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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T1524 & T1525 of 1988

IN THE MATTER OF APPLICATIONS BY THE TASMANIAN PUBLIC SERVICE ASSOCIATION AND THE TASMANIAN TRADES AND LABOR COUNCIL RESPECTIVELY [CONSEQUENT ON THE DECISION OF THE FULL BENCH OF THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION IN THE NATIONAL WAGE CASE OF 12 AUGUST 1988] TO INCREASE WAGE RATES AND ALLOWANCES GENERALLY IN ALL AWARDS AND AGREEMENTS AND TO REVIEW THE WAGE FIXATION PRINCIPLES

AND

T1549 & T1550 of 1988

IN THE MATTER OF APPLICATIONS BY THE ASSOCIATION OF PROFESSIONAL ENGINEERS, AUSTRALIA TO VARY THE **PROFESSIONAL ENGINEERS (PRIVATE INDUSTRY) AWARD** AND THE **PROFESSIONAL ENGINEERS AWARD**

RE: $10 INCREASE

AND

T1778 of 1988

IN THE MATTER OF PROCEEDINGS ON THE MOTION OF THE COMMISSION, PURSUANT TO SECTION 24(3) OF THE INDUSTRIAL RELATIONS ACT 1984, **TO VARY CLAUSE 6 - PARTIES AND PERSONS BOUND OF THE FIBREGLASS AND PLASTICS AWARD; THE RUBBER TRADES AWARD; THE METAL TRADES (STATE EMPLOYEES) AWARD AND THE MECHANICAL ENGINEERS AND FOUNDERS AWARD**

ORDER -

No. 2 of 1989
(Consolidated)

AMEND THE **FIBREGLASS AND PLASTICS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

This award shall be known as the "Fibreglass and Plastics Award".

2. SCOPE

This award is established in respect of the industry of processing or manufacturing fibreglass and plastic articles.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation as from the beginning of the first full pay period commencing on or after 15 March 1989.

It is a term of this award (arising from the decision of the Tasmanian Industrial Commission in the State Wage Case of 5 September 1988) that the union(s) undertake(s), until 1 July 1989, not pursue any claims, award or overaward, except where consistent with the State Wage Case Principles.

5. SUPERSESSION AND SAVINGS

This award incorporates and supersedes No. 2 of 1988 (Consolidated) and No. 1 of 1989.

Provided further, 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 engaged in the industry specified in Clause 2 - Scope;

(c) the Federated Miscellaneous Workers' Union of Australia, Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

(d) the National Union of Storeworkers, Packers, Rubber and Allied Workers', Tasmanian Branch and the Officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

(d) the Tasmanian Confederation of Industries; and

(e) the Tasmanian Trades and Labor Council.

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7. DEFINITIONS

'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.

8. WAGE RATES

DIVISION A

1. WAGE RATES

Adult employees of a classification hereunder mentioned shall be paid the wage rate opposite that classification

		Amount Per Week $
1.	Tradesman	353.80
2.	Laminator	328.60
3.	Mixer	337.50
4.	Mixer's Assistant	302.80
5.	Cleaner	302.80
6.	Heavy Machine Operator	324.20
7.	Light Machine Operator	317.40
8.	Fitter	353.80

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2. APPRENTICES

The minimum ordinary rates of payment to be paid by employers to apprentices shall be the undermentioned percentages of the Tradesman's rate of wages appearing, in Division A, subclause 1 - Wage Rates, classification 1 - Tradesman.

	Percentage of Tradesman's Rate %	Amount Per Week
First year	38	134.40
Second year	55	194.60
Third year	72	254.70
Fourth year	88	311.30

3. JUNIORS

The minimum rates of wages that may be paid by employers to junior workers shall be the undermentioned percentages of the wage rate appearing in Division A, subclause 1 - Wage Rates, classification 4 - Mixer's Assistant.

	Percentage of Mixer's Assistant's Rate %	Amount Per Week $
Under 17 years of age	65	196.80
17 years of age to 18 years of age	75	227.10
18 years of age to 19 years of age	85	257.40
19 years of age to 20 years of age	100	302.80

4. LEADING HANDS

(a) In charge of 1 to 3 employees - $8.50 per week extra
(b) In charge of 4 to 6 employees - $11.00 per week extra
(c) In charge of 7 to 9 employees - $13.10 per week extra
(d) In charge of more than 9 employees - $15.10 per week extra

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9. ALLOWANCES

(a) Tool Allowance

All employees engaged in classifications that are proclaimed as trades under the Industrial and Commercial Training Act, 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than $8.10 per week.

