

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for an award or variation of an award

Tasmanian Trades and Labor Council

[T10230 of 2002]

Private Sector Awards

[T10288 of 2002]

Private Sector Awards

[T10289 of 2002]

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT R J WATLING

COMMISSIONER T J ABEY

Wage Rates - State Wage Case July 2002 - applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print PR002002 - Safety Net Review 2002 - Award rates increased by - \$18 per week - Wage related allowances increased by 3.55% - Meal allowances increased to \$11.90 - Supported Wage increased to \$56 per week - Operation fpp 1 August 2002 - State Minimum Wage determined at \$431.40-s.35(1)(b)

FUEL MERCHANTS AWARD

ORDER BY CONSENT

NO. 1 of 2002

THE **FUEL MERCHANTS AWARD** IS VARIED IN THE FOLLOWING MANNER:

1. By deleting Clause 8 - WAGE RATES, and inserting in lieu thereof the following:

“8. WAGE RATES

GROUP I - SELLER OF WOOD AND/OR COAL

The minimum weekly wage rate that shall be paid to adult employees classified hereunder shall be:

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(i) Bench hand and all others not elsewhere provided for	339.50	106.00	445.50
(ii) Having maker's capacity of			
1.2 tonnes or less	355.20	106.00	461.20
Over 1.2 tonnes but under 3 tonnes	359.10	106.00	465.10
Over 3 tonnes but under 6 tonnes	364.00	106.00	470.00
Over 6 tonnes but under 7 tonnes	364.70	106.00	470.70
Over 7 tonnes but under 8 tonnes	365.6	106.00	471.60
Over 8 tonnes but under 9 tonnes	366.30	106.00	472.30
Over 9 tonnes but under 10 tonnes	367.20	106.00	473.20
Further additional amounts			
(iii) Employee handling money			
For any amount handled up to \$20		\$0.50 per week extra	
Over \$20 but not exceeding \$200		\$1.10 per week extra	
Over \$200 but not exceeding \$600		\$2.90 per week extra	
Over \$600 but not exceeding \$1,000		\$4.00 per week extra	
Over \$1,000		\$5.00 per week extra	

(iv) Leading Hand

In charge of not less than 3 nor more than 10	\$18.70
In charge of not less than 10 nor more than 20	\$27.60
In charge of more than 20	\$35.70

GROUP II - SELLER OF OIL FUELS AND THE DISTRIBUTOR OF PETROLEUM PRODUCTS

The minimum weekly wage rate that shall be paid to adult employees classified hereunder shall be as follows.

The undermentioned wage rates shall apply only when the employee is engaged on work within the terms of the purposes for which this award is established. Where the employee is engaged on work other than aforesaid the prescriptions contained in the appropriate award shall apply.

1. STOREMAN

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(i) Storeman and/or packer			
On commencement	437.70	108.00	545.70
6 months to 2 years	442.80	108.00	550.80
2 years to 3 years	447.60	108.00	555.60
3 years to 5 years	452.50	108.00	560.50
Over 5 years	457.50	108.00	565.50
(iii) Leading Hand			
In charge of 1 to 2 employees	\$9.20 per week extra		
In charge of a store	\$18.10 per week extra		
In charge of 3 to 10 employees	\$18.10 per week extra		
In charge of 11 to 20 employees	\$26.60 per week extra		
In charge of more than 20 employees	\$35.10 per week extra		

PROVIDED that all persons employed under this section who work in excess of 35 hours per week shall be paid a loading on their hourly rate equal to 12½ per cent of that hourly rate for each hour worked up to 40 hours per week.

2. DRIVERS

Weekly wage rate for adult service with the same employer in the same classifications.

