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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T11548 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11564 of 2004)

Private Sector Awards

Tasmanian Trades and Labor Council

(T11566 of 2004)

Private and Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

Wage Rates – State Wage Case July 2004 – applications to vary private sector awards in a manner consistent with the Australian Industrial Relations Commission in Print PR002004 – Safety Net Review – Award rates to be increased by \$19 per week – Wage related allowances increased by 3.5% - Meal allowances increased to \$12.70 – Supported Wage increased to \$61 per week – Operative date ffpp 1 August 2004 – State Minimum Wage determined at \$467.40 – s.35(1)(b)

ESTATE AGENTS AWARD

ORDER BY CONSENT:-

**No. 1 of 2004
(Consolidated)**

CLAUSES 4, 5, 8, 9, 29 AND 31 ARE VARIED, AND THE AWARD IS CONSOLIDATED

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1. TITLE

This award shall be known as the " Estate Agents Award".

2. SCOPE

This award is established in respect of the industry of Estate Agents licensed under the *Auctioneers and Real Estate Agents Act 1991*.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2004.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Estate Agents Award No 1 of 2003 (Consolidated).

PROVIDED 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

Unless otherwise specified, this award shall have application to and be binding upon:

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are employed in the industry specified in Clause 2 - Scope;
- (c) the following organisation of employees in respect of whom award interest has been determined:

the Australian Municipal, Administrative, Clerical and Services Union and the officers of that organisation and their members who are employed in the industry specified in Clause 2 - Scope;

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- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

- (e) The following organisation is deemed to have an interest in this award pursuant to Section 62(3) of the *Industrial Relations Act 1984*:

the Tasmanian Trades and Labor Council.

7. DEFINITIONS

- (a) Real Estate Sales Consultants and Management Classifications

'Real Estate Sales Consultant' - an appropriately licensed person employed by a real estate agent and whose responsibilities include:

- (i) Listing properties or businesses for sale or lease.
- (ii) Acts on behalf of vendors or purchasers of real estate or business.
- (iii) Preparation of listing agreements and sales contracts.

'Manager' - a person engaged by a real estate agent to manage a place where the agent is authorised to carry on the business and holds the necessary licences.

'Property Manager' - a person employed by a real estate agent and is responsible for:

- (i) The management and leasing of real estate.
- (ii) Whose duties include the collection of rents.

'Auctioneer' - a person who holds a real estate auctioneers licence, and whose employment includes a responsibility to conduct auctions.

'Scholarship Holder' - means a person who has been awarded a relevant scholarship by the Real Estate Institute and/or the Auctioneers and Real Estate Agents Council.

- (b) Classifications for Clerks

GRADE 1 CLERICAL ASSISTANT

A. GRADING

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

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- (i) The exercise of the "General Requirements" specified in 'B' hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform, and are accountable for clerical and office tasks as directed, within the skill levels set out. They work within established routine, methods and procedures. Supervision is direct.
- (ii) Employees in this grade shall be able to acquire and apply a limited knowledge of office procedures and requirements.

C. SKILL REQUIREMENTS

(i) Technical Skills

Machine Operation - Skill Level 1

Employees at this level are able to operate telephone/intercom systems, telephone answering machines; facsimile machines, photocopiers, franking machines, guillotines.

(ii) Information Handling Skills - Skill Level 1

Employees at this level are able to receive, sort, open, distribute incoming mail, process outgoing mail, receive incoming and despatch outgoing courier mail, deliver messages and documents to appropriate persons/locations; prepare and collate documents; sort and file documents/records accurately in correct location/sequence using an established paper-based filing system.

GRADE 2 CLERICAL OFFICER

A. GRADING

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the "General Requirements" specified in "B" hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

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B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform clerical and office tasks using a more extensive range of skills and knowledge at a level higher than required in Grade 1. They are responsible and accountable for their own work which is performed within established routines, methods and procedures. Supervision is routine.
- (ii) Employees at this level shall be able to acquire and apply a working knowledge of office or sectional operating procedures and requirements; acquire and apply a working knowledge of the organisations structure and personnel in order to deal with enquiries at first instance, locate appropriate staff in difference sections, relay internal information, respond to or redirect enquiries, greet visitors.

C. SKILL REQUIREMENTS

(i) Technical Skills

Machine Operation - Skill Level 2

Employees at this level are able to operate adding machines, switchboard, paging system, telex machine, typewriter and calculator.

Computer - Skill Level 1

Employees at this level are able to use knowledge of keyboard and function keys to enter and retrieve data through computer terminal.

Keyboard Typing - Skill Level 1

Employees at this level are able to type at 25 words per minute with 98% accuracy. Utilise basic word processing skills.

Note: Technical skills herein specified are to be read as a whole ie. an employee if required shall be capable of exercising all skills relating to machine operation, keyboard, computer and word processing at this level.

(ii) Information Handling Skills - Skill Level 2

Employees at this level are able to maintain mail register and records; maintain established paper-based filing/ records systems in accordance with set procedures including creating and indexing new files, distributing files within the organisation as requested, monitoring file locations; transcribe information into records, complete forms, take telephone messages.

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- (iii) Business/Financial Skills - Skill Level 1

Employees at this level are able to keep appropriate records; prepare and record petty cash transactions; undertake bank transactions (deposits and withdrawals). Assist in property valuations.

GRADE 3 CLERICAL OFFICER

A. GRADING

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the "General Requirements" specified in "B" hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

OR ARE:

- (iii) Employees holding a Certificate of Commercial Studies (TAFE) or accredited equivalent, and who are required to use skills and perform tasks within the range of Grade 3.

B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform clerical and office tasks using a more extensive range of skills and knowledge, at a level higher than required in Grade 2. They are responsible and accountable for their own work, which is performed within established guidelines. They exercise limited discretion within the range of their skill and knowledge. Supervision is general.
- (ii) They must be able to acquire a working knowledge of the organisation's products/services, functions, locations and clients; respond to, and act upon most internal/external enquiries in own function area.

