

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for award or variation of award

Minister administering the State Service Act 2000
(T13450 of 2009)

LEGAL PRACTITIONERS AND APPRENTICE-AT-LAW AWARD

Award variation – award review process – application approved – consent application – operative date 25 June 2009

ORDER BY CONSENT -

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

AMEND THE LEGAL PRACTITIONERS AND APPRENTICE-AT-LAW AWARD BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

1. TITLE

This award is the "Legal Practitioners Award".

2. SCOPE

This award is to apply to all employees appointed to positions requiring that the person be admitted or qualified for and entitled to be admitted, as a barrister or a practitioner of the Supreme Court of Tasmania under the provisions of the *Legal Profession Act 2007* as amended.

3. INDEX

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4. DATE OF OPERATION

This award is to come into operation from 25 June 2009

5. AWARD INTEREST

The following employee organisation is deemed to have an interest in this award pursuant to section 63(10) of the *Industrial Relations Act 1984*:

Community and Public Sector Union (State Public Services Federation Tasmania) Inc.

The following employer is deemed to have an interest in this award pursuant to section 62(4) of the *Industrial Relations Act 1984*:

Minister administering the State Service Act 2000

6. SUPERSESSION AND SAVINGS

This award incorporates and supersedes the Legal Practitioners and Apprentice-at-Law No. 1 of 2008 (Consolidated)

PROVIDED that no entitlement accrued or obligation incurred is affected by the supersession.

7. DEFINITIONS

The words and phrases set out below shall mean the following for the purposes of this award:

ADC means the Office of the Anti-Discrimination Commissioner.

Administrative Work means the exercise of an appropriate level of responsibility and discretion in undertaking functions of an administrative nature where administration is concerned with achievement of the organisation's corporate goals through planning, organising, directing and controlling resources or activities. Administration is also concerned with the development and implementation of policy to achieve set objectives and desired outcomes.

Appropriate Levels of Fees means the appropriate level of fees generated having regard to the nature, volume and availability of work to generate such fees.

Basic Legal Work means Legal Work that could be expected to be undertaken by a Legal Practitioner who does not have a substantial body of knowledge or expertise in the particular field of law. It does not involve issues of a complex or critical nature, nor is there decision making on priorities or deadlines. Precedent or procedures are clearly established and the exercise of independent Professional Judgement as to approach or process is not expected.

Broad Direction means that employees are expected to develop and achieve objectives for specific functions under their control that will ensure the attainment of results critical to the efficient operation of the work unit.

Complex Legal Work means Legal Work that requires the exercise of considerable Professional Judgement in the selection of the most appropriate approach and the application of a significant body of general or specialist legal knowledge.

There may be a variety of potential options from which to choose and precedent may not be clearly established or may be ambiguous. The work requires careful analysis of the subject or issues.

Critical Legal Work is a term used in the sense commonly accepted in relation to critical component, critical issue or critical decision. It means a cornerstone, or fundamental decision, requiring the exercise of considerable Professional Judgement of the effects of a decision within the discipline or field of work. The work may or may not be complex but carries greater risk or more serious consequences than Complex Legal Work.

Direct Supervision is where a person works under supervision with instruction provided. The employee is expected to apply only limited Professional Judgement, and deviations from normal routines; problems and unfamiliar situations are discussed with the supervisor. The exercise of discretion is restricted and the employee has only limited responsibility for the final outcome of work undertaken. Deadlines and priorities are given.

General Direction is where a person is expected to exercise the Professional Judgement necessary to undertake his or her work without supervision. Work is performed in accordance with broadly based standing instructions, policies and professional standards. Detailed or specific instructions are limited to unusual features. The person is expected to exercise discretion and a substantial degree of independent judgment in the performance of the work. They are responsible for the determination of priorities and achieving required outcomes in relation to their work.

General Supervision is where a person is expected to exercise a degree of independence in undertaking their day-to-day work. Their Professional Judgement is such that they are not subject to the same level of control as a person receiving Direct Supervision. General instructions are given on the required objectives or outcomes and the employee is encouraged to exercise some discretion and choice in selecting the most appropriate method for completing the allotted tasks.

