminable only by a week's notice from either the employer or the employee unless the amount of a week's wages be paid or allowed in lieu of such notice.

14. DISTANT WORK

- (a) Except as otherwise determined herein an employee engaged on distant work, i.e. work at a place which in the opinion of the employer, because of its distance from, or the restricted facilities available for travelling to and from his usual place of residence reasonably necessitates the employee's living and sleeping elsewhere than at such usual place, shall be allowed \$11.30 per day in addition to his ordinary rates if free board and accommodation is not found by his employer, or \$4.50 per day in addition to his ordinary rates if accommodation only be found. Where the time so employed includes an additional part of a day, the allowance shall be at the rate of \$1.70 per meal.
- (b) An employee:
 - (i) engaged in one place to work in another; or
 - (ii) sent, other than at his own request, from his usual place of employment to another, for work which can reasonably be regarded as permanent,

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who is thus involved in a change of residence, shall be paid in accordance with the provisions of subclause (a) of this clause and of Clause 38 - Travelling Time and Allowances of this award.

PROVIDED that such payments shall cease after a period of three months or after he has taken up abode at the new place of employment, whichever event is the sooner.

- (c) Where the employer offers to provide free weekend transport between the distant work and the employee's place of engagement, the provisions of subclause (a) of this clause shall apply to working days only.
- (d) The time spent in travelling to and from the work site at the beginning and end of his employment at the site and at weekends shall be paid for at ordinary rates when outside normal working hours.

15. 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 holiday, he 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.

16. HOURS

- (a) Day Workers

Subject to the provisions of Clause 17 - Implementation of 38-Hour Week, the ordinary hours of employment shall not exceed 38 per week, to be worked in periods of not more than 8 hours per day, Monday to Friday, inclusive, between the hours of 7.00am and 6.00pm each day.

- (b) Shift Workers

Subject to the provisions of Clause 17 - Implementation of 38-Hour Week, the ordinary hours of employment shall not exceed eight, including a twenty minute meal break (to be taken not later than five hours after the commencement of shift), in each twenty-four hour period, or more than 38 hours in each week. The 38 hours shall be worked in five days.

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PROVIDED that where possible shift workers shall be given forty eight hours notice of change of shift.

(c) Employees - Bruny Ferry

The ordinary hours of employment for employees engaged on the Bruny Ferry shall not exceed an average of seventy six per fortnight to be worked within a spread of twelve hours per day or shift between 6.00am on Monday and midnight of the following Sunday.

PROVIDED that for all work done in excess of 8 hours per day (up to 12 hours per day) the rates of pay shall be one and one quarter times the ordinary rate.

(d) Make Up Time

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

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record make up time arrangements in the time and wages book, as prescribed in Clause 37 - Time and Wages Record, of this award.

(e) Rostered Days Off

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

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- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of Rostered Days Off flexibility, in accordance with this clause, its terms must be set on in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations *Regulations 1993*.
- (vi) An employer shall record these Rostered Days Off arrangements in the time and wages book, as prescribed in Clause 37 - Time and Wages Record, of this award.

17. IMPLEMENTATION OF 38-HOUR WEEK

- (a) From 1 November 1988 ordinary hours of work shall be an average of 38 per week as provided in Clause 16 - Hours.
- (b) Except as provided for in subclause (d), (e) and (f) of this clause, the method of implementation of the 38-hour week may be one of the following:
 - (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) by fixing one day in which all employees will be off during a particular work cycle, or
 - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle.
- (c) On each site, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.

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- (d) In the absence of agreement at site-level, the method of implementation provided in subclause (b)(iv) of this clause shall be the method of implementation on that site.
- (e) Subject to the provisions of Clause 16 - Hours, subclause (b) the employer and the majority of employees in the plant or section or sections concerned may agree that the ordinary working hours are to exceed 8 on any day, thus enabling a week day to be taken off more frequently than would otherwise apply.
- (f) Circumstances may arise where different methods of implementation of a 38-hour week may apply to various groups or sections of employees in the plant or establishment concerned. OR, by agreement a plant or establishment may adopt a method not identified in subclause (b) of this clause.

