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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
(T9062 of 2000)

Private sector awards

FULL BENCH:

DEPUTY PRESIDENT R J WATLING
COMMISSIONER P L LEARY
COMMISSIONER P A IMLACH

Wage Rates - State Wage Case July 2000 - application to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission decision in Print number S5000 - 2000 Safety Net Review - Wages - Agreed Settlement - \$15.00 Arbitrated Safety Net Adjustment and 3.14% increase to work related allowances - Approved

ESTATE AGENTS AWARD

ORDER BY CONSENT -

No. 2 of 2000

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THE **ESTATE AGENTS AWARD** IS VARIED IN THE FOLLOWING MANNER:

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

"8. WAGE RATES

DIVISION A - CLERKS

The classification structure listed here shall be read in conjunction with the definitions set out in Clause 7 - Definitions, of this award.

(a) Adult Clerks

The weekly wage rates set out hereunder shall be the rates payable to adult employees classified herein:

Adults	Base Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Adult Entry				
1st 6 months	80	333.80	75.00	408.80
2nd 6 months	85	354.60	75.00	429.60
Grade 1				
1A 1st 12 months	87	363.00	75.00	438.00
1B After 12 months	90	375.50	75.00	450.50
Grade 2				
2A 1st 12 months	92	383.80	75.00	458.80
2B After 12 months	95	396.30	75.00	471.30
Grade 3				
3A 1st 12 months	97	404.70	75.00	479.70
3B After 12 months	100	417.20	75.00	492.20
Grade 4	105	438.10	75.00	513.10
Grade 5	110	458.90	75.00	533.90
Grade 6	115	479.80	73.00	552.80
Grade 7	120	500.60	73.00	573.60

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(b) Junior Employees

The minimum weekly wage rate that may be paid to junior employees is the undermentioned percentages of the Grade 1, 1st 12 months service weekly wage rate adjusted to the nearest 10 cents:

	%
Under 16 years of age	40
16 to 17 years of age	45
17 to 18 years of age	55
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(c) Trainee Clerk

The minimum weekly wage rate payable to a trainee clerk shall be determined by the following method of calculation:

By taking the appropriate weekly wage rate for a junior clerk as prescribed in subclause (b) of this division then multiplying it by 39 and dividing it by 52.

PROVIDED that the wage determined by this calculation shall in no case be less than the minimum rate (as varied from time to time) prescribed by the Australian Traineeships System Guidelines.

PROVIDED FURTHER that trainee clerk weekly wage rate shall be calculated in multiples of 10 cents with any result of five cents or more being taken to the next 10 cents.

(d) Advice of Grading and Settlement of Disputes

All current and future employees shall be notified in writing by the employer of their grading within one month of this award coming into operation or the date of engagement as the case may be.

In the event of a dispute regarding grading, the matter shall be discussed by the employer involved or his representative and the Australian Municipal, Administrative, Clerical and Services Union in an attempt to resolve the matter, and if then still in dispute, shall be referred to the Tasmanian Industrial Commission for determination.

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(e) 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, program, 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.

(ii) For the purposes of this subclause:

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

'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.

'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.

'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 (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 \$51 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 \$51 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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DIVISION B - REAL ESTATE SALESPeOPLE AND MANAGEMENT

(a) Wage Rates

The weekly wage rates set out hereunder shall be the rates payable to employees classified herein:

	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	\$	\$	\$
(1) Real Estate Sales Trainee	280.00	75.00	355.00
(2) Real Estate Sales Consultant Auctioneer, Property Manager, Manager	325.00	75.00	400.00

(b) Scholarship Holder

The minimum weekly wage rate payable to trainees for the first 12 months shall be determined by taking the appropriate wage rate for a junior clerk as prescribed in Division A - Clerks, subclause (b) - Junior Employees - of and multiplying it by 42 and dividing it by 52 (42 being the actual number of weeks spent on the job). For each subsequent year scholarship holders will receive the appropriate wage rate for a junior clerk as prescribed in Division A - Clerks, subclause (b) - Junior Employees, and adult scholarship holders shall receive the appropriate wage for a Grade 1 Clerk.

(c) Supported Wage System

As provided for in Division A - Clerks, subclause (e) Supported Wage System, of this Clause."

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

"9. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave) on weekly hiring.

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(b) Broken Leave

Leave allowed under the provisions of subclause (a) shall be given and taken in one consecutive period, or if the employer and the employee agree, in one of the following methods:

- (i) in two separate periods, the lesser of which shall be not less than seven consecutive days ie. five working days.
- (ii) in any combination, provided one period shall be not less than seven consecutive days ie. five working days.

(c) Annual Leave Exclusive of Public Holidays

If any of the holidays prescribed by Clause 17 - Holidays with Pay, 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 leave one day for each such holiday so occurring.

(d) Payment in Lieu Prohibited

Except as provided in subclause (h) hereof, payment shall not be made or accepted in lieu of annual leave.

(e) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued and after not less than two weeks notice to the employee.

(f) Payment for Period of Leave

- (i) All employees before going on leave shall be paid the amount of wages prescribed in Clause 8 - Wage Rates, that they would have received in respect of the ordinary time which they would have worked had they not been on leave during the relevant period.
- (ii) In addition thereto all employees (including part-time employees engaged to work 20 or more hours per week) shall receive a loading of 17.5 percent on payments made for annual leave as prescribed in paragraph (i) hereof; provided the loading is at least a minimum payment of \$332.40.

Such loading shall not apply to proportionate leave on termination of service.

(g) Leave Allowed Before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

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Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 17 - Holidays with Pay.

(h) Proportionate Leave on Termination of Service

If after one completed month of service in any qualifying 12 monthly period an employee lawfully leaves employment, or the employment is terminated by the employer through no fault of the employee, the employee shall be paid at the ordinary rate of wage as follows:

twelve and two thirds hours for each completed month of continuous service.

The aforementioned service is in respect of leave which has not been granted."

Operative Date

These variations shall come into operation from the first full pay period to commence on or after 1 August 2000.

R J Watling
DEPUTY PRESIDENT

7 August 2000