

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T.1524 and T.1525 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

T.1549 and T.1550 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: APPLICATION OF 3% TO SALARY RATES AND
ALLOWANCES**

ORDER BY CONSENT -

**No. 3 of 1988
(Consolidated)**

**THE WHOLESALE TRADES AWARD IS AMENDED BY DELETING ALL CLAUSES CONTAINED
THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING:**

1. TITLE

This award shall be known as the "Wholesale Trades Award".

2. SCOPE

This award is established in respect of:

- (a) wholesale grocer and/or wholesale wine and spirit merchant;
- (b) wholesale tabacconist;
- (c) manufacturer of any one or more of the following articles -
condiments, coffee, baking powder, self-raising flour,
soap powder, soap, washing soda, blacking, sand-soap, candles.
- (d) manufacturers of grocers' sundries, millet brooms, and/or cereal
breakfast foods.
- (e) manufacturers of products containing dried fruits, pudding and cake
mixes, icing sugar, and other sugar based products; and
- (f) wholesalers not specifically subject to the jurisdiction of any
other award of the Tasmanian Industrial Commission.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the beginning of the first full pay period to commence on or after 15 September 1988.

Provided that it is a term of this award (arising from the decision of the Tasmanian Industrial Commission State Wage Case of 5 September 1988, the terms of which are set out therein, that the unions undertake, until 1 July 1989, not to pursue any extra 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).

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 Clerks' 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 Shop Distributive and Allied Employees' Association, Tasmanian Branch, and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;

- (e) the Federated Storemen and Packers' Union of Australia, Tasmanian Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (f) the Transport Workers' Union of Australia, Tasmanian Branch, and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (g) the United Sales Representatives' and Commercial Travellers' Guild of Australia, Tasmanian Branch, and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (h) the Tasmanian Confederation of Industries up to and including 26 April 1987, and thereafter the Tasmanian Confederation of Industries; and
- (i) the Tasmanian Trades and Labor Council.

7. DEFINITIONS

For the purposes of Division A:

'Maker's capacity' shall mean the capacity attributed to the vehicle by the manufacturer as a maximum gross rating less the vehicle's tare, except in cases where on any day the maximum weight on any load exceeds such capacity by one third or more thereof, in which cases such maximum load shall, for the purposes of assessing wages to be paid for that day, be deemed to be the maker's capacity.

'Process packer' shall mean an employee engaged on repetitive packing and filling duties and who is not required to carry out the full range of duties as a storeman.

'Storeman' means a person performing any or all of a combination of the following functions with regard to goods whether partly or wholly manufactured and materials; accepting delivery; unpacking goods from any container or any means of conveyance used for transporting goods within or from a store; sorting or checking goods received for quantity, type or size; distributing goods to containers or compartments or to other locations; holding goods in containers or compartments or at other locations; establishing or maintaining up-to-date records of the goods in store; assembling or collecting goods in store to satisfy orders, requisitions or schedules; checking goods before despatch for quantity, type or size; making and marking containers for the despatch of goods; packing goods as and where appropriate (not being the repetitive packing and by a process worker or a labourer in a standard container or containers in which goods are ordinarily sold); packing goods into or

placing goods on to any means of conveyance used for transporting goods from or within a store; issuing goods to purchasers or other persons authorised to receive them; and any other clerical work incidental to any of the functions described. Provided that 'storeman and/or packer' shall not include:

- (i) an employee who in the course of manufacture merely encloses goods in the uniform container or containers in which such goods are ordinarily sold by the manufacturer or packer,
- (ii) a foreman or other person in charge in such store or place who does not ordinarily work manually therein as a storeman or packer.

'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.

For the purposes of Division B:

'Commercial traveller' shall mean a person over the age of 21 years employed outside the employer's place of business in the process, trade, business or occupation of -

- (a) soliciting orders for articles, goods, wares, merchandise, or materials:
 - (i) wholesale in quantity for resale;
 - (ii) to be used by the purchaser or by persons in the manufacture, production, preparation, or distribution of commodities for sale;
- (b) soliciting orders for articles, goods, wares, merchandise or materials to be used by the purchaser or by the person from whom the order was solicited in his or their business, trade, or occupation or (in the case of a public or semi-public body) for the purpose of its undertaking.
- (c) buying outside the employer's place of business for some person, firm, or company engaged in wholesale business for resale in any form.

'Country traveller' shall mean a commercial traveller who spends at least 2 week nights in any one week away from his normal place of residence or home town, but it shall be a condition of this award that an employer of a country traveller shall at all times retain the right to instruct such traveller to remain away from his normal place of residence or home town until Friday and that a country traveller shall comply with any instructions received from his employer regarding this matter.

'Probationary traveller' shall mean a commercial traveller with less than 12 months' experience with one or more employers.