(g) Notice of Days Off

Except as provided in subclause (h) of this clause, in cases where, by virtue of the arrangement of his ordinary working hours an employee, in accordance with subclauses (b) (iii), and (iv) of this clause, is entitled to a day off during his work cycle, such employee shall be advised by the employer at least four weeks in advance of the week day he is to take off.

(h) Subsequent Days

- (i) An employer, with the agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with subclauses (b) (iii), and (iv) of this clause, for another day in the case of breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.
- (ii) An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.

(i) Accumulation of Rostered Days Off

Where an employer and employees agree, rostered days off may accumulate to a maximum of 6 days which shall be taken at a mutually agreed time.

(j) Sickness on Day Off

From 7 September 1988, where an employee is sick or injured on the week day he is to take off in accordance with subclause (b)(iii) or (iv) of this clause or subclause (d) of this clause, he shall not be entitled to sick pay nor will his sick pay entitlement be reduced as a result of his sickness or injury that day.

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(k) Averaging of Payment

Subject to subclause (f) of this clause where the method of implementation adopted is in accordance with subclause (b)(iii) and (iv) of this clause, the wages paid each week for ordinary hours shall be paid so that in each week when 40 hours is worked 2 hours pay shall be kept in hand and paid to the employee in the pay week that the rostered day off occurs to enable an averaging of payments for ordinary time to occur.

(l) On Site Agreements

Any agreement reached pursuant to subclause (c) of this clause shall be notified in writing to the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, and to the Tasmanian Chamber of Commerce and Industry Limited within 14 days of its making.

At any time either party to such agreement may seek to review the agreement.

PROVIDED that should the agreement be altered, details of the alteration shall be notified in writing to the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch, and to the Tasmanian Chamber of Commerce and Industry Limited.

18. LOSS OF PERSONAL EFFECTS

If by fire, foundering, collision or stranding an employee sustains damage or loss to his equipment or personal effects an employer shall reimburse the employee for such loss but the amount of such reimbursement shall not exceed the sum of \$90.00.

19. MEAL ALLOWANCE

- (a) An employee required to work overtime for more than one and a half hours, or in the case of employees engaged on the Bruny Ferry, beyond 8.00pm, shall either be supplied with an adequate meal by the employer, or be paid \$12.70 meal money.
- (b) When a vessel is proceeding outside the harbour limits for a period exceeding twenty-four hours, the victualling of the crew shall be the responsibility of the employer and no deductions shall be made for it.

20. MEAL BREAKS ON ALL VESSELS OPERATING WITHIN HARBOUR LIMITS

- (a) A meal break of one hour shall be allowed between 11.30am and 2.00pm to employees on permanent day work on all vessels operating within harbour limits.

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- (b) Working during meal intervals shall be avoided as far as possible. If employers require work to continue during a recognised meal interval the employee shall be paid at the rate of double time. Any fraction of an hour less than thirty minutes worked during a meal interval shall be paid for as half an hour and any fraction of an hour in excess of thirty minutes so worked shall be paid for as a full hour.

21. MEALS ON VESSELS OPERATING AS TUGS

A meal break of one hour shall be allowed between 11.30am and 2.00pm.

PROVIDED that if a meal is not commenced before 1.00pm and the vessel is under way at the time, a disturbed meal allowance of 84 cents shall be paid for such meal.