Provided that such an allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

10. 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) in any one of the occupations to which this award applies.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any holidays prescribed by Clause 13, Holidays with Pay of this award, and if any such holiday 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 period one day for each such holiday falling as aforesaid.

Where a holiday falls as aforesaid and the employee fails without reasonable cause, proof whereof shall be upon him, to attend for work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave he shall not be entitled to be paid for any such holiday.

(c) Calculation of Continuous Service

For the purpose of this clause service shall be deemed to be continuous notwithstanding:

(i) any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;

(ii) any absence from work on account of personal sickness or accident and in calculating the period of 12 months continuous service absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be paid of the period of continuous service; or

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(iii) any absence with reasonable cause, proof whereof shall be upon the employer, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months continuous service.

(d) Proportionate Leave on Termination of Service

If after 1 month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee the employee shall be paid at his ordinary rate of wage as follows:

12 1/2 hours for each completed month of continuous service.

(e) Leave to be Given and Taken

The annual leave provided for by this clause shall be allowed and shall be taken and except as provided for in subclause (d) of this clause payment shall not be made or accepted in lieu of annual leave.

(f) Broken Leave

The annual leave provided for by this clause shall be given and taken at a time fixed by the employer.

By agreement between the employer and employee the leave may be broken into shorter periods provided one period is of at least 14 consecutive days.

(g) Calculation of Service

Where the employer is a successor or assignee or transmittee of business if the employee was in the employment of the employer's predecessor at the time when he became such successor or assignee or transmittee the employee in respect of the period during which he was in the service of the predecessor shall for the purpose of this clause be deemed to be in the service of the employer.

(h) Payment for Period of Leave

(i) Each employee before going on leave shall be paid the amount of wage he would have received in respect of the ordinary time which he would have worked had he not been on leave during the relevant period or periods plus a loading equal to 17 ½% of the amount paid in respect of annual leave.

(ii) The provisions of this subclause shall not apply to proportionate leave on termination of service.

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11. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, step-child, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, 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.

12. CONTRACT OF EMPLOYMENT

(a) Except as hereinafter provided, employment shall be by the week.

Any employee employed by the week shall, provided he is ready, willing and available for work be paid the weekly wage prescribed for a full week's work and in addition thereto such overtime or other penalty rates if any that may have occurred during the relevant period.

(b) Employment shall be terminated by a week's notice on either side given at any time during the week or by the payment or forfeiture of a week's wages, as the case may be. This shall not affect the right of the employer to dismiss any employee without notice for malingering, inefficiency, neglect of duty or misconduct, and in such cases the wages shall be paid up to the time of dismissal only or to deduct payment for any day the employee cannot be usefully employed because of any strike, or through any break-down in machinery or any stoppage of work by any cause for which the employer cannot be reasonably held responsible.

(c) Any employee not attending for duty shall, except as provided by Clause 24 - Sick Leave of this award, lose his pay for the actual time of such non-attendance.

(d) Casual Employees

An employee may be engaged on a casual basis provided:

(i) the engagement is to fill a temporary vacancy occasioned by the absence of another employee; or

(ii) the engagement does not exceed one month's duration;

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(iii) a casual employee for ordinary time shall be paid an hourly rate of one thirty-eighth of the weekly rate expressed in Clause 8 - Wage Rates plus a loading of 20%.

Such loading shall be in lieu of annual leave, sick leave and public holiday payments.

(e) Part-time Employees

(i) The employer may engage part-time employees to regularly work for less hours per day or per week than a full-time employee. A part-time employee shall be paid per hour one thirty-eighth of the appropriate rate in Clause 8 - Wage Rates.

A part-time employee shall be entitled to annual leave, sick leave and public holidays and all other award provisions in the same proportion as their hours bear to thirty-eight.

(ii) A part-time employee shall work in accordance with a pre-established roster and shall be paid at overtime rates for work outside of such rostered hours.

Provided that the roster may be altered by mutual agreement without notice or by the employer giving not less than 7 clear days notice.

(iii) Should full-time employment within the classification of work being performed by a part-time employee become available the part-time employee shall be offered the opportunity to apply for such full-time position.

(iv) No full-time employee will be reduced to part-time status without their express consent.

(v) No more than 10% of the employees in any one establishment shall be engaged on a part-time basis provided that any establishment will be permitted to employ at least one part-time employee.

