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TASMANIAN INDUSTRIAL COMMISSION

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

Tasmanian Trades and Labor Council
(T7702 of 1998)

Private and public sector awards

FULL BENCH:

PRESIDENT F D WESTWOOD
DEPUTY PRESIDENT B R JOHNSON
COMMISSIONER R J WATLING

Wage Rates - State Wage Case July 1998 - application to review the Wage fixing Principles and to vary awards in a manner consistent with the Australian Industrial Relations Commission decision in Print number Q 1998 Safety Net Review - Wages - Agreed Settlement - Two-stage Arbitrated Safety Net Adjustment - ffpp on or after 14 July 1998 and ffpp on or after 14 October 1998 - Revised Wage Fixing Principles - Approved

CLOTHING INDUSTRY AWARD

ORDER BY CONSENT-

No. 3 of 1998

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AMEND THE **CLOTHING INDUSTRY AWARD** IN THE FOLLOWING MANNER:

1. Delete Clause 8 - Wage Rates and insert in lieu thereof the following:

"8. WAGE RATES

- (a) (i) Adult employees in a classification hereunder mentioned shall be paid the base rate and supplementary payments appearing opposite that classification:

Operative from the first full pay period to commence on or after 14 July 1998:

Classification	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
Entry Level	%	\$	\$	\$
New Employee less than 3 months service	78	325.40	44.00	369.40
1. Employee Skill Level 1	82	342.10	44.00	386.10
2. Employee Skill Level 2	87.4	364.60	44.00	408.60
3. Employee Skill Level 3	92.4	385.50	44.00	429.50
4. Employee Skill Level 4	100	417.20	44.00	461.20
5. Employee Skill Level 5	110	458.90	44.00	502.90

PROVIDED that for the purpose of identifying an employee's new classification in accordance with the creation of a new broadly based and generic classification structure Schedule A to this award shall apply.

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- (ii) Adult employees in a classification hereunder mentioned shall be paid the base rate and supplementary payments appearing opposite that classification:

Operative from the first full pay period to commence on or after 14 October 1998:

Classification Entry Level	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
New Employee less than 3 months service	78	325.40	48.00	373.40
1. Employee Skill Level 1	82	342.10	48.00	390.10
2. Employee Skill Level 2	87.4	364.60	48.00	412.60
3. Employee Skill Level 3	92.4	385.50	48.00	433.50
4. Employee Skill Level 4	100	417.20	48.00	465.20
5. Employee Skill Level 5	110	458.90	48.00	506.90

PROVIDED that for the purpose of identifying an employee's new classification in accordance with the creation of a new broadly based and generic classification structure Schedule A to this award shall apply.

- (b) Apprentices

The minimum weekly wage rate to be paid by employers to apprentices shall be the undermentioned percentages of the Employee Skill Level 4 rate of wages appearing in subclause (a) - Wage Rates.

	Percentage of Employee Skill Level 4
	%
First year - 1st 6 months	45
First year - 2nd 6 months	50
Second year - 1st 6 months	55
Second year - 2nd 6 months	60
Third year - 1st 6 months	65
Third year - 2nd 6 months	70
Fourth year - 1st 6 months	75
Fourth year - 2nd 6 months	80

Thereafter the appropriate adult rate.

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(c) Juniors

The minimum weekly wage rate to be paid by employers to Junior Workers shall be the undermentioned percentages of the weekly wage rate appearing subclause (a) - Wage Rates of this clause for the classification 'Employee Skill Level 2'.

	Percentage of Employee Skill Level 2 %
16 years and under	50
16 & 1/2 years	55
17 years	60
17 & 1/2 years	65
18 years	69
18 & 1/2 years	72
19 years	75
19 & 1/2 years	80
20 years	85

PROVIDED that any Juniors:

- (i) with at least 3 years and not more than 4 years experience in the clothing industry shall be paid not less than the percentage of the rate for a 20 years old junior.
- (ii) after 4 years experience in the Clothing Industry shall be paid the appropriate rate for an adult employee in the classification in which he or she is employed.
- (iii) on attaining 20 years of age who has had more than 2 years experience in the clothing industry shall be paid the appropriate adult rate.
- (iv) Time served by an apprentice or junior in any occupation for which a classification is prescribed by this award in similar experience in the same classification in the Textile Industry shall be counted as experience for the purpose of apprenticeship indenture or continuance of junior experience, both as regards wages and the terms to be served in respect of the continuation of the employment by such apprentice or junior in the occupation covered by such classification.

