

TASMANIAN INDUSTRIAL COMMISSION

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

Australian Municipal, Administrative, Clerical & Services Union
(T9729 of 2001)

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

The Australian Workers' Union, Tasmania Branch
(T9738 of 2001)

Australian Cement Holdings Enterprise Award
Automotive Industries Award
Bootmakers Award
Butter and Cheesemakers Award
Civil Construction and Maintenance Award
Clay and Mud Products Award
Concrete Products 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 Industry 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
Quarrying and Lime Processing Award
Rubber Trades Award
Shellfish Industry Award
Silviculture and Afforestation Award
Timber Merchants Award

Wireworking Award

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

(T9740 of 2001)

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

The Shop, Distributive & Allied Employees Association, Tasmania Branch

(T9741 of 2001)

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

The Australasian Meat Industry Employees Union, Tasmanian Branch

(T9778 of 2001)

Meat Retailing Award

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the order that was printed and published by the Printing Authority of Tasmania.**

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT R J WATLING
COMMISSIONER T J ABEY

Award variation - nominated private sector awards - meal allowance - increase to
reflect CPI movements - 11.78% - applications granted - operative date fpp 3
September 2001

AUTOMOTIVE INDUSTRIES AWARD

ORDER BY CONSENT -

No. 3 of 2001

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

1. By deleting Part V, Clause 4 - Overtime and inserting in lieu thereof the following:

“4. OVERTIME

The provisions of this clause shall not apply to a person classified as 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 that 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 FURTHER 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 Part V – Hours of Work, Shift Work and Overtime, Clause 3 - 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 \$11.60 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 Part X, Clause 1 - Conditions For Vehicle Salespersons and inserting in lieu thereof the following:

“1. CONDITIONS FOR VEHICLE SALESPERSONS

(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 1/38th of the appropriate weekly rate as prescribed by Part III – Wage Rates and Related Matters, Clause 1 - 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 Part III – Wage Rates and Related Matters, Clause 1 - 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 Part II – Employment Relationship and Associated Matters, Clause 5 - Suspension, Part III – Wage Rates and Related Matters, Clause 6 - Superannuation, Part VI – Leave and Holidays with Pay, Clause 1 - Annual Leave, Part VII - Consultation and Dispute Resolution, Clause 1 - Settlement of Disputes, and Clause 2 - Structural Efficiency, and Part IX - Miscellaneous Provisions, Clause 2 - 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 Part V – Hours of Work, Shift Work and Overtime, Clause 1 - Holidays with Pay, shall be paid \$11.60 for each evening meal and \$11.60 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 \$11.60, 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 FURTHER 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 \$11.60 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 Part III – Wage Rates and Related Matters, Clause 1 - 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 Part III – Wage Rates and Related Matters, Clause 1 - Wage Rates;
- (ii) if half a day or less is worked - 1/5th of the appropriate weekly rate prescribed by Part III – Wage Rates and Related Matters, Clause 1- 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 Part III – Wage Rates and Related Matters, Clause 1 - Wage Rates;
 - (2) if half a day or less is worked, 1/5th of the weekly rate prescribed by Part III – Wage Rates and Related Matters, Clause 1 - Wage Rates.
- (ii) All work done by a vehicle salesperson on the instruction of the employer on a holiday referred to in Part V – Hours of Work, Shift Work and Overtime, Clause 1 - 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 Part III – Wage Rates and Related Matters, Clause 1 - Wage Rates;
- (2) if half a day or less is worked, one quarter of the appropriate weekly rate prescribed by Part III – Wage Rates and Related Matters, Clause 1 - Wage Rates.”

OPERATIVE DATE

This variation shall come into operation from the first full pay period to commence on or after 3 September 2001.

P L Leary
PRESIDENT

4 September 2001