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(a) Employee driving a vehicle with a combined weight of vehicle and maximum load of:			
(1) Rigid Vehicle			
(A) On commencement			
Under 10 tonnes	453.40	108.00	561.40
10 tonnes and under 13 tonnes	456.70	108.00	564.70
13 tonnes and under 19 tonnes	460.50	108.00	568.50
19 tonnes and under 25 tonnes	466.50	106.00	572.50
25 tonnes and under 31 tonnes	472.60	106.00	578.60
31 tonnes and under 37 tonnes	478.70	106.00	584.70
37 tonnes and under 43 tonnes	485.40	106.00	591.40
Thereafter for each additional 6 tonnes or part thereof \$6.70 or week extra			

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(B) 6 months to 2 years			
Under 10 tonnes	458.70	108.00	566.70
10 tonnes and under 13 tonnes	462.10	106.00	568.10
13 tonnes and under 19 tonnes	465.90	106.00	571.90
19 tonnes and under 25 tonnes	472.00	106.00	578.00
25 tonnes and under 31 tonnes	478.10	106.00	584.10
31 tonnes and under 37 tonnes	484.00	106.00	590.00
37 tonnes and under 43 tonnes	490.90	106.00	596.90
Thereafter for each additional 6 tonnes or part thereof \$6.70 per week extra			
(C) 2 years to 3 years			
Under 10 tonnes	463.80	106.00	569.80
10 tonnes and under 13 tonnes	467.50	106.00	573.50
13 tonnes and under 19 tonnes	471.70	106.00	577.70
19 tonnes and under 25 tonnes	477.30	106.00	583.30
25 tonnes and under 31 tonnes	483.50	106.00	589.50
31 tonnes and under 37 tonnes	489.50	106.00	595.50
37 tonnes and under 43 tonnes	497.50	106.00	603.50
Thereafter for each additional 6 tonnes or part thereof \$6.70 per week extra			
(D) 3 to 5 years			
Under 10 tonnes	469.30	106.00	575.30
10 tonnes and under 13 tonnes	472.80	106.00	578.80
13 tonnes and under 19 tonnes	477.20	106.00	583.20
19 tonnes and under 25 tonnes	484.00	106.00	590.00
25 tonnes and under 31 tonnes	488.90	106.00	594.90
31 tonnes and under 37 tonnes	495.0	106.00	601.00
37 tonnes and under 43 tonnes	501.80	106.00	607.80
Thereafter for each additional 6 tonnes or part thereof \$6.70 per week extra			

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(E) Over 5 years			
Under 10 tonnes	475.10	106.00	581.10
10 tonnes and under 13 tonnes	478.50	106.00	584.50
13 tonnes and under 19 tonnes	482.80	106.00	588.80
19 tonnes and under 25 tonnes	488.20	106.00	594.20
25 tonnes and under 31 tonnes	494.70	106.00	600.70
31 tonnes and under 37 tonnes	500.90	106.00	606.90
37 tonnes and under 43 tonnes	507.20	106.00	613.20

(2) Articulated Vehicle

(A) On commencement

Under 10 tonnes	461.80	108.00	569.80
10 tonnes and under 13 tonnes	465.50	106.00	571.50
13 tonnes and under 19 tonnes	469.20	106.00	575.20
19 tonnes and under 25 tonnes	475.40	106.00	581.40
25 tonnes and under 31 tonnes	481.50	106.00	587.50
31 tonnes and under 37 tonnes	490.30	106.00	596.30
37 tonnes and under 43 tonnes	493.70	106.00	599.70

(B) 6 months to 2 years

Under 10 tonnes	467.30	106.00	573.30
10 tonnes and under 13 tonnes	470.90	106.00	576.90
13 tonnes and under 19 tonnes	474.50	106.00	580.50
19 tonnes and under 25 tonnes	480.70	106.00	586.70
25 tonnes and under 31 tonnes	487.00	106.00	593.00
31 tonnes and under 37 tonnes	492.90	106.00	598.90
37 tonnes and under 43 tonnes	499.10	106.00	605.10
Thereafter for each additional 6 tonnes or part thereof \$6.70 per week extra			