22. MIXED FUNCTIONS

- (a) When an employee is required to perform duties carrying a higher rate than his normal classification for a time exceeding 3 hours on any day he shall be paid at such higher rate for all work on that day.
- (b) The master of a vessel powered by an engine of 150kw governed power or over, who is required to act in a dual capacity as master and engine-driver shall be paid an additional \$12.80 per week, or 32.04 cents per hour, whilst so engaged.
- (c) Bruny Ferry Employees

An employee nominated to act as Master or engineer on a relieving basis shall be paid an allowance of \$36.30 per week extra on the rates as prescribed in Clause 22 - Mixed Functions and Clause 16 - Hours, of this award whilst working in a lower capacity.

PROVIDED that such extra rate shall not be in substitution for the higher rate as prescribed when so acting as Master or engineer.

23. NEEDS OF THE INDUSTRY

- (a) For the purpose of meeting the needs of the industry the employer may require any employee to work reasonable overtime, including work on Sundays and holidays at the rate prescribed by this award and, unless reasonable excuse exists, the employee shall work in accordance with such requirements.
- (b) The parties to the award recognise that developments to improve the efficiency of the industry must be considered. Employers will adopt a consultative approach with employees where change in the industry is likely to occur.

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24. OVERTIME

- (a) For all work done outside ordinary hours the rates of pay shall be time and a half for the first two hours and double time thereafter, such double time to continue until the completion of overtime work.

The aggregate of hours worked in excess of ordinary hours in each day shall constitute the amount of overtime at the appropriate rate.

PROVIDED that for all work performed on an employee's rostered days off, payment shall be made at the rate of double time.

PROVIDED ALWAYS that a continuous shift worker shall be paid at the rate of double time for all overtime worked.

Except as provided in this subclause, or subclause (b) of this clause, in computing overtime, each day's work shall stand alone.

For all time worked by employees on the Bruny Ferry in excess of 12 hours on any day or shift, the minimum payment shall be at the rate of double time.

- (b) Rest Period after Overtime

When overtime work is necessary it shall wherever reasonably practicable be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.

An employee (other than employees on vessels operating as tugs) who worked so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least ten consecutive hours off duty between those times, shall, subject to this subclause, be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If on the instructions of his employer such an employee resumes or continues work without having had such ten consecutive hours off duty he shall be paid at double rates until he is released from duty for such period and he shall be entitled to be absent until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

- (c) 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.

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- (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 negotiation referred to in paragraph (i) of this subclause.
 - (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
 - (vi) An employer shall record these time off in lieu arrangements in the time and wages book, as prescribed in Clause 37 - Time and wages Record, of this award.
- (d) Requirement to Work Reasonable Overtime
- (i) Subject to paragraph (ii) of this subclause and subclause (c) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
 - (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.

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25. 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.

(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.

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(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.

(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.

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(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
 - (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.

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- (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.

(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.

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- (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.

PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

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(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.

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:

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- (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:
 - (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.

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- (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.

(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.

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

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

(l) Replacement Employees

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

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

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

'Child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or stepchild of the 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.

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'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:

- (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

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- (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.

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- (ii) (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.
- (2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent 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.

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

(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.

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- (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 as provided for in paragraph (a) Definitions, '**Continuous service**' of this part.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

26. PAY ABSTRACT

Employers shall supply to each employee on or before pay day a statement showing the number of ordinary hours and overtime hours worked during the relevant period and the deductions, if any, that have been made from the wages.

27. PROTECTIVE EQUIPMENT

Deck hands on the Bruny Island Ferry shall be provided with oilskins, southwesters and torches.

28. RATES NOT CUMULATIVE

Penalty rates prescribed herein are not cumulative so as to exceed the maximum of double the ordinary rates excepting as to payments for work performed on public holidays or broken shifts.

29. RECALL TO WORK

Employees who are recalled to work special trips outside their ordinary hours shall be paid as for a minimum of four hours work at appropriate rates.

PROVIDED that for second or subsequent recalls in the same interval between ordinary hours payment shall only be for the time so worked.

30. REFERENCE OF DISPUTES

Any dispute arising in respect of any matter to which this award relates shall be referred to the Tasmanian Industrial Commission, whose decision shall be final.

