

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.23 application for award or variation of award

Tasmanian Trades and Labor Council

(T13471 of 2009)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2009 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$12.00 per week - wage related allowances to be increased by 1.9% – meal allowance increased to \$15.40 - Supported wage increased to \$71.00 - State Minimum Wage rate determined at \$558.10 - s.35(1)(b) – operative date ffpp 1 August 2009 - Wage Fixing Principles set aside in part

CUSTODIAL OFFICERS AWARD

ORDER -

**No. 1 of 2009
(Consolidated)**

AMEND THE **CUSTODIAL OFFICERS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

1. TITLE

This award shall be known as the "Custodial Officers Award".

2. SCOPE

The Custodial Officers Award shall apply to all persons employed in the Prison Service who occupy a position classified in this award.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall take effect from the first full pay period to commence on or after 1 August 2009.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Custodial Officers Award No. 1 of 2008 (Consolidated).

PROVIDED that no entitlement accrued or obligation incurred under that award shall be affected by the supersession.

6. PARTIES AND PERSONS BOUND, INTEREST

- (a) The following employee organisations have a registered interest in this award under section 63(10) of the Act: -
- (i) the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch;
 - (ii) The Community and Public Sector Union (State Public Services Federation Tasmania) Inc.
- (b) This award binds:
- (i) the employer in relation to employees covered by this award;
 - (ii) employees covered by this award;
 - (iii) the Liquor, Hospitality and Miscellaneous Union - Tasmanian Branch;
 - (iv) The Community and Public Sector Union (State Public Services Federation Tasmania) Inc.

7. DEFINITIONS

'Afternoon Shift' means a shift terminating after 7.00 pm and at or before midnight.

'Employee' means a person employed under the provisions of the Tasmanian State Service Act 1984.

'Employer' means the Minister for Public Sector Management.

'Holiday' means any day which is a bank holiday or bank part holiday under the Bank Holidays Act 1919, either throughout the State or in any particular locality, or any specified day or part day appointed as a holiday by the Governor.

'Night Shift' means a shift terminating after midnight and at or before 8.00 am.

'Prison Service' means the Prison Service of the Corrective Services Division of the Department of Justice.

'Shift Worker' means an employee who is required to regularly perform shift work in accordance with a roster covering seven days per week which includes Saturdays and Sundays.

8. SALARIES

- (a) An employee appointed to a position classified under this award shall be paid at the relevant level according to the following scale:

	Salary per Annum \$
Level 1	
Utility Officer	35373.00
Level 2	
Senior Utility Officer	36626.00
Level 3	
Custodial Officer	
1 st year of service	36035.00
2 nd year of service	36908.00
3 rd year of service	38068.00
4 th year of service	38665.00

The commencing salary of a person appointed to a position in this Level shall be as determined by the employer having regard to the qualifications and/or practical experience of the person so appointed.

Progression from first year of service salary rate to second year of service salary rate is conditional upon successful completion of an approved Custodial Officers' examination or other qualification deemed appropriate by the employer.

PROVIDED that no employee shall be entitled to an annual increment unless, in the opinion of the employer, the conduct, diligence and efficiency of the employee have been satisfactory during the year immediately prior to the date from which that increment is due.

Custodial Officer First Class	38984.00
Level 4	
Senior Custodial Officer	40242.00
Level 5	
Industry Supervisor	41649.00
Level 6	
Chief Custodial Officer	42836.00
Level 7	
Unit Manager	48683.00

(b) 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 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.

(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 (iv))	% 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 \$71 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.

(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 \$71 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.

9. CONDITIONS OF SERVICE

Unless prescribed otherwise in this award, conditions of service applying to employees covered by this award shall be as prescribed in the General Conditions of Employment Award or the Tasmanian *State Service Act 2000* and Regulations, as the case may be.