PROVIDED FURTHER that such person on attaining the age of 21 years shall be paid the wage herein prescribed for an adult.

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(d) Supported Wage System

(i) Eligibility criteria

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

(ii) For the purposes of this subclause:

- (1) **'Supported Wage System'** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (2) **'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.
- (3) **'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.
- (4) **'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.

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(iii) Supported wage rates

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

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

PROVIDED that the minimum amount payable shall be not less than \$45 per week.

(iv) 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:

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

(v) Lodgment of assessment instrument

- (1) All assessment instruments under the conditions of this subclause, 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.
- (2) 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.

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(vi) 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.

(vii) 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 subclause 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.

(viii) Workplace adjustment

An employer wishing to employ a person under the provisions of this subclause 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.

(ix) Trial Period

- (1) 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 subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (2) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (iv) and (v).
- (3) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week or such greater amount as is agreed from time to time between the parties.
- (4) Work trials should include induction or training as appropriate to the job being trialed.
- (5) 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 paragraph (iii) hereof."

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2. Delete Clause 9 - Annual Leave and insert in lieu thereof the following:

"9. ANNUAL LEAVE

(a) Period of Leave

A period of one hundred and fifty two hours paid annual leave shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave).

(b) Annual Leave Exclusive of Holidays with Pay

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 14 - Holidays with Pay, and if any such holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

Where a holiday falls as aforesaid and the employee fails, without reasonable cause (proof whereof shall be upon the employee), to attend for work at the employees ordinary starting time on the working day immediately following the last day of the period of the employees annual leave, the employee shall not be entitled to be paid for such holiday.

(c) Calculation of Continuous Service

For the purpose of this clause, service shall be deemed to be continuous notwithstanding -

- (i) Any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- (ii) Any absence from work on account of personal sickness or accident, and in calculating the period of 12 months' continuous service, absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service;
- (iii) Any absence with reasonable cause, proof whereof shall be upon the employee, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months' continuous service.

(d) Proportionate Leave on Termination of Service

If after one months' continuous service is any qualifying monthly period an employee lawfully leaves employment or employment is terminated by the employer through no fault of the employee, the employee shall be paid at his/her ordinary rate of wage as follows:

12.67 hours for each completed month of service.

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(e) Payment in Lieu Prohibited

The annual leave provided for by this clause shall be allowed and shall be taken and, except as provided in subclause (d) of this clause, payment shall be made or accepted in lieu of annual leave.

(f) Payment of Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees (as defined), and part-time employees (as defined) engaged to work less than 20 hours per week shall be paid:

- (i) an amount of \$277.40 operative from the first full pay period to commence on or after 14 July 1998;
- (ii) an amount of \$281.40 operative from the first full pay period to commence on or after 14 October 1998.

(g) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued. Where practicable, and unless otherwise mutually arranged between the employer and the employee, at least 2 weeks' notice shall be given to the employee that his/her annual leave is to be taken.

(h) Broken Leave

Leave allowed under the provisions of subclause (a) shall be granted and taken in one consecutive period, or where the employer and employee agree, in any combination.

(i) Annual Shut Down

Where an employer closes down his plant, or a section or sections thereof, for the purpose of allowing annual leave to all or the bulk of the employees in the plant, or section or sections concerned, the following shall apply:

- (i) the employer may, by giving no less than three months' notice of his intention so to do, stand off for the duration of the closedown all employees in the plant or section or sections concerned and allow to those who are not qualified for a full entitlement to annual leave for twelve months' continuous service pursuant to subclause (h) hereof, paid leave on a proportionate basis for 12 2/3 hours for each completed month on continuous service subject to and the including the initial qualifying period of one month of continuous service with the employer.

PROVIDED that where in any establishment a ballot indicates that at least 75 per cent of employees agree, and with the consent of the union, the period of closedown may be extended and all employees stood down without pay for a further period of not more than two days.

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(j) Disputes

Any dispute arising out of this clause shall be determined by the Secretary for Labour, whose decision shall be final."

OPERATIVE DATE

This Order shall come into operation from the first full pay period to commence on or after 14 July 1998.

R J Watling
COMMISSIONER

21 July 1998