C. SKILL REQUIREMENTS

- (i) Technical Skills

Machine Operation - Skill Level 3

Employees at this level are able to operate computerised radio telephone equipment, micro/personal computer, printing devices attached to personal computer, dictaphone equipment, typewriters.

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Keyboard - Typing - Skill Level 2

Employees at this level are able to produce documents and correspondence using knowledge of standard formats, touch type at 40 words per minute with 98 percent accuracy, audio type.

Computer - Skill Level 2

Employees at this level are able to use one software application package developed for a micro-personal computer to create:

- a database file structure, or
- a spreadsheet, worksheet, or
- a graphic, or
- an accounting/payroll file following standard procedures and using existing models/fields of information; or
- use a central computer resource to an equivalent standard.

Word Processing - Skill Level 1

Employees at this level are able to use ONE software package to create, format, edit, proof read, correct, print and save text documents, eg. standard correspondence and business documents.

Note: Technical skills herein specified are to be read as a whole, ie. an employee if required shall be capable of exercising all skills relating to machine operation, keyboard, computer and word processing at this level.

(ii) Secretarial - Skill Level 1

Employees at this level are able to take shorthand notes at 70 words per minute and transcribe with 95 percent accuracy.

(iii) Information Handling - Skill Level 3

Employees at this level are able to use computer-based record management systems to file and retrieve records such as accounts, stock inventory, finance and personnel records.

(iv) Business/Financial - Skill Level 2

Employees at this level are able to maintain records and journals, sort, process and record transactions such as incoming/outgoing cheques, invoices, debit/credit items, payroll data, establish petty cash imprest system. Perform duties associated with the administration and receipt of moneys derived from rental properties.

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GRADE 4 CLERICAL OFFICER

A. GRADING

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the "General Requirement" specified in "B" hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform clerical and office tasks using a more extensive range of skills and knowledge at a level higher than required in Grade 3. They are responsible and accountable for their own work, and exercise discretion and initiative in the organisation of work within prescribed limits. Supervision is limited.
- (ii) Employees in this grade are able to provide detailed advice and information on the organisation's products and services; respond to client/public/supplier problems within own function area, using such techniques as personal interview and liaison; explain organisation's viewpoint to clients and appropriate persons related to own function area.
- (iii) Employees at this level shall be capable of guiding employees graded at a lower level by means of personal instruction and demonstration. This may include general supervision of up to four employees.
- (iv) Employees at this level shall be capable of acquiring and using specialist vocabulary, ie. technical, medical, legal, etc, within the scope of this grade.

C. SKILLS REQUIREMENTS

(i) Technical Skills

Keyboard - Typing - Skill Level 3

Employees at this level are able to format complex documents including technical data, technical language, tables, graphs, text design, indexing, variable type face; produce documents requiring specified legal form or to comply with regulations or standards.

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Computer - Skill Level 3

Employees at this level are able to use TWO application software packages developed for a micro/personal computer at a standard equal to Skill Level 2 in each, eg. database, communications, accounting, payroll/personnel, spreadsheets, graphics, other applications; or

Employees at this level are able to use a central computer resource to an equivalent standard.

Word Processing - Skill Level 2

Employees at this level are able to use TWO software packages at a standard equal to Skill Level 1; or

Apply additional functions such as search and replace, variable fonts, moving and merging across documents, text columns, money columns, tables, eg. to produce financial statements, printed forms.

Note: Technical skills herein specified are to be read as a whole, ie. an employee if required shall be capable of exercising all skills relating to machine operation, keyboard, computer and word processing at this level.

(ii) Secretarial Skills - Skill Level 2

Employees at this level are able to arrange travel bookings and itineraries; make appointments; screen telephone calls; follow visitor protocol procedures; establish telephone contact on behalf of executive.

Take shorthand notes at 90 words per minute and transcribe with 95 percent accuracy.

(iii) Information Handling - Skill Level 4

Employees at this level are able to maintain a computer based records management system;

Identify, access and extract information from internal sources.

(iv) Business/Financial - Skill Level 3

Employees at this level are able to prepare cash payment summaries, banking reports and bank statements; maintain wage and salary records; follow credit referral procedures; apply purchasing and inventory control requirements; port journals to ledger.

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GRADE 5 ADMINISTRATIVE OFFICER

A. GRADING

Employees shall be graded at this level where the principal functions of their employment and determined by the employer require the following:

- (i) The exercise of the "General Requirements" specified in "B" hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required in Grade 4. They are responsible and accountable for their own work, and may have limited responsibility for the work of others. They exercise initiative, discretion and judgement within the range of their skills and knowledge. Supervision is minimal.
- (ii) Employees in this grade must be able to acquire a detailed knowledge of enterprise operations and structures and a basic knowledge of the industry or field of interest in which the organisation operates. Respond to and act upon complex issues/arrangements in such areas as consumer/client services, special products/service knowledge, production and planning schedules, material supply, transport/freight arrangements.
- (iii) Employees in this grade shall be capable of guiding employees in lower grades by means of personal instruction and demonstration.

C. SKILL REQUIREMENTS

(i) Technical Skills

Computer - Skills Level 4

Employees at this level are able to use THREE application software packages developed for a micro/personal computer at a standard equal to Skill Level 2 in each; or

Use a central computer resource to an equivalent standard; or

Apply knowledge of advance functions of a SINGLE application software package to manipulate data, ie. modify fields of information, develop new database or spreadsheets models; or graph previously prepared spreadsheets; or perform reconciliation.

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and/or

Work Processing - Skill Level 3

Employees at this level are able to apply functions including Macros, Sorting and Maths functions, boxes, thesaurus using ONE software package; or

Apply knowledge of additional functions defined in Skill Level 2 using TWO software packages.

(ii) Secretarial Skills - Skill Level 3

Employees at this level are able to write shorthand notes at 100 words per minute and transcribe at 95 percent accuracy; maintain executive diary; respond to invitations; organise internal meetings on behalf of executive; establish and maintain reference lists/personal contact systems for executives; maintain current working and personal filing systems for executive.