LACT means the Legal Aid Commission of Tasmania.

Legal Practitioner means a person appointed to a position that requires that the person be admitted, or qualified for and entitled to be admitted, as a barrister or a practitioner of the Supreme Court of Tasmania under the provisions of the *Legal Profession Act 2007*.

Legal Work means work requiring the application of professional legal knowledge by a Legal Practitioner.

Novel Legal Work means Legal Work requiring a major degree of creativity, originality, ingenuity and initiative and is of a type not normally encountered in the day-to-day operations of the work unit.

OCS means the Office of the Crown Solicitor.

ODPP means the Office of the Director of Public Prosecutions.

OPC means the Office of Parliamentary Counsel.

OSG means the Office of the Solicitor-General.

Paralegal means an employee who undertakes administrative and clerical work of a legal nature that does not require the skills or experience of a legal practitioner.

Principal means in the case of:

- ADC the Anti-Discrimination Commissioner
- the LACT, the Director
- the ODPP, the Director of Public Prosecutions;
- the OCS, the Crown Solicitor;
- the OSG, the Solicitor-General;
- the OPC, the Chief Parliamentary Counsel;
- Tasmania Police, the Commissioner of Police
- the Supreme Court of Tasmania, the Registrar
- the TPT, the Chief Executive Officer
- An employee not covered by the list appearing above, the relevant Head of Agency for that employee

or any person acting in these positions from time to time.

Professional Development means the acquisition of professional knowledge and expertise acquired through experience in the practice of the law.

Professional Judgement means the application of professional knowledge and expertise in defining objectives, solving problems, establishing guidelines, reviewing the work of others, interpreting information and providing and assessing advice or recommendations and other matters that have an element of latitude or decision making.

Routine Legal Work means Legal Work that requires a body of knowledge or expertise in the particular field of law. It does not involve issues of a complex or critical nature. Precedent or procedures are usually clearly established. It requires independent decision making in respect of day-to-day work, with complex, critical or novel aspects referred to more senior Legal Practitioners. The exercise of Professional Judgement as to approach or process is undertaken in consultation with more senior Legal Practitioners.

Specific Direction means where precise instructions are given with little or no choice provided.

TPT means The Public Trustee.

8. SALARIES

The salaries payable to employees in the table below are to be determined by reference to the classification standards set out in Clause 10 of this award.

Classification	Salary Per Annum
Level 1	
1st Increment	\$42,391
2nd Increment	\$48,120
3rd Increment	\$53,848
Level 2	
1st Increment	\$65,808
2nd Increment	\$69,682
3rd Increment	\$73,595
4th Increment	\$76,803
5th Increment	\$80,010
Level 3	
1st Increment	\$84,283
2nd Increment	\$88,566
3rd Increment	\$90,701
4th Increment	\$94,978
5th Increment	\$98,184
Level 4	
1st Increment	\$101,396
2nd Increment	\$109,945
3rd Increment	\$114,864
Level 5	
Contract	In a salary range of between \$129,446 to \$138,627
Level 6	
Contract	By negotiation

9. CLASSIFICATION STANDARDS

The following classification standards apply to positions in which Legal Practitioners employed under the terms of this award:

LEVEL 1 LEGAL PRACTITIONER

A Legal Practitioner with less than 3 years' relevant post-admission experience, and may include a graduate legal practitioner.

General Descriptors - Level 1

A junior Legal Practitioner who:

- undertakes Basic Legal Work but with Professional Development may undertake Routine Legal Work where functions are within his or her skill and competence;
- initially works under Specific Direction but with increasing Professional Development would be expected to work under Direct Supervision or General Supervision as appropriate to the nature of the work being undertaken and the skills and knowledge of the Legal Practitioner;
- with Professional Development and under Direct Supervision or General Supervision as appropriate, would be able to conduct - negotiations or consultations appropriate to the work at this level;
- with Professional Development, would be expected to develop an appreciation of the strategic context within which the Legal Work is undertaken;
- under supervision, provide legal advice in support of the management by paralegal staff of deceased estates, trusts, administration orders, conveyancing transactions, preliminary criminal prosecution phases, and debt recovery matters;
- assists more senior Legal Practitioners with research, preparation, drafting and other appropriate tasks as directed;

