

This document is translated from the original order, issued on 2 August 2002, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.23 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 ffpp 1 August 2002 - State Minimum Wage determined at \$431.40 - s.35(1)(b)

PASMINCO HOBART SMELTER ENTERPRISE AWARD

ORDER BY CONSENT -

No. 1 of 2002

This document is translated from the original order, issued on 2 August 2002, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

THE **PASMINCO HOBART SMELTER ENTERPRISE AWARD** IS VARIED IN THE FOLLOWING MANNER:

1. **By deleting from Part III – Wages and Related Matters, Clause 4 – Supported Wage System, and inserting in lieu thereof the following:**

“4. SUPPORTED WAGE SYSTEM

- (a) Eligibility criteria

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

“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.

“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.

“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.

This document is translated from the original order, issued on 2 August 2002, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

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

(c) Supported wage rates

Employees to whom this division 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 \$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 division, 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 division 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 division 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 division 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.

This document is translated from the original order, issued on 2 August 2002, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

- (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 subclause (c) hereof.”

2. By deleting from Part V – Hours of Work, Penalty Payments, Shift Work and Overtime, Clause 5 – Overtime, in inserting in lieu thereof the following:

“5. OVERTIME

Award Employees (excluding Part X - Waterside Workers)

Day Workers

- (a) For all work done by day workers before or after the times of the day mentioned in Part V, Clause 1 - Hours of Work hereof, or on Saturday, overtime shall be paid at the rate of double time.

Shift Workers

- (b) Shift workers shall be paid at the rate of double time for all time of duty beyond 8 hours per day, except where the excess time of duty is:
 - (i) by arrangement between the employees themselves;
 - (ii) for the purpose of effecting the customary rotation of shifts and of reliefs.
- (c) Shift work shall be rostered for periods of not less than a fortnight, but shifts may be changed from time to time as may be necessary for the operation of the works.

PROVIDED that:

- (i) unless an employee is given 48 hours' notice of change of shift; or
- (ii) unless not less than 7 clear days' notice is given of change of employees' days off,

overtime at the rate of double time shall be paid for work performed on such changed shift or day off, irrespective of the number of hours otherwise worked in any fortnight.

- (d) A shift worker required to work overtime immediately after working ordinary hours shall be paid a minimum of one hour's work at the appropriate rate provided that except in the case of unforeseen circumstances arising the employee shall not be required to work the full hour if the job which he/she is held back to perform is completed within a shorter period.

Overtime - General

- (e) Except as otherwise provided in subclause (f) hereof, in computing overtime each day's or shift's work shall stand alone. For such purpose a day shall be deemed to commence at 11.45 pm.

Notwithstanding the foregoing, a shift worker (whether or not he/she has been given notice of change of shift pursuant to subclause (c) of this clause) who concludes work of 8 hours on his/her regularly rostered shift at 11.45 pm and is then required to immediately commence his/her changed rostered shift commencing at 11.45 pm and finishing at 7.45 am shall be paid double the ordinary rate for such second consecutive shift.

- (f) An employee who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she has had 10 consecutive hours off duty without loss of pay for ordinary time of duty occurring during such absence.

If, on the instructions of his/her employer, any employee resumes work without having had such 10 hours off duty, he/she shall be paid at double rates until he/she is relieved from duty to take such rest period and he/she shall then be entitled to be absent until he/she has had 10 consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.

PROVIDED that time off duty without loss of pay shall not be regarded as time worked for the computation of overtime or other penalty rates.

In the case of day workers, such rest period shall be exclusive of crib time set out in Part V, Clause 1 - Hours of Work, subclause (a) hereof.

- (g) Where an employee continues to work on the instructions of his/her employer after working for 4 hours or more at overtime rates before his/her ordinary starting time, he/she shall be paid at double time for his/her work until he/she shall have been relieved for at least 10 hours.

PROVIDED that he/she shall not be entitled to payment for any such rest period.

This document is translated from the original order, issued on 2 August 2002, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

- (h) An employee recalled to work overtime after leaving his/her employer's works shall be paid a minimum of 4 hours' work at the appropriate rate for each time he/she is 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 he/she was recalled to perform is completed within a shorter period.