(iii) Information Handling - Skill Level 5

Employees at this level are able to create new forms of files and records as required using computer-based records systems;

Access, identify, and extract information as required from external sources, eg. databases, libraries, local authorities, maintain subscriptions for required technical, trade and other publication systems, maintain circulation, indexing and filing systems for publications; review/close files, archive files.

(iv) Business/Financial - Skill Level 4

Employees at this level are able to reconcile accounts to balance; follow-up unpaid accounts; calculate wage and salary requirements; calculate work valuations; prepare bank reconciliations.

(v) Supervisory - Skill Level 1

Employees at this level are able to allocate work tasks to individuals, check work progress and correct errors. Normally 5 or more subordinates would be involved.

(vi) Specialist Skills - Skill Level 1

Employees at this level are able to apply knowledge of export and customs documentation requirements and procedures;

Apply knowledge of separate relevant industrial award rates of pay and conditions, occupational health and safety requirements.

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GRADE 6 ADMINISTRATIVE OFFICER

A. GRADING

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the "General Requirements" specified in "B" hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required in Grade 5. They are responsible and accountable for their own work, and may have limited responsibility for the work of a section or unit. They exercise initiative, discretion and judgement within the range of their skills and knowledge. Supervision is by means of reporting to more senior officers as required.
- (ii) Employees in this Grade are able to apply knowledge of the organisation's objectives, performance, projected areas of growth, product trends; and general industry conditions, eg. knowledge of competitors and major clients market structure in the performance of own responsibilities.
- (iii) Employees in this Grade shall be capable of guiding employees graded at a lower level by means of personal instruction and demonstration.

C. SKILL REQUIREMENTS

(i) Technical Skills

Computer - Skill Level 5

Employees at this level are able to use TWO application software packages on a micro/personal computer to a standard equal to Skill Level 4 in each; or

Use a central computer resource to an equivalent standard; or

Assist in operating a mainframe computer.

and/or

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Word Processing - Skill Level 4

Employees are able to use complex functions such as moving columns, creating displays of charts or graphs, booklet or report format on ONE software package; or

Apply knowledge of advanced functions defined in Skill Level 3 using TWO software packages.

(ii) Secretarial Skills - Skill Level 4

Employees at this level are able to write shorthand notes at 120 words per minute and transcribe at 95 percent accuracy; attend executive/organisational meetings and take minutes; establish current working and personal executive filing system, answer correspondence from verbal or rough handwritten instructions; organise teleconferences.

(iii) Information Handling - Skill Level 6

Employees at this level are able to establish new paper based/manual filing records systems for the enterprise; assist in separate undertaking research (locate/solicit, summarise/extract and interpret information) related to function area;

Compose original business correspondence from minimal instructions.

(iv) Business/Financial - Skill Level 5

Employees at this level are able to post transactions to ledger and prepare a trial balance; prepare financial/tax schedules; calculate costings, stock pricing; complete personnel/payroll data for authorisation.

(v) Supervisory - Skill Level 2

Employees at this level are able to assist in the development of work quality and performance in a team environment; solve operational problems in own work functional area and resolve operational problems for staff in lower grades; co-ordinate work flow within a section or unit and counsel and advise staff who are under direct supervision.

(vi) Specialist Skills - Skill Level 2

Employees at this level are able to apply working knowledge of industrial/employment law, equal opportunity, workers compensation procedures and superannuation requirements.

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GRADE 7 ADMINISTRATIVE OFFICER

A. GRADING

Employees shall be graded at this level where the principal functions of their employment as determined by the employer require the following:

- (i) The exercise of the "General Requirements" specified in "B" hereunder and
- (ii) In addition to the "General Requirements" are required to exercise any one or more of the broad skill levels set out in "C" hereunder.

B. GENERAL REQUIREMENTS

- (i) Employees in this grade perform clerical and administrative duties using a more extensive range of skills and knowledge at a level higher than required in Grade 6. They are responsible and accountable for their own work, and may have designated responsibility for the unit/section under their supervision. They exercise initiative, discretion and judgement within the range of their skills and knowledge. Supervision is by means of reporting to more senior officers as required.
- (ii) Employees in this Grade are able to assist in developing policy or new products and services to meet changing market or other circumstances; identify and assess internal and external factors impacting on production and service delivery; identify future trends.
- (iii) Employees in this Grade are able to assist in the delivery of structured training courses and apply a knowledge of training materials and aids;

Train employees (where appropriate) in lower grades by means of personal/instruction and demonstration.

C. SKILL REQUIREMENTS

(i) Technical Skills

Computer Skill Level 6

Employees at this level are able to use and integrate a variety of application software packages within a micro/personal computer network; or

Use a central computer resource to an equivalent standard; or

Evaluate and determine optimum software solutions (using existing software/programs) to meet new or different application requirements; or

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Use MACRO function (logical operators) on a spreadsheet package.

and/or

Word Processing - Skill Level 5

Employees at this level able to use all preceding work processing functions and integrate word processing software with other application software packages to produce complex text and data documents;

Apply knowledge of Desk Top Publishing to integrate documents and select style sheets appropriate to final presentation;

Determine all document production design needs without instructions.

(ii) Secretarial Skills - Skill Level 5

Employees at this level are able to arrange conferences and external meetings; originate executive correspondence; assist executive in preparing, attending and following up appointments, interviews, meetings, etc; act on delegated authority of executive.

(iii) Business/Financial - Skill Level 6

Employees at this level are able to assist in preparing - budgets, cashflow records, balance sheets, trading accounts, cash management analysis, FBT and company tax requirements;

Administer individual executive salary packages, travel expenses and allowances, company transport;

Administer specialised salary and payroll requirements, eg. Eligible Termination Payments, Superannuation Trust Deed Requirements, Workers' Compensation, Maintenance Support Scheme, etc;

Assist in financial forecasting;

Interpret and prepare financial information for senior management and prepare reports and assessment relevant to areas of responsibility.

(iv) Supervisory - Skill Level 3

Employees at this level are able to plan and organise work priorities of unit or section; reschedule work loads as necessary and resolve operational problems in area of responsibility; monitor work quality of those supervised; use observations, diagnosis and intervention skills to ensure unit/section meets objectives; organise and chair necessary work meetings/conferences; assist in planning future sectional/office organisational resources and equipment needs.