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31. SATURDAY WORK

For all time of rostered duty on a Saturday payment shall be made at the rate of time and one-half.

32. SHIFT ALLOWANCE

Shift workers employed on afternoon, night or broken shifts shall be paid 15% more than the ordinary rates for such shifts.

When in any day a shift is worked in two periods a travelling allowance of \$1.75 shall be paid to each employee working such broken shift, provided his place of residence is in excess of 1.5 kilometres from his place of work.

33. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) unless prevented by exceptional circumstances, employees who will be absent from work on account of personal illness/injury shall notify the employer of such impending absence prior to the commencement of the shift and in sufficient time for a replacement to be called;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute the Secretary for Labour), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) he shall not be entitled in any year (whether in the employment of one employer or of more) to sick leave credit in excess of two weeks of ordinary working time;
 - (v) for the purposes of administering paragraph (iv) of this subclause an employer may within one month of this award coming into operation or within two weeks of the employee entering his employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

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

34. SPECIAL RATES

- (a) Chipping Hammers - Employees using electric or pneumatic chipping hammers, wire brushing machine and sandblasting machine shall be paid at the rate of 0.08 cents per hour in addition to any other ordinary or overtime rate for the time so occupied.

Where a chipping hammer is being used in a confined space, suitable ventilation shall be installed, if practicable, before work commences.

- (b) Dirty Work - For any of the following work, an employee shall, in addition to any other ordinary or overtime rate payable under this award, be paid at the rate of 0.29 cents per hour for the time so occupied:
- Working inside boilers or furnaces
 - Cleaning inside the casing of internal combustion engines
 - Cleaning inside oil tanks in motor vessels
 - Cleaning tubes, uptakes or smoke boxes where doors have to be opened
 - Cleaning bilges (including roseboxes) and coffer dams.

35. SUNDAY AND HOLIDAY WORK

- (a) Employees required to work on a Sunday shall be paid at the rate of double time.
- (b) Employees required to work on a public holiday shall be paid at the rate of double time and one-half.

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36. SUPERANNUATION

(a) Preamble

Superannuation legislation

- (i) The subject of superannuation contributions is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.
- (ii) Notwithstanding subclause (a)(1) above, the following provisions shall also apply.

(b) Definitions

- (i) The **'fund'** for the purposes of this clause shall mean TASPLAN; which complies with the *Superannuation Industry (Supervision) Act 1993* as amended from time to time, and any scheme, which may be made in succession thereto.
- (ii) Ordinary time earnings for the purposes of this clause, means:
 - (1) award classification rate;
 - (2) over-award payment;
 - (3) shift loading - including weekend and public holiday penalty rates earned by shift employees on normal rostered shifts forming the ordinary hours of duty not when worked as overtime;
 - (4) casual loading in respect to casual employees.
- (iii) Ordinary time earnings does not include bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowance, annual leave loading, annual and/or long service leave payments on separation from employment and any allowance not paid on a permanent all purpose basis.

(c) Employers to become a party to the fund

- (i) An employer shall make application to the fund to become a participating employer in the fund and shall become a participating employer upon acceptance by the Trustee of the fund.
- (ii) An employer shall provide each employee who is not a member of the fund with a membership application form upon commencement of this clause and thereafter upon commencement of employment.