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the conduct and carriage, including as counsel, of preliminary, interlocutory and ancillary matters relating to civil, family and criminal proceedings;
- assist more senior practitioners in the conduct of indictable criminal matters;
- the conduct and carriage, including as counsel, of straightforward summary criminal, and lower court civil proceedings;
- undertaking straightforward conveyancing transactions;
- drawing and settling straightforward commercial documents, using established precedents and limited independent drafting skills;
- drafting straightforward legislation, assisting with the preparation of more complex legislation and attending Parliament as required to assist, under Direct Supervision, in the passage of legislation;

- drafting advice for Government and agencies on straightforward legal matters;
- taking instructions for straightforward wills, powers of attorney and deeds;
- providing straightforward legal advice, in both face to face and telephone settings, on a wide range of legal issues;
- undertaking community legal education;
- the conduct and carriage of straightforward administrative investigations.

(a) **LEVEL 2 LEGAL PRACTITIONER**

A Legal Practitioner with more than 2 years' relevant post-admission experience.

General Descriptors - Level 2

A moderately experienced Legal Practitioner who:

- undertakes Basic Legal Work and progresses to undertaking Routine Legal Work;
- may initially work under General Supervision or Direct Supervision, but with Professional Development would be expected increasingly to function with General Direction;
- has acquired a body of relevant professional knowledge in a field relevant to the nature of the duties performed;
- has the skills, under the General Supervision or General Direction of a more senior Legal Practitioner, to undertake negotiations or consultations relevant to the nature of the duties performed;
- has an understanding of the strategic context within which the Legal Work is undertaken;
- exercises Professional Judgement as to approach or process in consultation with more senior Legal Practitioners;
- undertakes legal research in respect of own work and at the request of more senior Legal Practitioners in relation to more complex matters;
- assists more senior legal practitioners with research, preparation, drafting and other appropriate tasks as directed.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of prosecutions for, and defence of, regulatory and summary offences, including appearances in all relevant courts and tribunals at first instance;
- the carriage and conduct of prosecutions for, and defence of, indictable crime, including appearances before relevant courts;
- the carriage and conduct of civil litigious and family law matters as counsel, solicitor, or instructing solicitor before all courts and tribunals at first instance;
- the carriage and conduct as solicitor of commercial and conveyancing matters which include the requirement for independent drafting of documents, and negotiation of outcomes;
- advising Government and Agencies on a wide range of legal matters that have a limited capacity to affect good government, including matters requiring detailed legal research and the interpretation of relevant statutes;
- drafting less difficult legislation, assisting with the preparation of more complex legislation and attending Parliament as required to assist in the passage of legislation;
- drafting more complex wills, deeds of family arrangement, and enduring powers of attorney;
- providing legal advice in support of the management by paralegal staff of deceased estates, trusts, administration orders, conveyancing transactions, preliminary criminal prosecution phases, and debt recovery matters;
- the conduct and carriage of more complex investigations;
- the conduct of straightforward mediations and assisted dispute resolution procedures;
- preparing and delivering legal education presentations and seminars for specialist or professional audiences;
- reviewing and determining straightforward applications in the Probate Jurisdiction of the Supreme Court.

(b) **LEVEL 3 LEGAL PRACTITIONER**

An experienced Legal Practitioner who has significant relevant experience.

