

**TASMANIAN INDUSTRIAL COMMISSION**

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch**  
(T9245 of 2000)

Aerated Waters Award  
Automotive Industries Award  
Baking Industry Award  
Cleaning and Property Services Award  
Fibreglass and Plastics Award  
Furnishing Trades Award  
Health and Fitness Centres Award  
Hotels, Resorts, Hospitality and Motels Award  
Ice Cream Makers Award  
Independent Schools (Non Teaching Staff) Award  
Laundry and Dry Cleaning Award  
Leather, Canvas and Sheet Plastic Fabrication Award  
Licensed Clubs Award  
Miscellaneous Workers Award  
Restaurant Keepers Award  
Retail Trades Award  
Security Industry Award  
Shipping Award  
Veterinary Services Award  
Wholesale Plant Bakeries Award

**Australian Municipal, Administrative, Clerical and Services Union**  
(T9248 of 2000)

Barristers and Solicitors Award  
Broadcasting and Television Award  
Clerical and Administrative Employees (Private Sector) Award  
Community Services Award  
Disability Service Providers Award  
Estate Agents Award  
Fuel Merchants Award  
Insurance Award  
Marine Boards Award  
Medical Practitioners (Private Sector) Award  
Photographic Industry Award  
Public Accountants Award  
Softgoods Award  
Textile Award  
Totalizator Agency Award  
Wholesale Trades Award

**Shop, Distributive and Allied Employees Association, Tasmanian Branch  
(T9251 of 2000)**

Automotive Industries Award  
Bootmakers Award  
Hairdressers Award  
Insurance Award  
Retail Pharmacy Award  
Retail Trades Award  
Timber Merchants Award  
Wholesale Trades Award

**The Australian Workers' Union, Tasmania Branch  
(T9275 of 2000)**

Australian Cement Holdings Enterprise Award  
Automotive Industries Award  
Bootmakers Award  
Butter and Cheesemakers Award  
Clay and Mud Products Award  
Concrete Products Award  
Civil Construction and Maintenance Award  
Dairy Processing Award  
Farming and Fruit Growing Award  
Fish Aquaculture and Marine Products Award  
Horticulturists Award  
Leather, Canvas and Sheet Plastic Fabrication Award  
Meat Processing Award  
Metal and Engineering Industry Award  
Monumental Masons Award  
Optical Industries Award  
Pasminco Hobart Smelter Enterprise Award  
Pasminco (Rosebery) Mining Award  
Plant Nurseries Award  
Produce Award  
Public Vehicles Award  
Quarrymens Award  
Rubber Trades Award  
Shellfish Industry Award  
Timber Merchants Award  
Wireworking Award

**The Australasian Meat Industry Employees Union, Tasmanian Branch  
(T9278 of 2000)**

Meat Retailing Award

FULL BENCH:  
DEPUTY PRESIDENT R J WATLING  
COMMISSIONER P A IMLACH  
COMMISSIONER T J ABEY

Award variation - nominated private sector awards - meal allowance - increase to reflect CPI movements - applications granted - operative fppp 23 November 2000

## **AUTOMOTIVE INDUSTRIES AWARD**

### **ORDER BY CONSENT**

#### **No. 3 of 2000**

THE **AUTOMOTIVE INDUSTRIES AWARD** IS VARIED IN THE FOLLOWING MANNER:

1. By deleting Clause 22 - OVERTIME, and inserting in lieu thereof the following:

#### **“22. OVERTIME**

Note: The provisions of this clause shall not apply to a person classified as Motor Vehicle Salesperson or Commercial Traveller.

- (a) Rate of Remuneration

For all work done outside ordinary hours the rates of pay shall be time and a half for the first 2 hours and double time thereafter, such double time to continue until the completion of the overtime work.

- (b) Rest Break After Overtime

- (i) An employee, other than a casual employee (as defined) after the completion of overtime work performed after the usual ceasing time, shall be entitled to be absent until the employee has 10 consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during each absence.

- (ii) If, on the instructions of the employer, an employee resumes work without having had such 10 hours off duty the employee shall be paid at double rates until relieved from duty to take such rest period. The employee shall be entitled to 10 consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.

(c) Requirement to Work Overtime

As a condition to the operation of a 38-hour week any employee who may be required by the employer to work reasonable overtime at the overtime rates herein prescribed shall work such overtime in accordance with such requirements.