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- (iii) Each employee shall be required to complete the membership application and the employer shall forward the completed application to the fund by the end of the calendar month of commencement of this clause or commencement of employment.
- (d) Eligibility of employees
 - (i) Each employee shall be eligible to join the fund upon commencement of employment, subject to subclause (c)(i) of this clause.
 - (ii) Each employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in subclause (c)(iii) above was forwarded to the fund.
- (e) Employer contributions
 - (i) An employer shall contribute to the fund in respect of each employee such contributions as required to comply with the *Superannuation Guarantee (Administration) Act 1992* and the *Superannuation Guarantee Charge Act 1992* as amended from time to time:
 - (1) the following percentage of ordinary time earnings on behalf of each eligible employee:
9% of Ordinary time earnings
 - (ii) Provided that the employer shall make contributions for each employee for each month where the employee earns \$450.00 or more in a calendar month, the amount of contributions to the fund shall be calculated to the nearest ten cents, any fraction below five cents shall be disregarded.
 - (iii) An employer shall contribute to the fund:
 - (1) monthly by the last day of the month following the total of the weekly contribution amounts accruing in the previous month in respect of each employee; or
 - (2) equivalent monthly contributions at such other time and in such manner as may be agreed in writing between the Trustees of a fund and the employer;
- (f) Voluntary employees contributions
 - (i) An employee may make contributions to the fund in addition to those made by the respondent employer under subclause (e).
 - (ii) An employee who wishes to make additional contributions must authorise the respondent employer in writing to pay into the fund, from the employee's wages, amounts specified by the employee in accordance with the Fund Trust Deed and Rules.

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- (iii) An employer who received written authorisation from the employee, must commence making payments into the fund on behalf of the employee within fourteen days of receiving authorisation.
- (iv) An employee may vary his or her additional contributions by a written authorisation and the employer must alter the additional contributions within fourteen days of receiving the authorisation.
- (v) Additional employees contributions to the fund requested under this clause shall be expressed in whole dollars.
- (vi) Employees shall have the right to adjust the level of contributions made on their own behalf on the first of July each year provided that by agreement with the respondent employer the employees may vary their additional contribution at other times.

37. TIME AND WAGES RECORD

The employer shall keep or cause to be kept a record of the times during which each employee has been on duty, including the times of commencing and finishing duty by each employee on each day and the payments made to each employee, including wages, overtime payment and all allowances paid to him, and a duly accredited official of the union shall be permitted by the employer to inspect such a record at a reasonable time during the office hours of the employer at his place of business.

38. TRAVELLING TIME AND ALLOWANCES

- (a) Employees who are required to travel from their regular place of employment to distant locations during periods that vessels are on the slip or undergoing repairs shall either be supplied with transport by the employer or reimbursed the cost of fares to and from the job. If they are required to remain away from their homes overnight, they shall be reimbursed the amount spent for board and lodging.
- (b) Where an employee, after having worked overtime, or a shift for which he has not been regularly rostered, finishes work at a time when public transport is no longer available, he shall be paid a distance allowance except where the employer provides or offers to provide transport for such employee to or from his home as the case applies.

The allowance shall be paid at the rates prescribed by the General Conditions of Service Award applying from time to time.

- (c) Travelling time at ordinary rates only shall be allowed each way when an employee is required to perform work away from his place of engagement which does not reasonably necessitate the employee residing on or near the job.

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39. VESSELS ON WATCHES

- (a) Where a vessel is proceeding beyond harbour limits for a period in excess of two hours, the crew shall be paid an additional 25% of the normal rate.
- (b) Whilst the vessel is in an out-port, but not on watches, an additional 5% shall be paid.

40. UNIFORMS

Where an employee is required to wear a uniform or distinctive dress, same shall be provided by the employer free of cost to the employee.

CONDITIONS FOR EMPLOYEES IN DIVISION B

41. ESTIMATING SERVICE

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

42. GENERAL CONDITIONS

The provisions of Clauses:

- 9. Annual Leave
- 10. Carer's Leave
- 12. Compassionate Leave
- 13. Contract of Employment
- 15. Holidays with Pay
- 16. Hours
- 17. Implementation of 38-Hour Week
- 19. Meal Allowance
- 23. Needs of the Industry
- 24. Overtime
- 25. Parental Leave
- 26. Pay Abstract
- 28. Rates Not Cumulative
- 30. Reference of Disputes
- 31. Saturday Work
- 33. Sick Leave
- 35. Sunday and Holiday Work
- 37. Time and Wages Record
- 38. Travelling Time and Allowances

of Division A hereof shall also apply to this Division.