10. DISPUTES SETTLING PROCEDURE

If a dispute or grievance should arise, the following procedure will be adopted:

- (a) The union(s) shall refer the matter to management.
- (b) When a matter has been referred under (a), management shall endeavour within 24 hours to meet with union(s) representatives in an attempt to resolve the dispute or grievance. Management may seek the involvement of the Public Sector Management Office at any stage of the dispute settling process.
- (c) The union(s) shall endeavour to advise management whether or not the matter is resolved within 24 hours of the meeting referred to in (b).
- (d) If the matter is unresolved, a further meeting between the union(s) and management shall be held, if practicable, within 24 hours of the advice given by the union(s) under (c).
- (e) Unless otherwise agreed between the parties, the steps outlined in (a) to (d) shall be carried out within a period of not more than seven consecutive days.
- (f) If the matter remains unresolved after the procedures detailed in (a) to (e) have been followed, either party may notify the dispute to the Tasmanian Industrial Commission.
- (g) Whilst a matter is being dealt with in accordance with this procedure, normal work and management practices will be observed and any threat to safety removed.
- (h) Any union(s) meetings in relation to a matter being dealt with under this procedure shall be held in the employee's own time unless otherwise agreed by management.

11. ENTERPRISE FLEXIBILITY

By agreement between the employer and the relevant union(s), any of the provisions contained in this award relating to work practices may be varied to suit the needs of the prison service.

Any agreed variation is to be in writing and signed by the employer and the relevant union(s). A copy of the agreed variation is to be provided to the member of the Tasmanian Industrial Commission having responsibility for this award.

12. MEAL BREAKS

(a) Shift Workers

- (i) Shift workers shall be allowed a meal break of 20 minutes during each shift, and that break will be counted as time worked.
- (ii) A meal break taken between 10.00 pm and 6.00 am is to be taken at the employee's post.
- (iii) Shift workers shall not be paid penalty rates for an untaken meal break or a meal break taken later than the normally scheduled time.

(b) Non-shift Workers

Meal breaks for employees other than shift workers shall be as agreed by the employer and the relevant employee(s) but shall not be less than 30 minutes and such breaks shall not count as time worked.

13. MULTISKILLING

The employer may direct an employee to perform any duties which are within the limits of the employee's skill, competence and training.

14. ON CALL ALLOWANCE

- (a) An allowance of \$15.10 shall be paid for each day that an employee is rostered to remain on call and available to be recalled to duty, irrespective of whether or not the employee is recalled to work.
- (b) Payment of an on-call allowance to an employee of the rank of Chief Custodial Officer or above is deemed to compensate such officers for situations in which they are required to provide information or advice to the senior duty officer at a prison.
- (c) An employee recalled to work shall be paid the appropriate overtime rate for the actual time worked during the recall or recalls, provided that the minimum payment for any one day shall not be less than four hours.

15. ORDINARY HOURS OF WORK

The daily, ordinary hours of duty shall not exceed eight unless otherwise agreed between the employer and the majority of employees directly affected by any proposed change. The daily, ordinary hours of duty for employees other than shift workers may be worked between 6.00 am and 8.00 pm.

The starting and finishing times of hours of duty shall be as determined by the employer, provided that no employee shall be required to work a split shift except in an emergency and with the agreement of the relevant employee(s) and union(s).

The ordinary hours of work for an employee covered by this award shall be 38 hours per week or 38 hours per week in the aggregate over a designated roster cycle.

The 38 hour week is implemented in the following manner:

Rosters may either: -

- (a) provide that employees shall accrue 12 extra days leave upon completion of a 12 month work cycle or a pro rata number of days for part thereof; or
- (b) fix one day off on leave for each completed four weeks of a particular work cycle.

16. PAYMENT OF WAGES

Payment of wages shall be made fortnightly by electronic funds transfer, direct deposit, cheque or other non-cash method as determined by the employer.

Payment of wages other than by cheque is to be made into a banking or financial institution account nominated by the employee.

The method of payment existing at the time of this award taking effect will not be altered by the employer without a minimum of three months notice to the employees concerned unless otherwise agreed between the employer and the majority of employees.

17. QUALIFICATIONS

To be eligible for appointment to any position for which a classification appears in this award, an employee must satisfy the relevant, following requirements.

Custodial Officer

Successful completion of an entrance examination if required or other qualifications as deemed appropriate by the employer.

Successful completion, during the first year of service, of an approved Custodial Officers' examination or other qualification deemed appropriate by the employer.