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(C) 2 years to 3 years			
Under 10 tonnes	472.10	106.00	578.10
10 tonnes and under 13 tonnes	475.10	106.00	581.10
13 tonnes and under 19 tonnes	480.60	106.00	586.60
19 tonnes and under 25 tonnes	486.40	106.00	592.70
25 tonnes and under 31 tonnes	492.30	106.00	598.30
31 tonnes and under 37 tonnes	498.40	106.00	604.40
37 tonnes and under 43 tonnes	504.80	106.00	610.80
Thereafter for each additional 6 tonnes or part thereof \$6.70 per week extra			
(D) 3 years to 5 years			
Under 10 tonnes	478.10	106.00	584.10
10 tonnes and under 13 tonnes	482.20	106.00	588.20
13 tonnes and under 19 tonnes	485.50	106.00	591.50
19 tonnes and under 25 tonnes	491.90	106.00	597.90
25 tonnes and under 31 tonnes	497.80	106.00	603.80
31 tonnes and under 37 tonnes	502.80	106.00	608.80
37 tonnes and under 43 tonnes	510.30	106.00	616.30
Thereafter for each additional 6 tonnes or part thereof \$6.70 per week extra			
(E) Over 5 years			
Under 10 tonnes	483.60	106.00	589.60
10 tonnes and under 13 tonnes	487.60	106.00	593.60
13 tonnes and under 19 tonnes	491.10	106.00	597.10
19 tonnes and under 25 tonnes	497.10	106.00	603.10
25 tonnes and under 31 tonnes	503.10	106.00	609.10
31 tonnes and under 37 tonnes	509.50	106.00	615.50
37 tonnes and under 43 tonnes	515.60	106.00	621.60

(b) Additional Payments

In addition to the rates prescribed above, the following additional payments shall apply to:

- | | | |
|--|---|------------------|
| (i) | an employee driving a vehicle (not being a tractor) and drawing a trailer | \$1.80 per day |
| (ii) | an employee driving a vehicle carrying hot liquid bitumen or hot tar | \$5.40 per week |
| (iii) | An employee required to operate alone a delivery vehicle fitted with a reel and hose exceeding 19 metres in length and to deliver through such hose into customers' tanks of 900 litres or less capacity - for each day on which the employee is principally engaged on such work | \$1.70 per day |
| This amount shall not be payable on any day on which the employee concerned delivers exclusively to service stations | | |
| (iv) | an employee driving a vehicle carrying bulk liquid petroleum gas | \$5.00 per week |
| (v) | an employee driving a bituminous products and spraying vehicle and directing the work of a bituminous products sprayman | \$6.40 per week |
| (vi) | an employee picking up used oil - for any day on which the employee is so employed | \$1.70 per day |
| (vii) | A leading hand, ie an employee who is in charge of: | |
| | (1) 3 to 10 employees | \$22.50 per week |
| | (2) 11 to 20 employees | \$33.60 per week |
| | (3) More than 20 employees | \$43.40 per week |

PROVIDED that all persons employed under this section who work in excess of 35 hours per week shall be paid loading on their hourly rate equal to 12½ per cent of that hourly rate for each hour worked up to 40 hours per week.

(c) Junior Drivers

- (i) The minimum weekly wage rate to be paid to junior employees is as follows:

Under 19 years of age - 70 per cent of the total weekly wage rate payable to an adult for the class of work performed.

19 years and under 20 years of age - 80 per cent of the total weekly wage rate payable to an adult for the class of work performed.

- (ii) No juniors under 18 shall be permitted to have sole charge of a motor vehicle.
- (iii) Juniors shall not be employed in a greater proportion than one junior to every five drivers receiving adult wages.

3. CLERKS

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(a) Adult Clerks			
1 st year of adult service	424.50	108.00	532.50
2 nd year of adult service	437.70	108.00	545.70
3 rd year of adult service	450.40	108.00	558.40
4 th year of adult service	462.90	106.00	568.90
5 th year of adult service	475.60	106.00	581.60
6 th year of adult service	487.30	106.00	593.30
7 th year of adult service	497.50	106.00	603.50
8 th year of adult service	509.20	106.00	615.20
9 th year of adult service	520.80	106.00	626.80
10 th year of adult service	532.50	106.00	638.50
11 th year of adult service	544.60	106.00	650.60
12 th year of adult service	557.00	106.00	663.00