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CONDITIONS FOR EMPLOYEES IN DIVISION C

43. GENERAL CONDITIONS

The provisions of Clauses:

9. Annual Leave
10. Carer's Leave
11. Casual Rates
12. Compassionate Leave
13. Contract of Employment
15. Holidays With Pay
17. Implementation of 38-Hour Week
22. Mixed Functions
23. Needs of the Industry
25. Parental Leave
26. Pay Abstract
30. Reference of Disputes
33. Sick Leave
34. Special Rates
37. Time and Wages Record
38. Travelling Time & Allowances

of Division A hereof shall also apply to this Division.

44. HOURS

- (a) The maximum number of ordinary working hours per week in respect of which the rates of wages herein determined shall be paid shall be forty, to be worked in periods of not more than eight hours per day.

PROVIDED that the hours worked inclusive of overtime shall not exceed sixteen in any twenty-four hour day.

- (b) Make Up Time

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

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.

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- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.
- (v) An employer shall record make up time arrangements in the time and wages book, as prescribed in Clause 37 - Time and Wages Record, of this award.

45. OVERTIME

- (a) An employee required to work outside the normal hours in his home port shall be paid at the rate of time and one-half for the first two hours and double time thereafter.
- (b) Payment for overtime worked away from the home port shall be at the rate of time and one-half.
- (c) Time off may be allowed in recompense for overtime worked away from the home port and payment for such time off shall be at the rate of time and one-half for each hour of overtime so worked including work performed on Saturday, and at the rate of two hours for each hour of work performed on Sundays and such public holidays as are prescribed in Clause 15 - Holidays with Pay. Time off allowed under the provisions of this subclause shall be at the discretion of the employer.
- (d) In computing overtime, each day's work shall stand alone.

PROVIDED that the appropriate overtime rate shall continue to apply until the completion of the overtime work commenced the day before.

46. SAILING BOARD

On the day of departure of the ship from any port, the clock time appointed for the departure shall be clearly stated on a notice board, fixed in a conspicuous place at the gangway and if any change be made the substituted time shall be likewise stated as early as practicable.

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47. SATURDAY WORK

Except as provided in Clause 45 - Overtime, subclause (a) of this clause hereof an employee required to work on a Saturday shall be paid at the rate of time and one-half for all time so worked.

48. SHIPWRECK OR STRANDING

- (a) If a ship, in the course of a voyage, becomes wrecked or stranded, and an employee is called upon for special efforts while the ship is still wrecked or stranded, he shall, for the time during which he so assists, be paid at the rate of \$1.85 per hour in addition to the ordinary rates.
- (b) For the purposes of this clause a ship shall be deemed to be wrecked if while at sea it is so disabled as to be in a dangerous crisis and unable for the time being to continue its voyage in the ordinary course of its operations.
- (c) Where a ship grounds in a tidal harbour or river and is refloated by ordinary means, without lightening cargo, it shall not be deemed to be wrecked or stranded within the last preceding subclause.
- (d) Notwithstanding anything in this clause, in a case of wreck or loss of the ship, proof that any seaman has not exerted himself to the utmost to save the ship, human life, cargo, stores and equipment shall bar his claim to wages as prescribed in the *Navigation Act*. Questions of fact shall be determined as provided for in the said Act.
- (e) If by fire, explosion, foundering, collision or stranding, an employee sustains damage or loss to his equipment or personal effects, an employer shall reimburse the employee for such loss but the amount of such reimbursement shall not exceed \$273.

49. SUNDAY AND HOLIDAY WORK

- (a) An employee required to work on a Sunday shall be paid at the rate of double time.
- (b) An employee required to work on a public holiday shall be paid at the rate of double time and one-half.

Tim Abey
COMMISSIONER

23 August 2004