Custodial Officer First Class

Requirements as for Custodial Officer together with at least four years' satisfactory service as a Custodial Officer and successful completion of an approved Senior Custodial Officer's examination, or qualifications and practical experience deemed appropriate by the employer.

PROVIDED that a Custodial Officer should be afforded the opportunity to complete an approved Senior Custodial Officer's examination during the first five years of service. If such an opportunity does not occur within that period, such an employee shall be paid from the five years anniversary date as a Custodial Officer First Class, conditional upon successfully completing the examination at the first attempt.

Except under extenuating circumstances, a Custodial Officer First Class must act in the position of Senior Custodial Officer as required by the employer.

Senior Custodial Officer

Requirements as for Custodial Officer First Class, together with at least four years satisfactory service as a Custodial Officer, or qualifications and practical experience as a Custodial Officer deemed appropriate by the employer.

Except under extenuating circumstances, a Senior Custodial Officer must act in the position of Chief Custodial Officer as required by the employer.

Industry Supervisor

A person appointed to the position of Industry Supervisor shall possess trade and/or vocational qualifications deemed appropriate by the employer.

Chief Custodial Officer

Requirements as for Senior Custodial Officer, together with satisfactory service as a Senior Custodial Officer or qualifications and practical experience as a Custodial Officer deemed appropriate by the employer.

18 SHIFTWORK

(a) Hours of Duty

Subject to the following conditions, shift workers shall work at such times as may be directed by the employer:

- (i) A shift shall consist of not more than eight hours duration unless otherwise agreed between the employer and the majority of employees directly affected by any proposed change.
- (ii) Except at the regular change over of shifts, an employee shall not be required to work more than one shift in each 24 hours.

(b) Rosters

There shall be a rotating roster for shifts which, unless otherwise agreed between the employer and the majority of employees, will provide that:

- (i) not more than eight shifts are worked in any nine consecutive days;
- (ii) there is not more than one single day off in any period of three weeks, all other days off being arranged as two or more consecutive days;
- (iii) an employee's place on a roster shall not be changed at the direction of the employer without seven days notice or payment of the relevant penalty rate, unless otherwise agreed between the employer and the relevant employee in which case no penalty will be payable;
- (iv) where an employee's place on a roster is changed at the request of the employee, no penalty will be payable.

(c) Shift Allowances

- (i) An employee regularly rostered to work afternoon or night shifts shall be paid an allowance of 15 per cent of the ordinary rate of pay for each shift so worked.
- (ii) An employee who works night shift only and remains on night shift for a period longer than four consecutive weeks shall be paid an allowance of 30 per cent of the ordinary rate of pay for each shift so worked.

(d) Overtime

- (i) When work is performed outside the ordinary hours of an employee's rostered shift, payment shall be made at the rate of double the ordinary hourly rate for each hour worked.

PROVIDED that such payment is not applicable in circumstances where the work performed outside the ordinary hours of a rostered shift is a consequence of arrangements made between employees, or is due to rotation of shifts.

- (ii) Where a change over of shift is delayed, overtime shall not commence to accrue to the unrelieved employee until ten minutes after completion of eight hours of duty.

(e) Saturday Shifts

Where the major part of an employee's rostered shift falls on a Saturday, payment for the shift shall be at the rate of time and one half of the ordinary rate, which shall be in substitution for and not cumulative upon the shift allowances prescribed in subclause (c).

(f) Sunday Shifts

Where the major part of an employee's rostered shift falls on a Sunday, payment for the shift shall be at the rate of double the ordinary rate which shall be in substitution for and not cumulative upon the shift allowances prescribed in subclause (c).

(g) Daylight Saving

Any shift worked, the hours of which are affected by the commencement or termination of Summer Time as specified in the Daylight Saving Act 1968, shall be deemed to be a normal shift as specified in subclause (a)(i) and will be paid for accordingly.

19. WAGE INCREASES

No other increases to salary rates shall occur before 31 December 1996, except as provided for and in accordance with the Agreement in relation to State Service Wages Arrangements.

Tim Abey
COMMISSIONER

6 August 2009