General Descriptors - Level 3

An experienced Legal Practitioner who:

- primarily undertakes Routine Legal Work under General Direction but may be required to undertake Complex Legal Work and/or Legal Work of a sensitive nature under the Direct Supervision or General Supervision of a more senior Legal Practitioner;
- possesses a substantial body of professional knowledge, and may have specialised expertise in a relevant area of law;
- has the expertise and specialised skills necessary to undertake negotiations or consultations relevant to the nature of the duties performed;
- provides legal guidance involving a substantial degree of independent Professional Judgement;
- has a well-developed understanding of the strategic context within which the Legal Work is undertaken;
- where required, provides supervision, guidance and assistance to Legal Practitioners of a lower classification level, including allocating work, or undertaking the role of leader of a small unit requiring the coordination of the work of a number of Legal Practitioners;
- may be required to undertake Administrative Work including managing a small team of Legal Practitioners, a small work unit or allocating work across a broad range of Legal Practitioners or clerical staff;
- has responsibility for ensuring that subordinate legal practitioners uphold the highest professional standards;
- has the proven ability to guide and train other Legal Practitioners and or paralegal staff in Routine Legal Work.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of prosecutions for, and defence of, complex regulatory and summary offences, including appearances in all relevant courts and tribunals both at first instance and on appeal;
- the carriage and conduct of prosecutions for, and defence of, indictable crime and appearances in all courts and tribunals of first instance;
- the carriage and conduct of complex civil litigious and family law matters as counsel, solicitor or instructing solicitor before all courts and tribunals at first instance;
- under the general supervision of more senior legal practitioners, undertake appellate matters before the Supreme Court of Tasmania, the Court of

Criminal Appeal, the Full Court of the Supreme Court of Tasmania, the Family Court of Australia or the Full Court of the Family Court of Australia;

- the carriage and conduct as solicitor of commercial and conveyancing matters on behalf of the Crown and its instrumentalities, requiring the preparation, negotiation and settling of complex commercial issues and documentation in circumstances where there is a high degree of reliance on independent drafting and professional judgement;
- advising Government Agencies and instrumentalities on a wide range of complex legal matters which require substantial legal research and the interpretation of relevant statutes;
- under the supervision of the Solicitor-General, assisting in the preparation and presentation of constitutional matters;
- providing legal advice in support of the management by paralegal staff of complex matters involving the administration of deceased estates, trusts, administration orders, conveyancing transactions, preliminary criminal prosecution phases and debt recovery matters;
- the conduct and carriage of complex, critical and novel investigations;
- the conduct of complex mediations and assisted dispute resolution procedures;
- preparing and delivering legal education presentations and seminars for specialist and professional audiences;
- drafting moderately sensitive, complex and novel legislation, consulting and advising Ministers, Departments and Members of Parliament with respect to such legislation and attending Parliament to assist in the passage of legislation as required;
- reviewing and determining more complex applications in the Probate Jurisdiction of the Supreme Court.

(c) LEVEL 4 LEGAL PRACTITIONER

A very experienced Legal Practitioner with an extensive body of relevant professional legal knowledge, significant expertise in a relevant area such as to be able to provide expert legal advice within that area of specialty and the demonstrated capacity to lead and supervise other Legal Practitioners.

General Descriptors - Level 4

A very experienced Legal Practitioner who:

- undertakes Routine Legal Work, Complex and Critical Legal Work, which may be of a sensitive nature;
- operates under General Direction and exercises personal Professional Judgement in the determination of overall strategies, priorities and work standards in respect of his or her own work;
- possesses an extensive body of professional knowledge, expertise and specialised skills and operates in accordance with broad objectives applying a high degree of Professional Judgement;
- provides a high level of professional advice based on an in-depth and comprehensive knowledge of the field of law within which the person practices;
- assumes responsibility for the direction and control of subordinate Legal Practitioners including leading, directing, supervising and coordinating specific projects, a work unit, or work team and undertaking Administrative Work relevant to the work unit or team;
- has an in-depth understanding and knowledge of the strategic context within which the Legal Work is undertaken;
- has an involvement in the development of policy and the establishment of professional principles;
- has responsibility for ensuring that subordinate Legal Practitioners uphold the highest professional standards;
- may be required to undertake Administrative Work relevant to the nature of the duties performed;
- may have the responsibility to directly provide policy and strategic advice to the relevant Principal on matters of significance.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of prosecutions for, and defence of, highly complex, novel or critical regulatory and summary offences, including appearances in all relevant courts and tribunals both at first instance and on appeal;
- the carriage and conduct of highly complex criminal trials and actions in all courts, principally the Criminal Court and the Court of Criminal Appeal as senior counsel;
- the carriage and conduct of highly complex civil litigious matters in all courts and tribunals but principally in the Supreme Court and the Full Court of the Supreme Court as senior counsel;