(d) Computation of Overtime

Except as otherwise provided in subclauses (a) and (b) hereof, in computing overtime each day's work shall stand alone.

(e) Excess Time Worked by Clerical Employees/Sellers of Automotive Replacement Parts and Accessories

Clerical Employees/Sellers of Automotive Replacement Parts and Accessories who work ten minutes or more past the time fixed for ceasing work shall be paid overtime rates for all time worked after the time fixed for ceasing work.

**PROVIDED ALWAYS** this subclause shall not be used to obtain unpaid work from employees on a regular basis.

(f) Call Back

An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of 4 hours' work at the appropriate rate for each time so recalled. Provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full 4 hours if the job the employee was recalled to perform is completed within a shorter period. Provided employees classified as a seller of motor vehicle replacement parts and accessories shall be afforded a minimum payment of 3 hours only.

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

Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purposes of subclause (a) of this clause where the actual time worked is less than 3 hours on such recall or on each of such recalls.

(g) Stand-by

Subject to any custom now prevailing under which an employee is regularly required to be available for a call back, an employee required to remain on standby shall, until replaced, be paid at ordinary time rates from the commencement of the standby period.

(h) Meal Breaks

(i) For work done during meal hours and thereafter until a meal break is allowed double time shall be paid. An employee shall not be compelled to work for more than 5 hours without a break for a meal, subject to the provisions of Clause 18 - Hours.

(ii) Subject to the provisions of the second part of subclause (h) (i) of this clause, an employee employed as a regular maintenance person shall work during meal breaks at the ordinary rates herein prescribed whenever instructed to do so for the purpose of making good breakdowns of plant or upon routine maintenance of plant which can only be done while such plant is idle.

(iii) An employee working overtime shall be allowed a crib time of 20 minutes without deduction of pay after each 4 hours of overtime work, if the employee continues to work after such crib time.

(iv) Before starting overtime after ordinary working hours a meal break of at least 45 minutes shall be allowed unless the period of overtime is less than one and a half hours. An employer and employee may agree to any variation of this provision to meet the circumstances of the work in hand.

(i) Tea Money

(i) An employee required to work overtime for more than one and a half hours shall either be supplied with a meal by the employer or paid \$10.40 for each meal.

(ii) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime, the employee shall be paid as above prescribed above. An employee may request that the payment prescribed in this subclause be made on the day on which the overtime is worked.

(j) Transport Home

The employer shall provide an employee with transport to the employee's home in circumstances where the employee works unrostered overtime and finishes work at a time when other means of transport are not available.

(k) Time off in lieu

(i) Where an employee requests and the employer agrees, time off at the penalty equivalent may be allowed in lieu of payment for overtime.

- (ii) Provided that such time off shall be paid at the ordinary rate.
- (iii) Agreement to implement this provision shall be in writing signed by the employee and the employer and shall form part of the records required to be kept in accordance with section 75 of the *Industrial Relations Act 1984*.”

2. By deleting Clause 40 - VEHICLE SALESPERSON - CONDITIONS FOR EMPLOYEES, and inserting in lieu thereof the following:

**“40. VEHICLE SALESPERSON - CONDITIONS FOR EMPLOYEES**

(a) Calculation of Wages

For the purposes only of determining payment for sick leave, bereavement leave, deduction for unauthorised absences, wage calculation on termination of employment and casual rates, the hourly rate shall be 1/38<sup>th</sup> of the appropriate weekly rate as prescribed by Clause 8 - Wage Rates of this award.

(b) Commission

Payment of commission, if any, to a vehicle salesperson may be negotiated between the salesperson and his or her employer subject to the following provisions:

- (i) The basis on which commission is to be paid shall be committed to writing and a copy given to the salesperson within 21 days of his or her commencing employment and such basis shall not be altered except by mutual consent or by a week’s notice in writing from the employer to the salesperson.
- (ii) The employer of a salesperson employed at the date of the coming into operation of this award shall comply with subclause (a) hereof within 21 days of such date.
- (iii) The employer shall within 21 days after the last day of each month furnish the salesperson with all relevant particulars of vehicles delivered and commission earned by them during the preceding month and thereupon such commission or any balance thereof shall be payable.
- (iv) Commission shall be deemed to accrue upon the delivery of a vehicle to the customer.
- (v) Where a sale is effected as a result of the efforts of two or more salesmen, the commission payable in respect of such sale shall be divided between them in such proportion as they may mutually agree. In default of agreement, the employer and the sales manager, shall act as arbitrator, subject to the right of any party to apply to the Tasmanian Industrial Commission for a decision.
- (vi) Where the employment of a salesperson terminates prior to the delivery of a vehicle for which the employee would otherwise be entitled to commission, the employee shall, provided the vehicle is delivered within three months of the

termination of employment, be paid two-thirds of the commission the employee would otherwise have received.