'Town or local traveller' shall mean a commercial traveller who ordinarily returns each day to his home town or headquarters.

8. WAGE RATES

DIVISION A - ALL EMPLOYEES OTHER THAN COMMERCIAL TRAVELLERS

Subdivision 1 - Wholesale Establishments

1. WAGES

The amounts set out in this clause shall be the minimum rates payable to adult employees herein mentioned.

Group 1 - Wholesale Grocer, Wholesale Wine and Spirit Merchant and/or Wholesale Tobacconist and Wholesalers not specifically subject to the jurisdiction of any other Tasmanian Industrial Commission award.

	Amount Per Week \$
1. Storeman/woman (Grade 1)	299.90
2. Storeman/woman (Grade 2)	307.00

A storeman/woman working singly and/or a storeman who has control of an isolated store where no direct supervision is exercised and is responsible for receipt, controls, issues, and stock checking of goods and/or material notation and preparation of necessary documents.

	Amount Per Week \$
3. An employee operating a power driven fork lift or similar power driven stacking machine or device in the course of his/her duties as a storeman/woman and/or packer.	
(i) With lifting capacity of up to and including 5000 kgs	303.70
(ii) With lifting capacity of over 5000 kgs	307.80
4. Checker	304.50
5. Storeman/woman and/or packer usually employed in cold chambers	302.50
6. Head Cellarman/woman	311.50
7. Cellarman/woman	302.70

Group 2 - Manufacturer and/or packer of anyone or more of the following articles: Condiment, coffee, baking powder, soap powders, soap, washing soda, candles, blacking, sandsoap, self-raising flour, products containing dried fruits, pudding and cake mixes, icing sugar and other sugar based products and allied grocery lines.

Box Maker: The same wage rate as prescribed from time to time by the Timber Merchants Award.

Extraction of tallow and/or treatment of animal offal:

The same wage rate as is prescribed from time to time by the Meat Trades Award.

Other Employees:

(i) Storeman	299.90
(ii) Process Packer	293.30

Junior Employees:

- (i) Storeman: The rates prescribed in subclause 4 hereof.

- (ii) Process Packers: Shall be paid the undermentioned percentages of the adult rate for classification 3(ii) hereof.

% of classification 3(ii)

Under 16 years of age	55%
16 years of age	65%
17 years of age	78.5%
18 years of age	93%
19 years of age	100%
20 years of age	100%

Group 3 - Manufacturer of Cereal Breakfast Foods

	Amount Per Week \$
1. Operator in charge of and working cereal cookers	307.20
2. Operator in charge of and working at toasting	307.20

2. LEADING HANDS

- (a) Employees in Groups 1 and 2, subclause 1

Leading Hands in charge of less than 3 employees shall be paid \$3.10 per week extra.

If in charge of 3 to 10 employees, \$6.10 per week extra.

If in charge of 11 to 20 employees, \$10.20 per week extra.

If in charge of 21 or more employees, \$14.80 per week extra.

- (b) Employees in Group 3, subclause 1 hereof an additional \$6.70 per week.

3. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 hereof, no adult employee shall be paid less than the rate \$221.10 per week.
- (b) Provided that payments for overtime, special rates, weekend penalties and holiday work prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

Where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates, payments during sick leave and annual leave, and for all other purposes of this award.

4. JUNIORS

The minimum rates of wages per week that shall be paid to junior employees shall be the undermentioned percentages of the wage rate for a Storeman Grade 1 calculated to the nearest 10 cents.

	Percentage %
Under 16 years of age	55
16 years of age	65
17 years of age	78.5
18 years of age	93
19 years of age	100
20 years of age	100

Subdivision 2 - Clerks

1. WAGES

Except as prescribed in paragraph (b) of subclause 2 hereof, adult employees of a classification hereunder mentioned shall be paid the amount assigned opposite that classification.

	Amount Per Week \$
1. 1st year's adult experience	267.50
2nd year's adult experience	288.60
3rd year's adult experience and thereafter	316.10
2. An accountant or chief clerk wholly responsible for the office work and who prepares the balance sheet and profit and loss account	427.20
3. A clerk who is in charge of and responsible for the work of -	
(a) 5 or more employees	375.30
(b) 3 or 4 employees	359.20
(c) 2 employees	351.30

'Employees' in this subsection shall mean any male or female clerk, typist or stenographer and shall include the clerk-in-charge.

2. JUNIORS

The minimum rates of wages that may be paid to juniors shall be the undermentioned percentages of the second year adult rate adjusted to the nearest 10 cents.