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(v) Specialist Skills - Skill Level 4

Employees at this level are able to use knowledge of basic statistics to interpret data from spread sheets, statistical tables, graphs and frequency tables using tool such as mean, mode, median variation, etc.

Apply knowledge of exchange rate fluctuations in areas of functional responsibility;

Apply working knowledge of legal requirements, eg. personal income tax and company tax law, company law, contract law, superannuation law, local government and environmental regulation.

(c) General

'Adult Entry' shall mean the entry point for adult clerical employees (21 years and over) with less than 12 months clerical experience either as a junior or adult, and on completion of 12 months clerical experience (whether with one employer or more) such adult employees shall be advanced to a graded position dependent on skills held and position requirement. In the case of part-time and casual employees 12 months experience is defined as 1660 hours actual service.

'Show Day' means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

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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:

	Base Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Adult Entry				
1st 6 months	80	333.80	142.00	475.80
2nd 6 months	85	354.60	142.00	496.60
Grade 1				
1A 1st 12 months	87	363.00	142.00	505.00
1B After 12 months	90	375.50	142.00	517.50
Grade 2				
2A 1st 12 months	92	383.80	142.00	525.80
2B After 12 months	95	396.30	142.00	538.30
Grade 3				
3A 1st 12 months	97	404.70	142.00	546.70
3B After 12 months	100	417.20	144.00	561.20
Grade 4	105	438.10	144.00	582.10
Grade 5	110	458.90	144.00	602.90
Grade 6	115	479.80	142.00	621.80
Grade 7	120	500.60	142.00	642.60

(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:

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	%
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) 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.

(d) 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.

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(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 (subclause (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 \$61 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:

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- (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.

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(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 \$61 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.

DIVISION B - REAL ESTATE SALES CONSULTANTS 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 \$
Real Estate Sales Consultant, Auctioneer, Property Manager, Manager	325.40	142.00	467.40

(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.

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(c) Supported Wage System

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

DIVISION C – MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by subclause (d) Supported Wage System, Division A – Clerks, and subclause (c) Supported Wage System, Division B – Real Estate Sales Consultants and Management, is \$467.40 per week.

(ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).

(iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

(i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.

(ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

(d) Application of Minimum Wage to Certain Employees

Due to existing applicable award wage rates being greater than the relevant proportionate minimum wage, this clause will not apply to employees falling within the scope of the National Training Wage (Tasmanian Private Sector) Award and Trainees undertaking an apprenticeship.

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(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during sick leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2004 State Wage Case Decision (T.11548 of 2004) and all previous safety net and state wage case adjustments.

CONDITIONS FOR EMPLOYEES IN DIVISION A - ALL CLASSIFICATIONS OTHER THAN SALES CONSULTANTS AND MANAGERS

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.

(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.

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(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 \$382.17.

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.

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.

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10. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 27 - Sick Leave of the award for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

For the purposes of this clause part-time employees, who are not in receipt of a loading in lieu of entitlements as specified in subclause 23(a) shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlements per annum.

Where a part-time employee's hours of work are not constant the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

Leave may be taken for part of a single day.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
- (1) a member of the employee's immediate family, or
 - (2) a member of the employee's household.

The term '**immediate family**' includes:

- (A) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

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- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

(b) Unpaid Carer's Leave

- (i) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.
- (ii) A part-time employee in receipt of a loading in lieu of entitlements to paid leave as specified in subclause 23(b) shall be entitled to take a maximum of one week's unpaid carer's leave per annum.

Where a part-time employee's hours of work are not constant the employee's entitlement to unpaid carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

(c) Grievance Process

Any dispute or claim arising out of Carer's Leave provisions of the award shall be dealt with in the following manner:

- (i) the matter shall first be discussed between the employee and the employee's immediate supervisor;
- (ii) if not settled the matter shall be discussed between the employee's workplace delegate or representative and the immediate supervisor and the relevant manager with the authority to approve leave;
- (iii) if not settled the employee may refer the matter to the relevant union official to enable discussions between the appropriate union representatives and management representatives to occur;
- (iv) if not settled the matter may be submitted to the Tasmanian Industrial Commission for determination.

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11. CASUAL EMPLOYEES

The minimum rate per hour that may be paid to casual employees shall be two seventi-fifths of the weekly rate mentioned in Clause 8 - Wage Rates, Division A, and in addition thereto 10 percent.

A casual employee is one engaged and paid as such.

12. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, grandchild, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 3 ordinary days, provided that no payment shall be made in respect of an employee's rostered days off.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

For the purpose of this clause the words 'wife' and 'husband' shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

13. CONTRACT OF EMPLOYMENT

- (a) With the exception of employees engaged as specified in Clause 11 - Casual Employees hereof, all employment shall be by the week and the employment of an employee will not be terminated except for misconduct which would justify instant dismissal, without at least one week's notice being given by the employer to the employee and the employee shall likewise give to the employer one week's notice of intention to terminate employment. If one week's notice be not given by the employer or employee, one week's wages shall be paid or forfeited as the case may be, and in the case of misconduct, wages shall be paid up to the time of dismissal only.

Any dispute on what constitutes misconduct shall be determined by the Tasmanian Industrial Commission whose decision shall be final.

- (b) An employee shall be entitled to receive on request, a reference on termination of services. Such reference shall contain at least the commencing and finishing dates of service and shall become absolute property of the employee. Any prospective or future employer shall return the reference to the employee within seven days of having received it.

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14. ENTERPRISE AGREEMENTS

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an enterprise agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:
 - (i) The majority of employees affected by the change must genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iii) The relevant union shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union must be a party to the agreement.
 - (v) The relevant union shall not unreasonably oppose any agreement.
- (c) An enterprise agreement shall be signed by the parties, being the employer and the union, and contain the following:
 - (i) The terms of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of employees covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

15. ESTIMATING SERVICE

In estimating the number of years service of an employee the total clerical experience in the service of every employer in the trades or groups of trades in respect of awards of the Tasmanian Industrial Commission applicable to private industry employees shall be taken into account.