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(b) Adult Typists			
1 st year of adult service	424.50	108.00	532.50
2 nd year of adult service	437.70	108.00	545.70
3 rd year of adult service	450.40	108.00	558.40
4 th year of adult service	462.90	106.00	568.90
 (c) Juniors			
		Percentage of 1 st Year Adult Weekly Wage Rate	
		%	
At or under 17 years of age		57	
At 18 years of age		68	
At 19 years of age		79	
At 20 years of age		90	

SECTION III - SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this section an employer may engage employees at a supported wage rate (as set out in subclause (c) of this section) 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 section 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 section does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this section:

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

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

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

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

(c) Supported Wage Rates

Employees to whom this section 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 (subclause (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 \$56 per week.

(d) Assessment of Capacity

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

(i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;

(ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of Assessment Instrument

(i) All assessment instruments under the conditions of this section, 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 section 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 section 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 section for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with subclauses (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$56 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.

SECTION IV - MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

- (i) The minimum wage for full-time adult employees not covered by Section III - Supported Wage System is \$431.40 per week.
- (ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).
- (iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

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

applicable to the employee concerned to the relevant amount in subclause (b)(i)

(d) Application of Minimum Wage to Certain Employees

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

(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2002 State Wage Case Decision (T10230 of 2002) and all previous safety net and state wage case adjustments.”

2. By deleting Clause 18 - FIRST AID, and inserting in lieu thereof the following:

“18. FIRST-AID

In each establishment the employer shall provide an equipped first-aid chest at a place reasonably accessible to all employees. Such a chest, shall as to its contents, comply with any State Act or Regulation enforced from time to time.

An employee holding a current first aid qualification from St John Ambulance, Red Cross or similar body and appointed by the employer to perform first-aid duties shall be paid, in addition to wages \$8.20 for any week so appointed. The employer shall reimburse the cost of fees for any courses necessary for an employee covered by this clause to obtain, and maintain current, the appropriate first-aid qualification.”

3. By deleting Clause 25 - MEAL TIMES - and inserting in lieu thereof the following

“25. MEAL TIMES

- (a) (i) Subject to paragraph (b)(i) below each employee shall be allowed an unpaid meal break of not less than 45 minutes and not more than one hour to be taken between 11.00am and 3.00pm.

PROVIDED that by agreement between the employer and the majority of employees at an establishment the meal break may be less than 45 minutes. Such agreement shall be notified to the relevant union within seven working days.

- (ii) An employee required to work through the customary meal break shall be paid at the rate of ordinary time, in addition to any payment due in respect of a weekly or casual wage, until such time as the meal break begins.
- (b) (i) Except as otherwise provided in this clause, no employee shall be required to work for longer than 5½ hours without a break for a meal.
- (ii) All time worked over 5½ hours until such a break is allowed shall be paid for at the rate of ordinary time, the payment to be in addition to any payment due in respect of a weekly or casual wage.
- (iii) This subclause shall not apply to the evening meal time in the case of any employee returning to the yard or depot after the conclusion of any journey or delivery where such employee ceases work not later than 7.00 pm on Monday to Friday inclusive.

- (c) (i) Where an employee is required otherwise than because of the employee's own default or delay to continue working after 6.00pm on Monday to Friday inclusive, or 1.00pm on Saturday, without having been informed in some way on the preceding working day that the employee will be so required, the employee shall be allowed \$11.90 as meal money.
- (ii) An employee who is notified under this subclause that the employee will be required to continue working, but who is not so required to continue working, shall be paid the prescribed meal money.
- (iii) This subclause shall not apply in the case of any employee returning to the yard or depot after the conclusion of any journey or delivery where such employee ceases work not later than 7.00pm.
- (iv) The obligation to pay ordinary time under this clause in addition to weekly or other wages and overtime under any other clause shall not be cumulative, but the employee, in cases coming within this clause, shall be entitled only to the higher payment.”

Operative Date

This variation shall come into operation from the first full pay period to commence on or after 1 August 2002

P C Shelley
COMMISSIONER

2 August 2002