- the carriage and conduct of highly complex, critical and novel family law matters in all relevant courts but principally in the Family Court and the Full Court of the Family Court as senior counsel;
- acting as senior counsel in Tasmanian and Federal Courts, and Tribunals as required;
- acting as a senior legal adviser in relation to major commercial undertakings which are of a high level of commercial and political significance to the State;
- negotiating, drafting and completing matters of a highly complex commercial or financial nature;
- advising in matters that have a high level of legal significance to the State or the development of the law and which may require complex legal research or statutory interpretation;
- giving substantial assistance in the preparation and presentation of constitutional matters;
- drafting highly sensitive, complex and novel legislation, consulting and advising Ministers, Departments and Members of Parliament with respect to such legislation, attending Parliament as required to assist in the passage of legislation and appear before, and provide assistance to, select committees;
- advising on legal, policy and other matters of significance and strategic importance to a GBE Board or other entity;
- reviewing and determining highly complex applications in the Probate Jurisdiction of the Supreme Court;
- the conduct of highly complex, critical or novel mediations and assisted dispute resolution procedures;
- hearing and determining applications for matters such as the taxation of costs and settling appeal books in the Supreme Court jurisdiction.

(d) LEVEL 5 LEGAL PRACTITIONER

A very experienced and highly skilled Legal Practitioner who provides expert legal services and makes a major contribution to the provision of legal services in the area of responsibility through a comprehensive and expert knowledge of the law, and the exercise of significant professional leadership. Legal Practitioners at this level will also be executive managers requiring them to apply their comprehensive legal and management skills, knowledge and experience to manage and mentor professional staff; allocate and manage resources; and provide comprehensive strategic and policy advice to relevant principals. Appointment is by fixed term

contract at a specific salary for the duration of the contract. No re-negotiation of salary will be undertaken during the life of a contract. However, salary increases are to be paid in accordance with Clause 8 of this award.

General Descriptors - Level 5

A very experienced and highly skilled Legal Practitioner who:

- undertakes Complex Legal Work, Critical Legal Work, and Novel Legal Work, which may be of a sensitive nature;
- operates under Broad Direction and exercises extensive personal Professional Judgement in the determination of overall strategies, priorities and work standards in respect of his or her own work and that of subordinates;
- possesses an extensive body of professional knowledge, expertise and specialised skills and operates in accordance with broad objectives applying a high degree of Professional Judgement;
- provides a very high level of professional advice based on an extremely comprehensive knowledge of the field of law within which the person practices;
- assumes responsibility for the direction and control of subordinate Legal Practitioners including leading, directing, supervising and coordinating significant projects, a work unit, or work team;
- undertakes Administrative Work relevant to the nature of the duties performed;
- has a very detailed understanding and knowledge of the strategic context within which the Legal Work is undertaken;
- has an extensive involvement in the development of policy and the establishment of professional principles;
- has responsibility for ensuring that subordinate legal practitioners uphold the highest professional standards; and
- has a responsibility to directly provide policy and strategic advice to the relevant Principal on matters of significance.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of criminal, civil or family law matters of the highest order of complexity, with issues or consequences involved that have the capacity to have a significant effect on the development of the law or which are of a critical or extremely sensitive nature;

- acting as senior counsel in Tasmanian and Federal Courts, and Tribunals as required;
- advising Government and agencies on matters of the highest order of complexity with issues or consequences involved that have the capacity to have a significant effect on the development of the law or which are of a critical or extremely sensitive nature;
- having the conduct and carriage of constitutional legal matters on behalf of the State;
- acting as a senior commercial legal adviser, including negotiating, drafting and settling commercial legal documents in relation to matters of the highest order of complexity with issues or consequences involved that have the capacity to have a significant effect on the development of the law, the commercial interests of the State or which are of a critical or extremely sensitive nature;
- drafting legislation of the most sensitive, complex and novel nature, consulting and advising Ministers, Departments and Members of Parliament with respect to such legislation, attending Parliament as required to assist in the passage of legislation and appearing before, and provide assistance to, select committees.