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16. HOLIDAY AND SUNDAY WORK

For all time of duty on any of the holidays mentioned in Clause 17 - Holidays with Pay, and for all time of duty on any Sunday, payment shall be made at the rate of double time.

No employee shall unreasonably reject an employer's request to work on a Sunday or public holiday.

17. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned when, if it were not for such holiday, the employee had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) An employer may, by agreement with the employee, work that employee on any public holiday prescribed in subclause (a) provided an agreed substitute day off is provided at the penalty equivalent.

18. HOURS OF WORK

- (a) The ordinary hours of work shall be an average of 38 hours per week to be worked between 7.30 am and 6.00 pm, Monday to Friday and between 8.00 am and 11.30 pm on Saturday. Provided for all time worked on a Saturday payment shall be made at the rate of time and one half.
- (b) By agreement between the employer and employee that ordinary hours of work may include eight hours per day with an accumulation of rostered days off up to a maximum of five.
- (c) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

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- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
 - (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
 - (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiation referred to in paragraph (i) of this subclause.
 - (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.
 - (v) An employer shall record make up time arrangements in the relevant time and wages book, as prescribed in Clause 30 - Time and Wages Book of the award at each time this provision is used.
- (d) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off to provide that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee or the employer.
- (iv) An employee or the employees may choose to request a union party to this award to represent their interests in negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of Rostered Days Off flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.

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- (vi) An employer shall record Rostered Days Off arrangements in the relevant time and wages book, as prescribed in Clause 30 - Time and Wages Book of the award at each time this provision is used.

19. JURY SERVICE

- (a) An employee required to attend for jury service on a day on which he/she would otherwise have been at work, shall be reimbursed by the employer, an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service, and
 - (i) The minimum weekly wage pursuant to this award in respect of the period of jury service, and
- (b) An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service. Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount received in respect of jury service.

20. OCCUPATIONAL SUPERANNUATION

- (a) Definitions
 - (i) **'Tasplan'** means the superannuation fund established by Trust Deed and Articles on 16 March 1987.
 - (ii) **'The Real Estate Institute of Australia Ltd Superannuation Fund'** means the superannuation fund established by Trust Deed on 4 February 1975.
 - (iii) **'Employer'** means an employer who is licensed under the *Auctioneers and Real Estate Agents Act 1991* who is subject to the Estate Agents Award.
 - (iv) **'Eligible employee'** means a full-time, intermittent or casual employee who has completed at least three months continuous service with an employer, who is covered by the terms of this award.

PROVIDED that an employee who has so qualified with one employer shall not be required to serve the qualifying period with any subsequent employer subject to this award.
 - (v) **'Ordinary time earnings'** means the weekly rate for the ordinary hours of an eligible employee. This shall include any overaward payment but shall exclude any payment made in accordance with Clause 21 - Overtime.

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(b) Fund

For the purpose of this award, contributions by employers in accordance with the provisions of subclause (c) - Contributions, shall be paid to the Treasurer of TASPLAN or the Treasurer of the Real Estate Institute of Australia Ltd Superannuation Fund.

(c) Contributions

- (i) Employers shall make contributions in respect of each eligible employee at a rate equivalent to that provided for by the Superannuation Guarantee Charge Legislation on the employee's ordinary time earnings, as defined to all employees covered by Division A.
- (ii) Subject to Clause 33 - Contract of Employment, employees covered by Division B of this award shall receive a contribution at the rate of that provided for by the Superannuation Guarantee Charge Legislation on the minimum wage prescribed in Clause 8 - Wage Rates, Division B, or the agreed wage whichever is greater.
- (iii) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

(d) Part-time and Casual Employees

In the case of eligible part-time and casual employees, contributions shall be made where the employee works at least 38 hours per month.

(e) Exemptions

The following employers shall be exempt from using the nominated funds referred to in subclause (b) and in lieu shall utilise the funds identified opposite their company name:

Business	Fund
L.J. Hooker (Tas) Ltd	Australian Retirement Fund
Roberts Ltd	Roberts Limited Superannuation Fund
United Milk Tasmania Ltd	UMT Employees Superannuation Fund
Acushla Pty Ltd trading as David	
Anderson Real Estate	Mercantile Mutual Life Master Fund
Richardson & Wrench	GIO Personal Superannuation Fund

(f) Operative Date

This clause shall operate from the beginning of the first pay period to commence on or after **1 October 1989**.

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PROVIDED that for employees covered by Division B of this award the operative date shall be the beginning of the first pay period on or after 1 February 1990.

21. OVERTIME

- (a) For all time of duty in excess of ordinary hours, or on a Saturday, or before the time fixed for commencing work or after the time fixed for ceasing work, payment shall be made at the following rate - time and one half.
- (b) A junior employee under the age of 17 years shall not be required to work overtime unless the employee so desires.
- (c) In computing overtime, each day's work shall stand alone.
- (d) For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rates shall be divided by two seventy-fifths.
- (e) For the purpose of determining overtime entitlements of an employee, an employee who works 10 minutes or more past the time fixed for ceasing work shall be paid overtime rate for all the time worked after the time fixed for ceasing work.

PROVIDED that this subclause shall not be used to obtain unpaid work from employees on a regular basis.

- (f) Where an employee requests and the employer agrees, overtime may be allowed to accrue and time off at the penalty equivalent may be allowed in lieu of payment of overtime.

PROVIDED that such time off shall be paid at the ordinary rate.

- (g) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

22. PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

PART A - MATERNITY LEAVE

- (a) Nature of Leave

Maternity leave is unpaid leave.

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(b) Definitions

For the purpose of this part:

'Employee' includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

'Paternity leave' means leave of the type provided for in Part B - Paternity Leave.

'Child' means a child of the employee under the age of one year.

'Spouse' includes a de facto or a former spouse.

'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for Maternity Leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certificate

At the time specified in subclause (e) hereof the employee must produce to her employer:

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

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- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- (i) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (d)(i).
- (ii) An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (d)(ii).
- (iii) An employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a Safe Job

Where in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (j), (k), (l) and (m) hereof.