13. HOLIDAYS WITH PAY

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

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), the first Monday in November (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 holidays, he had been at work.

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(c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rate of double time and one half for all time worked on that holiday.

14. HOURS

(a) The ordinary hours of work from 29 October, 1984 subject to the exceptions herein provided, shall be an average of 38 hours per week, to be worked on one of the following bases:

(i) 38 hours within a work cycle not exceeding seven (7) consecutive days; or

(ii) 76 hours within a work cycle not exceeding fourteen (14) consecutive days; or

(iii) 114 hours within a work cycle not exceeding twenty-one (21) consecutive days; or

(iv) 152 hours within a period not exceeding twenty-eight (28) consecutive days.

The method of working may be one of the following

(v) by employees working less than eight (8) ordinary hours each day; or

(vi) by employees working less than eight (8) ordinary hours on one or more days each week; or

(vii) by fixing one week day on which all employees will be off during a particular work cycle; or

(viii) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle.

The ordinary hours of work prescribed herein may be worked on any day or all of the days of the week, Monday to Friday.

(ix) Where the 38 hour week is organised in accordance with subclauses (a) (vii) or (a) (viii) the employer may require the employee to accumulate the rostered days off up to a maximum accumulation of 5 days.

(b) The ordinary hours of work prescribed herein shall be worked continuously, except for meal breaks, at the discretion of the employers between 7.30 a.m. and 5.30 p.m., provided that the spread of hours may be altered by mutual agreement between the employer and the majority of employees in the plant or section or sections concerned.

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Provided further that, work done prior to the spread of hours fixed in accordance with this subclause for which overtime rates are payable, shall be deemed for the purposes of this subclause to be part of the ordinary hours of work.

(c) The conditions upon which the 38 hour week is operated is that an objective review of current practices can be conducted to establish where improvements can be made and implemented.

(d) Where an agreement cannot be reached in-plant and where problems arise after agreement or understandings have been achieved, a formal monitoring procedure will apply. The procedures to be applied with respect to special, anomalous or extraordinary problems, where unable to be resolved by the parties, will be referred in the final analysis to the Tasmanian Industrial Commission, or its legal successor, before any industrial action is taken on the matter.

(e) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned. In the absence of agreement at plant level the procedure for resolving special anomalous or extraordinary problems shall be applied in accordance with subclause (d) of this clause and shall be applied without delay.

(f) The employer and the majority of employees in the plant or section concerned, may agree that the ordinary working hours are to exceed eight (8) on any day, thus enabling a week day to be taken off more frequently than would otherwise apply. (Not to exceed 10 hours in any day).

(g) Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the plant or establishment concerned.

(h) Except as provided in subclause (i) of this clause, in cases where by virtue of the arrangement of his ordinary working hours, an employee in accordance with subclause (a) (vii) and (viii) of this clause, is entitled to a day off during his work cycle, such employee shall be advised by the employer at least four (4) weeks in advance of the week day he is to take off.

(i) Substitute Days

(i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with subclauses (a) (vii) and (viii) of this clause, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in emergency situations.

(ii) An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.

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(j) The ordinary hours of work prescribed herein, shall not exceed ten (10) hours in any day, provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees in the plant or section or sections concerned and the Union or relevant branch thereof.

(k) After the first three weeks of employment, the ordinary starting or finishing time of an employee shall not be changed during the currency of the working week unless overtime is paid, provided however that the starting or finishing times may be changed without payment of overtime in the case of sickness or accident or breakdown of plant or equipment.

(l) The starting and finishing times fixed by this clause shall be strictly observed by employees. The start and finish times expressed shall mean the times at which an employee is at the designated work station ready for work. An employee shall lose pay for late start or early finish.

15. MEAL INTERVAL AND MEAL ALLOWANCE

(a) No employee shall be required to work more than 5 hours without an interval for a meal break for a minimum period of half an hour to a maximum period of one hour.

(b) Any employee required to work overtime for more than one .and a half hours immediately following his ordinary working hours, without being notified the previous day by the employer that he will be so required to work, shall be supplied with an adequate meal by the employer or be paid a meal allowance of $4.80.

(c) Any dispute as to what constitutes an adequate meal shall be referred to the Tasmanian Industrial Commission for determination.

(d) The payment prescribed in subclause (b) of this clause shall be made on the day on which the overtime is worked.