- (vii) Where the employment of a salesperson terminates, the commission to which the employee is entitled in respect of vehicles which have already been delivered shall be paid to the employee within 14 days of such termination.
- (viii) Any sum payable under an agreement made pursuant to this clause shall be deemed to be payable under this award.

(c) Contract of Employment

- (i) All employees other than casual employees shall be employed by the week.
- (ii) Employment may be terminated by one week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages as the case may be.

This shall not affect the right of the employer to dismiss an employee without notice for misconduct, in which case wages shall be paid up to the time of dismissal only.

- (iii) An employer may deduct payment for any day an employee cannot be usefully employed through any strike, breakdown of machinery or any stoppage of work by any cause for which the employer cannot reasonably be held responsible.
- (iv) An employee shall be entitled to receive on request a reference on termination of services. Such reference shall contain at least the commencing and finishing dates of service, also the classification upon which the employee was engaged and shall become the absolute property of the employee. Any prospective or future employer shall return the reference to the employee within 7 days of having received it.

(v) Casual Employment

A casual employee shall be paid 12% of the appropriate weekly rate in Clause 8 - Wage Rates, for each time the employee commences work before noon and each time the employee commences work after noon.

An employee who is not engaged specifically as a casual employee shall be deemed to be on weekly hire.

The provisions of subclause (j) Work on a Sunday, and subclause (k) Work on Holidays and Days Off of this clause shall also apply to casual employees.

(vi) Part-time Employees

A part-time employee may be engaged in any of the classifications covered by the award, provided such employee accepts employment on the following terms:

- (1) The wage rate shall be equal to the appropriate weekly rate divided by 38.
- (2) The provisions of this award in respect to Annual Leave, Compassionate Leave, Sick Leave, Holidays and in all other respects shall apply to such part-time employees on a proportionate basis.
- (3) No part-time employee shall work less than twenty hours per week.
- (4) No full-time employee will be reduced to part-time without his or her express consent.
- (5) Not more than 10% of the employees in any one establishment shall be employed as part-time employees.

(d) Days Off

- (i) A vehicle salesperson shall be allowed one and one-half days free of duty per week or by mutual agreement three full days per fortnight.
- (ii) Each employee will be allotted a meal break of not less than 30 minutes nor more than 60 minutes between the hours of 11.00 a.m. and 3.00 p.m. each day.

**PROVIDED** that no employee may be required to work more than 5 hours without a break for a meal.

- (iii) No employee will be required to make himself or herself available for duty for more than 12 hours on any day.

(e) General Conditions

The provisions of this award relating to Clause 9 - Annual Leave, Clause 22 - Occupational Superannuation, Clause 30 - Settlement of Disputes, Clause 34 - Structural Efficiency, Clause 36 - Suspension, and Clause 38 - Training shall apply to employees engaged under this clause.

(f) Meal Allowance

- (i) A vehicle salesperson required to be on duty at a motor show, agricultural show, or similar exhibition on either over the evening meal period or on a holiday referred to in Clause 16 - Holidays with Pay, shall be paid \$10.40 for each evening meal and \$10.40 for the midday meal on the holiday.

- (ii) A vehicle salesperson required to work at a showroom or car yard for more than two hours after 6.00 p.m. on any day without being notified on the previous day or earlier that the employee would be so required to work, shall either be supplied with a meal by his or her employer or paid \$10.40, but such payment need not be made to an employee living in the same locality as his or her work place who can reasonably return home for meals.

(g) Payment of Wages

Wages shall be paid weekly and not later than Thursday of the week of payment. By agreement between the employer and the majority of employees wages may be paid by means other than cash.