(g) Variation of Period of Maternity Leave

- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and the employee.

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- (ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
 - (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
 - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
 - (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
 - (1) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
 - (2) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
 - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (c) hereof.
 - (iii) For the purposes of subclauses (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
 - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position she held immediately before such transfer.

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Where such position no longer exists but there are other positions available, which the employee is qualified for and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(k) Effect of Maternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART B - PATERNITY LEAVE

(a) Nature of Leave

Paternity leave is unpaid leave.

(b) Definitions

For the purpose of this part:

'Employee' includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

'Maternity leave' means leave of the type provided for in Part A - Maternity Leave (and includes special maternity leave).

'Child' means a child of the employee or the employee's spouse under the age of one year.

'Spouse' includes a de facto or a former spouse.

'Primary care-giver' means a person who assumes the principal role of providing care and attention to a child.

'Continuous service' means service under an unbroken contract of employment and includes:

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- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for Paternity Leave

A male employee, upon production to his employer of the certificate required by subclause (d) - Certification shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in subclause (e) the employee must produce to his employer:

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date of which the birth took place;
- (ii) in relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) he will take that period of paternity leave to become the primary care-giver of the child;
 - (2) particulars of any period of maternity leave sought or taken by his spouse; and
 - (3) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

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(e) Notice Requirements

- (i) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (d) hereof.
- (ii) The employee shall not be in breach of this subclause as a consequence of failure to give the notice required in paragraph (i) hereof if such failure is due to:
 - (1) the birth occurring earlier than the expected date; or
 - (2) the death of the mother or the child; or
 - (3) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (d) hereof.

(f) Variation of Period of Paternity Leave

- (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of paternity leave provided by paragraph (c)(ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and the employee.
- (ii) The period of paternity leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (c)(ii) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

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(h) Paternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(j) Termination of Employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work after Paternity Leave

- (i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

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- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART C - ADOPTION LEAVE

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purpose of this part:

'Employee' includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

'Child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

'Relative adoption' occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

'Primary care-giver' means a person who assumes the principal role of providing care and attention to a child.

'Spouse' includes a de facto spouse.

'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause, or
- (iii) any period of leave or absence authorised by the employer or by the award.

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(c) Eligibility

An employee, upon production to the employer of the documentation required by subclause (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of the placement of the child;
- (ii) an unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
 - (1) any period of leave taken pursuant to paragraph (i) hereof; and
 - (2) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.

The employee must have had at least 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

(d) Certification

Before taking adoption leave the employee must produce to the employer:

- (i)
 - (1) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (2) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under paragraph (c)(ii) hereof, a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (3) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

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(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval, shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (c)(i) hereof.
- (iv) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under paragraph (c)(ii) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this part as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave

- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (c) hereof:
 - (1) the period of leave taken under paragraph (c)(ii) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (2) the period may be further lengthened by agreement between the employer and employee.

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- (ii) The period of adoption leave taken under paragraph (c)(ii) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this part, does not exceed the period to which the employee is entitled under subclause (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

Subject to this part, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.

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- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (c)(ii) hereof.
- (ii) An employee, upon returning to work after adoption leave, shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this part, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

PART D - PART-TIME WORK

(a) Definitions

For the purposes of this part:

'Male employee' means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

'Female employee' means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

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'Spouse' includes a de facto spouse.

'Former position' means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this part whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

'Continuous service' means service under an unbroken contract of employment and includes:

- (i) any period of leave taken in accordance with this clause;
- (ii) any period of part-time employment worked in accordance with this clause; or
- (iii) any period of leave or absence authorised by the employer or by the award.

(b) Entitlement

With the agreement of the employer:

- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

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(ii) Nothing in paragraph (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(d) Effect of Part-time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

(e) Pro Rata Entitlements

Subject to the provisions of this part and the matters agreed to in accordance with subclause (h) hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

(f) Transitional Arrangements - Annual Leave

(i) An employee working part-time under this part shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this part.

(ii) (1) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this part, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(2) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(g) Transitional Arrangements - Sick Leave

An employee working part-time under this part shall have sick leave entitlements which have accrued under this award (including any entitlements accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(h) Part-time Work Agreement

(i) Before commencing a period of part-time employment under this part the employee and the employer shall agree:

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- (1) that the employee may work part-time;
 - (2) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (3) upon the classification applying to the work to be performed; and
 - (4) upon the period of part-time employment.
- (ii) The terms of this agreement may be varied by consent.
 - (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
 - (iv) The terms of this agreement shall apply to the part-time employment.
- (i) Termination of Employment
 - (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
 - (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.
 - (j) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with subclause (h).
 - (k) Nature of Part-time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

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(l) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (i) limiting the number of employees who may work part-time;
- (ii) establishing quotas as to the ratio of part-time to full-time employees;
- (iii) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (iv) requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this part.
- (ii) A replacement employee may be employed part-time. Subject to this subclause, subclauses (e), (f), (g), (h), (i) and (l) of this part apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of subclause (a) - Definitions, '**Continuous Service**' hereof.
- (v) Nothing in this part shall be construed as requiring an employer to engage a replacement employee.

23. PART-TIME EMPLOYEES

- (a) Part-time employees engaged to work 20 or more hours per week shall be entitled to Clause 9 - Annual Leave, Clause 17 - Holidays with Pay, and Clause 27 - Sick Leave of this award, provided that payment thereof shall be made at the rate normally paid to such employees for a similar period of time worked.

The wage rates payable per hour shall be two seventy-fifths of the relevant rate in Clause 8 - Wage Rates.

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- (b) Part-time employees engaged to work less than 20 hours per week shall be paid per hour two seventy-fifths of the weekly rates prescribed for the work performed. In addition thereto such employees shall receive 10 percent of the ordinary hourly rate in respect of each hour for which the employee is paid, such additional amount to be payment in lieu of annual leave, public holidays and sick leave.

24. PAYMENT OF WAGES

Payment of wages shall be made at least once in each month by one of the following methods:

cash (in employer's time);
cheque; or
electronic funds transfer.

