

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

DENTAL EMPLOYEES AWARD

ORDER -

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

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

1. TITLE

The award shall be known as the "Dental Employees Award".

2. SCOPE

Subject to the exceptions and conditions contained herein, this award shall apply to all persons permanently or temporarily employed under the provisions of the *Tasmanian State Service Act 1984*, who occupy a position covered by this award, the duties of which require the performance of dental work of a professional and/or administrative nature.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the beginning of the first full pay period to commence on or after 1 August 2009.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 1 of 2008 (Consolidated)

PROVIDED that the provisions of the *Tasmanian State Service Act 1984* and the regulations made thereunder, shall continue to apply to employees or classes of employee covered by this Award as and where such Act and regulations are applicable, save insofar as the salary to be received by, and the conditions of service of such employees or classes of employee are inconsistent with the provisions of this Award.

PROVIDED ALWAYS, that no right, obligation or liability incurred or accrued under any of the abovementioned provisions shall be affected by the replacement and supersession.

6. PARTIES AND PERSONS BOUND

This award shall apply to and be binding upon: -

- (a) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award.
- (b) the following organisation/s of employees in respect of whom award interest has been determined: -
 - (i) The State Public Services Federation Tasmania and the Officers of that organisation and their members for whom classifications appear in this award;
 - (ii) The Health Services Union of Australia, Tasmania No. 1 Branch and the Officers of that organisation and their members for whom classifications appear in this award;
- (c) the Controlling Authority having an interest in this award is the Minister for Public Sector Management, in relation to all employees (as defined).

7. DEFINITIONS

In this award, unless the contrary intention appears -

'Adult Employee' means an employee 21 years of age or over.

'Casual Employee' means a person engaged to work on an irregular basis, as and when required, but does not include any person employed on a part-time, full-time or permanent basis.

'Controlling Authority' means the Minister for Public Sector Management.

'Dental Employee' means a person registered as a dentist under the *Dentists' Act 1919*.

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

'Full-time Employee' means a person engaged to work for the full ordinary hours prescribed.

'Junior Employee' means an employee under the age of 21 years.

'Part-time Employee' means a person other than a full-time or casual employee (as defined), engaged to work regularly in each pay period for less hours than an equivalently classified full-time employee.

'Public Hospital' means a public hospital within the meaning of the *Hospitals Act 1918*.

'Temporary Employee' means a person who -

- (a) is engaged to relieve a full-time or part-time employee for specific period of leave; or
- (b) is engaged temporarily for specific duties over a fixed period determined by the Controlling Authority.

PROVIDED that such temporary employment be specified as to the number of hours, days or weeks to be worked; with the further proviso that where the period of engagement is specified as 5 consecutive working days or less the terms of employment shall be the same as those defined for casual employees.

8. SALARIES

An employee appointed or promoted to a position within a class or grade prescribed by this award shall, subject to satisfying the prescribed requirements, be paid at the salary rate determined for the relevant classification as hereinafter set forth: -

PROVIDED that it is a condition of the 4% second tier adjustment applied to the wage rates in this award that the package of restructuring and efficiency offsets referred to in Registered Agreements T1230 and T1233 of 1988 be implemented and/or observed in relation to all employees for whom salary rates appear in this award.

Where there is an inconsistency between a provision of:

- (a) either this award, the General Conditions of Employment Award, an Instruction, or Regulation; and
- (b) the Agreements referred to, the terms of which apply to employees covered by this award;

that provision shall be read subject to the relevant provision contained in the Agreements.

PROVIDED ALWAYS that "State Service Wages Arrangements Increases" means those fixed salary rate increases provided for in accordance with the Agreement in Relation to State Service Wage Arrangements.

The rates set out in Columns A to D below reflect the State Service Wages Arrangements Increases provided for under industrial agreements and are not in addition to those increases.

Column A - 1.5% per annum or \$8 per week whichever is the greater, payable on and from the first full pay period to commence on or after 1 August 1993.

Column B - 1.5% per annum or \$8 per week whichever is the greater, payable on and from 1 April 1994.

Column C - 1.0% per annum payable on and from 1 January 1995.