- (i) Subject to any custom now prevailing under which an employee is required to hold himself/herself in readiness for a call back, an employee required to hold himself/herself in readiness to work after ordinary hours, shall, until released, be paid standing-by time at ordinary rates from the time from which he/she is so to hold himself/herself in readiness.

Meal Period and Allowances

- (j) For work done by day workers during the normal crib time and thereafter until a meal break is allowed, payment shall be made at the rate of double time.
- (k) An employee shall not work for more than 5 hours without a break for a meal.
- (l) An employee working overtime shall be allowed a crib time of 20 minutes without deduction of pay after each 4 hours of overtime worked, if the employee continues to work after such crib time.

An employer and the employee may agree to any variation of this provision to meet the circumstances of the work in hand.

- (m) Before starting overtime immediately after working ordinary hours, a meal break of 20 minutes shall be allowed without deduction of pay, unless the period of overtime is 1 1/2 hours or less. An employer and the employee may agree to any variation of this provision to meet the circumstances of the work in hand.
- (n) An employee required to work overtime for more than one and one half hours without being notified the day before that the employee will be so required to work, shall be supplied with a meal by the employer or paid \$11.90 for each meal.
- (o) If an employee, pursuant to notice, has provided a meal or meals and is not required to work overtime, the employee shall be paid \$11.90 for each meal.

Provisions covering changes between Day and Shift Work

- (p) When day workers are rostered to and perform shift work for 5 or more successive shifts there shall be added to the rates prescribed for day-work the shift allowance prescribed in Part IV, Clause 1 - Shift Allowance thereof.
- (q) When day workers work less than 5 successive shifts, overtime at the rates prescribed for day workers shall be paid instead of the allowance for shift work.
- (r) When a day worker is required to change from day work to night shift commencing at 11.45 pm on the same day he/she shall be allowed to cease work at 3.45 pm without loss of pay for ordinary hours of employment on that day.

PROVIDED that the time off duty without loss of pay shall not be regarded as time worked for the purpose of computation of overtime or other penalty rates.

- (s) When a day worker is required to change to shift work he/she shall be given a minimum of 48 hours notice of such change. Where a lesser period of notice is given the employer shall either instruct the employee to work his/her ordinary day work hours, or pay him/her for such ordinary hours occurring but not worked within the period of such minimum notice.

Transport of Employees Required to Work Overtime

- (t) An employee recalled to work overtime after leaving his/her employer's premises shall be provided by the employer with transport to and from his/her place of work before commencing and after concluding such overtime.
- (u) Where an employee is required to work overtime or an additional shift immediately before or following on from his/her ordinary work or rostered shift, he/she shall be provided by the employer with transport to or from his/her home, notwithstanding that he/she may have been notified previously of the requirement to work such overtime.
- (v) Where an employee is required to work organised overtime at weekends or holidays, and that overtime commences and finishes at normal working times, and normal transport is available at the start and finish of such overtime, then the provisions of subclauses (w) and (x) hereof shall not apply.
- (w) Where the time occupied in transporting an employee to his/her home after working overtime exceeds 15 minutes, such additional time shall be paid for at the appropriate plant overtime rate.

This document is translated from the original order, issued on 2 August 2002, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

- (x) As an alternative to the employer providing transport in accordance with the provisions of subclauses (t), (u) and (v) hereof, the employee concerned may elect to use his/her own vehicle, in which case he/she shall be paid a travelling allowance of 27.5 cents per kilometre for the actual road distance involved in travelling by the most direct route and such travelling allowance shall be limited to a maximum of 32 kilometres on each occasion of work performed as aforesaid.
- (y) The foregoing provisions shall not apply to employees who, as an integral part of their job, are required to regularly work overtime immediately preceding or following their ordinary hours of work.”

OPERATIVE DATE

These variations shall come into operation from the first full pay period to commence on or after 1 August 2002.

R J Watling
DEPUTY PRESIDENT

2 August 2002