PROVIDED that if payment by electronic funds transfer, the employer is responsible to meet the cost of one deposit and one withdrawal per employee per pay period.

On completion of the first full pay period and when there is any change in the weekly rate, the employee shall be notified in writing of the amount of wages which the employee is entitled, the amount of deduction made therefrom and the net amount being paid. Provided also that such notification shall be given not less than once in each year of service.

25. REST PERIODS

Employees who work for five hours or more on any day shall be granted one 10 minute rest period.

If the work period includes meal break, the rest period is to be granted in that portion of the work period which is the greater or where such work periods are of equal duration, the rest period of 10 minutes shall be given at a time to be mutually agreed upon.

26. SAVING

An employee who, at the time of the making of this award was in receipt of a wage at a rate higher than that provided herein for the class of work in question, the employee as the case may be shall not be subject to a reduction thereto.

27. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations:

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- (i) the employee shall not be entitled to such leave of absence for any period in respect of which the employee is entitled to workers' compensation;
- (ii) the employee shall, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, inform the employer of an inability to attend for work, and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.
- (iii) the employee shall prove to the satisfaction of the employer (or in the event of a dispute, the Secretary for Labour), that the employee was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
- (iv) the employee shall not be entitled in any year to sick leave credit in excess of 2 weeks of ordinary working time.

PROVIDED that during the first three months of employment, sick leave shall accrue on the basis of 6.25 hours for each completed calendar month of service with the employer.

- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year.
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

28. STRUCTURAL EFFICIENCY

- (a) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of enterprises and to enhance the career opportunities and job security of employees subject to the award.
- (b) Consistent with the objectives of subclause (a) herein, employers, employees and the union shall establish consultative mechanisms and procedures appropriate to the size, structure and needs of the enterprise.
- (c) An employer may direct an employee to carry out such duties as are within the limits of an employee's skill, competence and training consistent with the classification structure of this award.

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This provision should not deny such employee any award entitlement which might be applicable for performing work at a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

29. TEA MONEY

An employee who has worked six hours or more during ordinary time and who is required to work in excess of two hours after the usual finishing time shall be paid a meal allowance of \$12.70 provided that this allowance shall not be paid if the employee has received notice on the previous day that the employee will be required to work after the normal finishing time.

30. TIME AND WAGES BOOK

- (a) Each employer shall keep a record from which can be readily ascertained the name and classification of each employee, the hours worked each day and the wages and allowances paid per week.
- (b) The time occupied by any employee in filling in any time record or cards or in making of records shall be treated as time of duty.

31. TRAVELLING TIME, ALLOWANCES AND BOARD

- (a) An employee who is required to perform work at a place other than the employee's usual place of work shall be paid all fares and reasonable travelling expenses including \$12.70 for each meal, together with the cost of board and lodging if the employee has to remain away from home for a night.
- (b) An employee who is required to travel in connection with the employer's business shall be paid at ordinary rates up to a maximum of eight hours out of every 24.
- (c) An employee who uses private means of conveyance in travelling in connection with the employer's business shall be reimbursed all expenses reasonably incurred.

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CONDITIONS FOR EMPLOYEES IN DIVISION B – SALES CONSULTANTS AND MANAGERS

32. CONTRACT OF EMPLOYMENT

(a) Notification of Termination

For all Real Estate Sales Consultants and Management employment shall be by the week and the employment of an employee will not be terminated except for misconduct which would justify instant dismissal, without at least one week's notice being given by the employer to the employee and the employee shall likewise give to the employer one week's notice of intention to terminate employment. If one week's notice is not given by the employer or employee, one week's wages shall be paid or forfeited as the case may be, and in the case of misconduct, wages shall be paid up to the time of dismissal only.

Any dispute on what constitutes misconduct shall be determined by the Industrial Commission whose decision shall be final.

(b) Entitlement to Reference

An employee shall be entitled to receive on request, a reference on termination of services. Such reference shall contain at least the commencing and finishing dates of service and shall become absolute property of the employee.

(c) Letter of Appointment and Employee Classification

(i) In respect of every employee employed, the employer shall complete a letter of appointment in duplicate containing the information set out in paragraph (iv), together with such other matters as the employer may require which are not inconsistent with any other provision of this award. The employer and the employee shall sign the letters of appointment and each shall retain a copy.

(ii) Such letter of appointment shall be signed:

(1) in the case of an employee employed at the date of operation of this award within 28 days of the said date of operation; and

(2) in all other cases - within seven days of the date of his engagement.

(iii) Where variation of the letter of appointment takes place by mutual agreement or by way of one week's notice by an employer/employee a new letter of appointment shall be prepared and signed in accordance with the provisions of paragraph (i) of this clause, before the expiration of the earlier agreement.

(iv) Letters of appointment shall contain the following particulars:

(1) names and addresses of the employer and employee;

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- (2) classification in which the employee is to be employed;
 - (3) the minimum wage to be paid to the employee and the method by and times at which such wage is to be paid. The minimum wage shall not be less than that prescribed in Clause 8 - Wage Rates, subclause 2, for Division B - Real Estate Sales Consultants and Managers.
- (v) Where an employee is to be remunerated by any commission and/or incentive payments the letter of appointment shall contain the following additional particulars:
- (1) The method of calculating such commission and/or incentive payments and the method by and times at which such commission and/or incentive payments are to be paid.
 - (2) Where the employee is to be entitled to receive any commission and/or incentive payments after the termination of his employment, the method by and the times at which such commissions and/or incentive payments are to be paid. Provided it shall also be stated that in the case of unconditional sales effected prior to termination of employment which subsequently becomes settled sales, that full commission which would have been paid to that real estate sales consultant as if he were still employed by the estate agent, be paid to that salesman.
- (vi) The employer and employee may agree by letter of appointment to a system of commission earnings in lieu of payment of the minimum wage as prescribed in Clause 8 - Wage Rates, subclause 2, Division B - Real Estate Sales Consultants and Managers.

The agreement to pay commission earnings in lieu of the minimum wage does not negate the employers obligation to pay the difference between commission earned and the minimum wage in any pay period for which the employee's commission earnings does not equate to the minimum wage.