Column D - 1.0% per annum payable on and from 1 October 1995.

A. FULL-TIME EMPLOYEES

1. DENTAL EMPLOYEE

Class I	\$
1st year of service	45179
2nd year of service	46808
3rd year of service	48543
4th year of service	50282
5th year of service and thereafter	52018

Class II	
Grade 1	53753
Grade 2	55494
Grade 3	57224

Class III	
Grade 1	58960
Grade 2	60706
Grade 3	62443
Grade 4	64436

Class IV	
Grade 1	67918
Grade 2	71650
	78003

Class V

2. SPECIALIST DENTAL EMPLOYEE

	65428
Grade 1	
Grade 2	69157
Grade 3	72889

B. PART-TIME AND CASUAL EMPLOYEES

Employees engaged on a part-time or casual basis shall have their salaries determined in the following manner: -

- (a) Part-time employees shall be paid in the proportion that the hours worked bear to the normal weekly rate prescribed for the equivalent full-time employee.
- (b) Casual employees shall be paid in the proportion that the hours worked bear to the normal weekly rate prescribed for the equivalent full-time employee, plus a 20 per centum loading to compensate for annual leave, sick leave and public holidays.
- (c) The normal weekly salary rate means 1/52nd of a full-time employee's annual salary exclusive of allowances and overtime.

PROVIDED that a casual employee's terms of engagement shall be by the hour with a minimum payment of three hours for each day worked.

PROVIDED ALWAYS that persons engaged as temporary part-time and casual employees prior to 15 April 1988 shall not suffer any loss of entitlement through the implementation of this award.

C. 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 \$71 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 \$71 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.

9. CONDITIONS OF SERVICE

Unless otherwise prescribed in this award, conditions of service shall be as prescribed in the General Conditions of Service Award, provided that where conditions are not prescribed therein, the *Tasmanian State Service Act 1984* and Regulations thereof shall apply.

10. NEW APPOINTMENTS AND PROMOTION

The commencing salary of an employee either on first appointment or on promotion to a position within a class or grade in respect of which a salary scale is prescribed by this award shall be as for the first year of service on that scale except where on the determination of the controlling authority, having regard to the qualifications and the practical experience in the practice of dentistry of such employee, a higher commencing salary is warranted.

11. QUALIFICATIONS

No employee shall be eligible to hold a position within a class or grade prescribed by this award unless he fulfils the following minimum requirements:-

- (a) Dental Employee Class I - unless he is a Dental Employee as defined in this award.
- (b) Dental Employee Class II and above - unless he has the requirements for Class I, and in addition has had at least five years practical experience in the practice of dentistry subsequent to attaining such requirements.

PROVIDED that in any particular case where, in the opinion of the controlling authority concerned, special circumstances exist, an employee may be appointed to any one of the abovementioned positions without fulfilling the specific requirements prescribed therein, where such employee holds qualifications and has had practical experience in the practice of dentistry deemed by the controlling authority to be appropriate to the satisfactory performance of the duties and responsibilities of such position.

12. SALARY INCREMENTS

- (a) Except where otherwise specifically determined by this award, or where inconsistent with any Act, an employee while holding a position within a class or grade in respect of which a salary scale is prescribed by this award, and who, for not less than twelve months, has been in receipt of a salary less than the maximum salary prescribed for such position, shall, subject to satisfactory service, be entitled to receive the annual increment prescribed for such position until the maximum salary is reached.

PROVIDED that an employee who was an employee on the date of this award shall be entitled to receive such increment on the anniversary of the date upon which he received his last salary increment in respect of his present position.

- (b) An employee whilst continuing to hold the same office or position shall, unless the controlling authority otherwise determines, be deemed, for the purposes of this clause, to have been in receipt of a salary during any period of leave without pay in the twelve months immediately following the date upon which his previous salary increment was awarded.
- (c) Notwithstanding anything contained in this award, no employee shall be entitled to receive any increase in salary by virtue of this clause unless, in the opinion of the controlling authority, his conduct, diligence and efficiency during the twelve months immediately prior to the date from which such increase would be payable shall have been satisfactory.

P C Shelley
DEPUTY PRESIDENT

4 August 2009