16. MIXED FUNCTIONS

An employee engaged for more than 2 hours of one day on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day. If for less than 2 hours of one day, he shall be paid the higher rate for the time so worked.

Provided that where it is the practice of the employer to rotate employees between various jobs the 2 hour limitation shall be increased to 4 hours.

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17. OVERTIME

For all work performed in excess of the hours prescribed in Clause 14 - Hours subclause (a) of this award or before or after the usual time of starting or finishing of work shall be paid at the rate of time and one half for the first three hours and double time thereafter.

18. PAYMENT OF WAGES

The wages prescribed by this award shall be paid not later than Thursday of each week. By agreement between the employer and the majority of employees wages may be paid other than in cash.

Provided that if agreement cannot be reached the employer may introduce payment by electronic funds transfer by giving not less than 3 months notice of his intention so to do.

If payment is effected by electronic funds transfer the employer shall meet the cost of one deposit and one withdrawal per pay period.

19. PREFERENCE OF EMPLOYMENT

(a) Preference in engagement of employees shall be given equally to persons in the following categories who are available and suitable:

(i) members of either the Federated Miscellaneous Workers Union of Australia, Tasmanian Branch or the National Union of Storeworkers, Packers, Rubber and Allied Workers' Tasmanian Branch;

(ii) persons who are prepared to give forthwith a written undertaking to apply to join the Tasmanian Branches of the appropriate union referred to in paragraph (i) above, within 14 days;

(iii) Conscientious Objectors:

if there is more than one person applying for employment within any or all of these categories the employer shall have freedom to select any one or more of such person in his or its discretion.

(b) Conscientious objectors shall pay a sum equivalent to the subscription to the appropriate union, to a charity to be agreed upon between the person concerned and the appropriate union and in default of agreement to consolidated revenue.

(c) This clause shall not apply in respect of engagement of employees in the following categories:

(i) employees sought to confidential or managerial positions;

(ii) owners of businesses or their spouses.

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20. RIGHT OF ENTRY OF UNION OFFICIALS

For the purpose of interviewing employees on legitimate union business a duly accredited union representative shall have the right to enter the employer's premises during the mid-day meal break on the following conditions:

(i) that he produces his authority to the gate-keeper or such other person as may be appointed by the employer;

(ii) that he interviews employees only at places where they are taking their meals; and

(iii) if any dispute arises over this clause the matter shall be referred to the Tasmanian Industrial Commission.

21. SATURDAY WORK

Employees required to work on a Saturday shall be paid at the rate of time and a half for the first 3 hours and double time thereafter.

22. SHIFT WORK

(a) Definitions

For the purposes of this clause the following definitions apply:

(i) 'Afternoon Shift' shall mean a shift finishing at or before midnight.

(ii) 'Night Shift' shall mean a shift commencing at 10pm or later.

(b) Shift Allowance

An employee engaged to work shift work shall be entitled to receive the following allowances:

(i) Afternoon Shift - 15%;

(ii) Permanent Night Shift (ie a shift which does not rotate or alternate with either day and/or afternoon shift) - 30%;

(iii) Rotating Night Shift - 15%.

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The above allowances shall be in addition to the wage rates prescribed in Clause 8 - Wage Rates and shall not be subject to premium or penalty addition. Neither shall they be payable at any time at which an employee is entitled to be paid penalty rates for overtime, weekend work, holiday work or any other purpose.

23. SHOP STEWARDS

An employee appointed shop steward in the factory or premises in which he is employed, upon notification thereof to his employer, be recognized as the accredited representative of the Union to which he belongs, and he shall be allowed the necessary time during working hours to interview the employer or his representative on matters affecting employees whom he represents; provided that if the shop steward so requests it he may be accompanied at such interview by another employee.

24. SICK LEAVE

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

(i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;

(ii) he shall, where practicable before the normal start time inform the employer of his inability to attend for work and as far as may be practicable state the nature of the illness and the estimated duration of absence;

(iii) he shall prove to the satisfaction of the employer or in the event of a dispute, the Secretary for Labour, that he 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) he shall not be entitled in any year to sick leave credit in excess of seventy-six hours of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer;

(v) for the purpose of administering paragraph (iv) above, an employment require an employee to make a sworn declaration or other written statement as to what paid leave of absence he has had from any employer during the then current year, and upon such statement the employer shall be entitled to rely and act.

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(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 payments in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

23. SUNDAY WORK

Employees required to work on Sundays shall be paid at the rate of double time.

R.J. Watling
COMMISSIONER

19 May 1989