(e) LEVEL 6 LEGAL PRACTITIONER

Appointments at this level will only be made where Government has a demonstrated need for duties to be undertaken and choose to appoint a Legal Practitioner at this level. A Legal Practitioner at this level requires a very high degree of professional knowledge and skills in a specified field of law demonstrated by wide acceptance and recognition in legal professional and government communities as a legal authority within his or her area of expertise. Excellence in legal professional leadership and an outstanding record of professional achievement are required. If working in an area where advocacy forms a significant element of the employee's work, appointment as a Senior Counsel is required at this level. Where advocacy is not a significant element of the employees work, then matters which will be considered include scholarship, authorship of papers and publications of major significance, and a body of work carried out of state or national significance.

Appointment is by fixed term contract at a specific salary for the duration of the contract. No re-negotiation of salary will be undertaken during the life of a contract. However, salary increases are to be paid in accordance with Clause 8 of this award.

General Descriptors – Level 6

A highly experienced and skilled legal practitioner who will undertake legal work of the most complex, critical, novel or sensitive nature or who will supervise those undertaking such work.

In addition to the Legal Work required at this level, the officer will also be required to:

- build organisational capability and responsiveness
- implement change
- nurture internal and external relationships
- facilitate cooperation and partnerships with other agencies
- guide, mentor and develop professional staff at all levels
- develop policy within the strategic framework
- undertake Administrative Work relevant to the nature of the duties performed
- have responsibility for ensuring that subordinate legal practitioners uphold the highest professional standards.

10. SALARY INCREMENTS AND ADVANCEMENT BETWEEN CLASSIFICATIONS

A Legal Practitioner is to advance to the next salary increment within a classification on the certification by the relevant Principal of satisfactory performance for a period of not less than one year at the existing level and of apparent capacity to accept greater responsibility. Certification will be undertaken in the context of the Operational Area Performance Management System, or such other system as is approved for use by the relevant Principal.

Satisfactory performance will be assessed using a variety of criteria but will include:

- Legal skills and knowledge
- Application of legal skills and knowledge
- File management skills
- Ethical standards
- Probity

- Fee generation against allocated budget
- Client satisfaction
- Team skills and achievements
- Management and supervision of staff where applicable
- Administrative achievements where applicable
- Contribution to output and Agency objectives

Advancement between classifications is dependent on a merit-based selection for an advertised position at the next or higher classification level.

There are no increments at Levels 5 and 6. Appointment is made at a specific salary and that salary will apply throughout the duration of the contract save and except for increases in salaries as prescribed by Clause 7 of this award.

11. EMPLOYMENT

Employment as a legal practitioner will be in accordance with the *State Service Act 2000*.

All appointments at Levels 5 and 6 will be made by a fixed term contract not exceeding five years in length.

12. PRACTISING CERTIFICATES AND PROFESSIONAL DEVELOPMENT

Where any legal practitioner employed under the terms of this award is required to hold a Practising Certificate and to pay the prescribed fee, such fees will be paid by the relevant operational area.

Legal practitioners employed under the terms of this award acknowledge that they have an individual responsibility to ensure that they maintain the currency of their legal knowledge and skills within their area of expertise or employment.

13. PROFESSIONAL CONDUCT

All legal practitioners employed under the terms of this award:

- (a) are to observe the same rules and standards of professional conduct and ethics as those that a private legal practitioner is, by law or the custom of the legal profession, required to observe in the practice of the legal profession; and

(b) is subject to the same professional duties as those to which a private legal practitioner is, by law or the custom of the legal profession, subject.

14. FEE GENERATION

All legal practitioners in billing areas have the responsibility of ensuring that appropriate levels of fees are generated.

15. GENERAL CONDITIONS OF EMPLOYMENT

Unless otherwise prescribed by this award all conditions of employment are to be determined by the Tasmanian State Service Award as varied from time to time.

James P McAlpine
COMMISSIONER

25 June 2009