**PROVIDED** that in the absence of agreement with the majority of employees an employer may introduce payment of wages by electronic funds transfer without cost to the employee by the giving of three months notice.

If payment is made by electronic funds transfer the employer shall be responsible to meet the cost of one deposit and one withdrawal per employee per pay period.

By agreement between the employer and the majority of employees wages may be paid on a fortnightly basis with one week being paid in advance and one week in arrears.

**PROVIDED ALWAYS** in the absence of agreement by the majority of employees the employer may implement fortnightly pay by giving not less than one months notice of his or her or her intention to do so.

(h) Travelling Allowances

A vehicle salesperson whose duties necessitate the employee staying away overnight from his or her usual abode, shall be reimbursed expenses reasonably incurred by the salesperson in the course of his or her duties, including \$10.40 for each meal.

(i) Use of Motor Vehicles

- (i) Where a vehicle salesperson is provided with a motor vehicle for use in the performance of his or her duties, no deduction shall be made from the wages payable to such salesperson pursuant to Clause 8 - Wage Rates, of this award as the case may required, on account of such use.

- (ii) Where a vehicle salesperson is engaged on terms which require the employee to provide his or her own vehicle, he or she shall be reimbursed as set out hereunder or on the basis not less favourable to the salesperson:

- (1) For motor cars up to and including 20 hp, an overhead cost allowance of \$122.15 per week, plus a weekly amount calculated at the rate of 12 cents per kilometre for the actual distance travelled by his or her car each week in connection with his or her employment.

- (2) For motor cars over 20 hp an overhead cost allowance of \$135.70 per week, plus a weekly amount calculated at the rate of 18 cents per kilometre for the actual distance travelled by his or her car each week on connection with his or her employment.
- (3) For the purposes of paragraphs (i) and (ii) hereof, distance travelled to and from the place where the vehicle customarily is housed shall be regarded as travel in connection with the employment.
- (4) The overhead allowances prescribed by subparagraphs (1) and (2) hereof, shall be paid during each week of the calendar year except in respect of periods:
  - (A) when the salesperson is absent from duty without the consent of the employer;
  - (B) in excess of three consecutive weeks when the vehicle is unavailable due to accident or mechanical defect;
  - (C) in excess of a total of three complete weeks in any one year due to personal illness or incapacity of the salesperson; provided that any such claim for any period of less than one week shall not be taken into account for the purpose of this paragraph.

Other than in cases of termination of employment, four weeks' notice shall be given to a salesperson by the employer that the salesperson is no longer required to provide his or her own vehicle.

- (iii) In the case of casual use by a salesperson of his or her own vehicle in the course of his or her duties and by agreement with his or her employer, the salesperson shall be reimbursed at a rate of not less than 48 cents per kilometre.

(j) Work on a Sunday

A vehicles salesperson required by his or her employer to work on a Sunday other than a Sunday which is his or her rostered day off shall be paid, in addition to his or her ordinary rate, as follows:

- (i) if more than half a day is worked - 2/5ths of the appropriate weekly rate prescribed by Clause 8 - Wage Rates;
- (ii) if half a day or less is worked - 1/5th of the appropriate weekly rate prescribed by Clause 8 - Wage Rates.

(k) Work on Holidays and Days Off

- (i) All work done by a vehicle salesperson on the instruction of his or her employer on his or her rostered day or half day off shall be paid for at the rate of double time.

For the purpose of this subclause, double time shall mean:

- (1) if more than half a day is worked - 2/5ths of the weekly rate prescribed by Clause 8 - Wage Rates;
  - (2) if half a day or less is worked, 1/5th of the weekly rate prescribed by Clause 8 - Wage Rates.
- (ii) All work done by a vehicle salesperson on the instruction of the employer on a holiday referred to in Clause 16 - Holidays with Pay, shall be paid for at the rate of double time and one half.

For the purpose of this subclause, double time and one half shall mean:

- (1) if more than half a day is worked, one half of the appropriate weekly rate prescribed by Clause 8 - Wage Rates;
- (2) if half a day or less is worked, one quarter of the appropriate weekly rate prescribed by Clause 8 - Wage Rates.”

#### **OPERATIVE DATE**

This variation shall come into operation from the first full pay period to commence on or after 23 November 2000.

RJ Watling  
**DEPUTY PRESIDENT**

24 November 2000