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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**

[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)

### **HORTICULTURISTS AWARD**

#### **ORDER BY CONSENT**

**No. 1 of 2002**

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The **HORTICULTURISTS AWARD** IS VARIED IN THE FOLLOWING MANNER:

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

**“8. WAGE RATES**

**1. HORTICULTURAL TRADESMAN**

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

Classification	Base Rate	Safety Net Adjustment	Weekly Wage Rate
Horticultural Tradesman (as defined)	\$ 368.80	\$ 106	\$ 474.80

**2. APPRENTICES**

The minimum weekly wage rates that may be paid to apprentices shall be the undermentioned percentages of the total weekly wage rate payable to a Horticultural Tradesman as prescribed in subclause 1 of this clause.

	%
1 <sup>st</sup> year	42
2 <sup>nd</sup> year	55
3 <sup>rd</sup> year	75
4 <sup>th</sup> year	88

**3. GENERAL**

Adult employees of a classification hereunder mentioned shall be paid the weekly wage rate opposite that classification.

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Classification	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(i) Fork Lift Driver	334.00	106.00	440.00
(ii) Motor Lorry Driver	334.00	106.00	440.00
(iii) An employee having less than one month's continuous service with their present employer	298.70	106.00	404.70
(iv) Leading hand, i.e. an employee who directs or supervises the work of:			
2 to 6 employees		\$13.40 per week extra	
7 to 10 employees		\$14.10 per week extra	
11 to 19 employees		\$21.85 per week extra	
20 or more employees		\$28.80 per week extra	

#### 4. JUNIOR EMPLOYEES - OTHER THAN APPRENTICES

The minimum weekly wage rate that may be paid to junior employees shall be the undermentioned percentages of the adult rate for the classification upon which they are employed.

	Percentage of Adult Weekly Wage rate
	%
Under 16 years of age	45
16 to 17 years of age	50
17 to 18 years of age	60
18 years of age and over	100

#### 5. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclauses 1, 2 & 3 of this clause, no adult employee shall be paid less than the rate of \$323.10 per week.
- (b) **PROVIDED** that payments for overtime, special rates, holiday and weekend penalties, prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

Where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates payments, sick leave and annual leave, and for all other purposes of this award.

## 6. PIECE-WORK

Piece-work rates may be fixed by the employer and the employee at such rates approved by The Australian Workers' Union, Tasmania Branch as will enable the average employee working the ordinary hours prescribed herein to earn at least twelve and a half percent above the prescribed time rate. Such rates shall, when fixed, be paid in lieu of the said time rates.

## 7. SUPPORTED WAGE SYSTEM

### (a) Eligibility criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) 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.

### (b) For the purposes of this subclause:

- (i) **"Supported Wage System"** means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.
- (ii) **"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.

- (iii) **“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.
- (iv) **“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.

(c) 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 \$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 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.
- (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 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.

(h) 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.

(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 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.
- (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 paragraphs (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 paragraph (c) hereof.”

**2. By deleting Clause 9 - ALLOWANCES, and inserting in lieu thereof the following:**

**“9. ALLOWANCES**

(a) Shift Allowance

All time worked outside of the hours prescribed in Clause 20 - Hours subclause (a) of this award shall have a shift loading of \$1.76 for each hour worked.

The extra rates prescribed by this clause are payable only during the employees' ordinary working hours and are not cumulative on the penalty rates prescribed in Clause 25 - Overtime, of this award.

(b) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the Industrial and Commercial Training Act 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.60 per week.

Provided that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

(c) Motor Cycle and Bicycle Allowance

If the nature of the employment requires an employee, on the instructions of the employer, to use a motor cycle or bicycle in the course of his work, such motor cycle or bicycle being the property of the employee, he shall be paid accordingly \$1.95 per day with fuel supplied for the motor cycle and 80 cents per day for the use of the bicycle.”

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**3. By deleting Clause 17 - FIRST AID, and inserting in lieu thereof the following:**

**“17. FIRST AID EQUIPMENT**

A suitable first-aid kit shall be kept at all places of work, and a qualified first-aid man (if available) shall be appointed to take charge of first-aid equipment and to attend to any person injured during working hours. Such first-aid man to be paid \$1.65 per day in addition to his ordinary wages where there are more than 3 persons employed.”

**4. By deleting Clause 35 - SPECIAL RATES, and inserting in lieu thereof the following:**

**“35. SPECIAL RATES**

Employees who are engaged in spraying, sowing, or spreading of fertiliser, handling of chemicals, or threshing or cleaning seeds indoors shall be provided by the employer with protective clothing (including where necessary, respirator and/or goggles) and be paid 48 cents per hour extra while so engaged with a minimum payment as for 4 hours on any one day.

Any dispute under this clause shall be referred to the Secretary for Labour, whose decision shall be final.”

**5. By deleting Clause 38 - WET PAY, and inserting in lieu thereof the following:**

**“38. WET PAY**

If an employee is required to work in a wet place or in heavy rain he shall be provided with gumboots or oilskins and/or suitable head covering so as to protect him from getting wet.

If he is not so provided so as to protect him from getting wet he shall be paid therefore \$3.75 per day extra for each day or part of a day on which he is not provided with waterproof clothing.”

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**6. By deleting Clause 21 - MEAL INTERVAL AND ALLOWANCE and inserting in lieu thereof the following:**

**“21. MEAL INTERVAL AND ALLOWANCE**

- (a) A meal interval of not less than 30 minutes shall be allowed not later than 5 hours after commencing work.
- (b) An employee who is required to work overtime for one and a half hours or more without being notified the previous day shall either be supplied with a meal by the employer or be paid a meal allowance of \$11.90
- (c) An employee required to work through his customary meal break shall be paid at overtime rates until such time as the meal break is taken.”

**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**

5 August 2002