PROVIDED that where the employer is required to make up the difference between the commission earnings and the minimum wage during any pay period that amount shall be absorbed against future commission earnings.

- (vii) The employer and employee may agree by letter of appointment to a level of commission from which occupational superannuation contributions prescribed by Clause 20 - Occupational Superannuation, subclause (c)(ii), shall be drawn.

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33. GENERAL CONDITIONS

The provisions of the following clauses in Division A shall also apply to employees in this division:

- Clause No: 9. Annual Leave
 10. Carer's Leave
 12. Compassionate Leave
 19. Jury Service
 20. Occupational Superannuation
 22. Parental Leave
 24. Payment of Wages
 26. Saving
 27. Sick Leave

Any reference to casual or intermittent employees in Division A shall not apply to employees in this division.

34. HOLIDAYS WITH PAY

- (a) All employees shall be allowed the following days as paid holidays:

New Years Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.

- (b) Payment for holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday the employee had been at work.
- (c) An employer may, by mutual agreement with the employee, work that employee on any public holiday prescribed in subclause (b) provided an agreed substitute date off is provided.

35. HOURS OF WORK

Payment of the minimum wage prescribed in Clause 8 - Wage Rates, subclause 2, shall be made to employees irrespective of the hours worked each week.

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36. WAGES BOOK

- (a) Each employer shall keep a record from which can be readily ascertained the name and classification of each employee, and the wages and allowances paid per week.
- (b) The time occupied by any employee in filling in any time record or cards or in making of records shall be treated as time of duty.

PC Shelley
DEPUTY PRESIDENT

19 August 2004

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APPENDIX A

TRANSLATION SCHEDULE FOR DIVISION A CLERKS

<u>Subject</u>	<u>Section</u>
Introduction	1
Outline of New Structure	2
Definitions	3
Grading and Translation	4
4.1 Existing Employees	
4.2 New Employees	
Minimum Rates Adjustment	5

1. INTRODUCTION

As from 1 July 1993 a complete new classification structure will be included in the award. This structure will be based solely on skill, competency and responsibility.

Comprehensive definitions will accompany each grade.

It will be necessary to classify each employee into the appropriate grade. In circumstances whereby this cannot be agreed, a dispute resolution mechanism is in place.

The new wage rates at each level will be phased in through four instalments. The first instalment payable from the first full pay period to commence on or after 1 July 1993. The second MRA payable nine months after the first MRA and the 3rd and 4th MRA in subsequent instalments six months apart. This is known as the Minimum Rate Adjustment (MRA) process.

The creation of this new structure, together with significant changes to Award Conditions of Employment will complete the structural efficiency process arising out of the October 1991 National Wage decision.

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2. OUTLINE OF NEW STRUCTURE

		Proposed Relativity %	Proposed Rate \$
		At completion of MRA process ie	at completion of MRA process * ie
Adult Entry Point (No Previous Experience)	1st 6 months	80	333.80
	2nd 6 months	85	354.60
Grade 1A Clerical Assistant Grade 1B	1st 12 months	87	363.00
	Thereafter	90	375.50
Grade 2A Clerical Officer Grade 2B	1st 12 months	92	383.80
	Thereafter	95	396.30
Grade 3A Clerical Officer Grade 3B	1st 12 months	97	404.70
	Thereafter	100	417.20
Grade 4 Clerical Officer		105	438.10
Grade 5 Admin Officer		110	458.90
Grade 6 Admin Officer		115	479.80
Grade 7 Admin Officer		120	500.60

* These proposed rates may be subject to adjustment in the event of future National Wage adjustments applying to awards generally.

3. DEFINITIONS - Classification Structure

See Clause 7 - Definitions, of the award.

4. GRADING AND TRANSLATION

All employees are to be classified in accordance with the new structure by 1 July 1993.

This classification process involves a matching of:

- the position requirements, and the individual employee with the definitions contained in Section 3.

All definitions are structured in the same format.

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In essence to be graded at a particular level, the General Requirements specified in "B" together with one or more of the broad "Skill Requirements" in "C" must be satisfied.

Note: It is the responsibility of the employer to identify the "principal functions" of an individual employee.

4.1 Existing Employees (ie. employed as at 1 July 1993)

Prima facie existing employees shall translate to the new structure in accordance with the following schedule.

Translation

Existing Classification	Translate to Adult Entry
1st year adult experience	1st 6 months 2nd 6 months
2nd year adult experience)	Grade 1B
3rd year adult experience)	Grade 2B
4th year adult experience)	Grade 3B
5th year adult experience)	N.B. Translation to new structure shall be based on skill as opposed to years of service.
In charge of 2 employees	Grade 4
In charge of 3 or 4 employees	Grade 4
In charge of 5 or more employees	Grade 5
Accountant or Chief Clerk	Grade 6 Grade 7

This process should occur on 1 July 1993.

There may be instances whereby after examination of the duties, responsibilities, etc, and the new definitions, an employee should be classified at a level higher than indicated in the schedule above.

4.2 New Employees

Employees engaged subsequent to 1 July 1993 shall be classified strictly in accordance with the definitions.

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5. MINIMUM RATES ADJUSTMENT

The new rates will be phased in through the process of the Minimum Rates Adjustment (MRA).

This process will involve four instalments.

The actual amounts vary between grades.

The schedule for the MRA process is as below and each MRA will require a separate application to the Commission:

1st MRA	1 July 1993
2nd MRA	1 April 1994
3rd MRA	1 October 1994
4th MRA	1 April 1995

Over Award Payment

Increases arising out of the MRA process are to be absorbed against any existing overaward payments.

Similarly, where an existing overaward payment results in a wage rate higher than the appropriate grading, no wage increase should be paid, and the difference (if any) maintained as an overaward payment for that individual employee.

Adult Entry

The award provides that an adult (over 21 years of age) with less than 12 months clerical experience with any employer, may be classified at the adult entry point for the balance of the 12 months. Thereafter, the employee must be classified in accordance with the definitions.

In the case of part-time and casual employees, 12 months experience is defined as 1660 hours actual service.