	Percentage
(a) 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

(b) Proviso

When determining the amount payable to an employee attaining the age of 21 years, who has been employed as a junior clerk in the trades or groups of trades in respect of awards of the Tasmanian Industrial Commission relating to private industry employees, experience obtained after reaching the age of 18 years shall be counted as adult experience.

(c) Additional Payments

In addition to the weekly rates prescribed herein the following additional amounts per week shall be paid to stenographers, audio-typists, tele-typists, accounting machine, computer, data processing, tabulating machine, card punch and verifier operators.

	Amount \$
Under 16 years of age	1.00
16 to 17 years of age	1.20
17 to 18 years of age	1.30
18 to 19 years of age	1.50
19 to 20 years of age	1.80
20 to 21 years of age	1.90
21 years of age and over	2.50

Subdivision 3 - Carters and Drivers

1. WAGES

The wage rates and loadings set out in this subclause shall be the minimum rates payable to the employees herein named:

	Amount Per Week \$
Employee driving motor vehicles having maker's capacity of -	
1.2 tonnes or less	311.50
Over 1.2 tonnes but not over 3 tonnes	315.40
Over 3 tonnes but under 6 tonnes	320.10
6 tonnes and over but under 7 tonnes	320.80
7 tonnes and over but under 8 tonnes	321.70
8 tonnes and over but under 9 tonnes	322.40
9 tonnes and over but under 10 tonnes	323.20
10 tonnes and over	324.10
Motor driver's assistant and yardman	296.20

	Amount Per Week \$
Further additional amount for employee driver collecting money per week -	
For any amount handled up to \$20	0.60
Over \$20 but not exceeding \$200	1.10
Over \$200 but not exceeding \$600	2.00
Over \$600 but not exceeding \$1000	3.00
Over \$1000	4.00

2. JUNIORS

The minimum rates of wages that may be paid to junior employees shall be the undermentioned percentages of the appropriate adult rate:

	%
Under 19 years of age	70
19 and under 20 years of age	80
20 years of age and over	Adult Rate

DIVISION B - COMMERCIAL TRAVELLERS

1. WAGES

The minimum rates of wages that may be paid to employees shall be the undermentioned:

	Amount Per Week \$
1. Country traveller	353.90
2. Town or local traveller	326.40
3. Probationary traveller	294.20

CONDITIONS FOR EMPLOYEES IN DIVISION A - ALL EMPLOYEES OTHER THAN COMMERCIAL TRAVELLERS

9. ANNUAL LEAVE

(a) Period of Leave

A period of one hundred and fifty two hours paid annual leave shall be allowed annually after 12 months continuous service (less the period of annual leave) to an employee in any one or more 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 of the holidays prescribed by Clause 15, 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 such holiday.

(c) Calculation of Continuous Service

For the purposes 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 part of the period of continuous service;
- (iii) Any absence with reasonable cause, proof whereof shall be upon the employee, 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 one 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, he shall be paid at his ordinary rate of wage as follows:

12.67 hours for each completed month of service.

(e) Payment in Lieu Prohibited

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

(f) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees, and part-time employees engaged to work less than 20 hours per week shall be paid an amount equivalent to the minimum wage as prescribed in subclause 3, Division A of Clause 8.

(g) Successor or Assignee

Where the employer is a successor or assignee or transmittee of a 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 purposes of this clause, be deemed to be in the service of the employer.

(h) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued. Where practicable, and unless otherwise mutually arranged between the employer and the employee, at least 2 weeks' notice shall be given to the employee that his annual leave is to be taken.

(i) Broken Leave

Leave allowed under the provisions of subclause (a) shall be granted and taken in one consecutive period, or where the employer and employee agree, in any combination.

(j) Disputes

Any dispute arising out of this clause shall be determined by the Secretary for Labour, whose decision shall be final.

(k) Transitory Provisions

Employees with annual leave entitlements as at 1 August 1984 shall have their entitlements adjusted in the relationship 38/40.

10. CASUAL EMPLOYEES

A casual employee (i.e. an employee engaged by the hour, whose services may be dispensed with or who may leave at any time without notice) shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work which he or she performs. In addition thereto a casual employee shall receive a loading of 20 per cent in respect of each hour paid; such additional amount to be payment in lieu of annual leave sick leave and public holidays.

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, step-mother, step-father, grand-father, grand-mother, 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 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

Except in the case of casual and part-time employees, all employment shall be by the week. Termination in the case of weekly and part-time employees may be effected by either side on the giving of one week's notice, or payment or forfeiture of a week's pay as the case may be. Provided that this shall not affect the right of an employer to terminate an employee without notice in the case of misconduct and in such cases, wages shall be paid up to the time of dismissal only.

13. DIRTY WORK ALLOWANCE

An employee who is handling -

- (a) red ochre, yellow ochre, lamp black, bagged soda ash for any period; or
- (b) grey cement, white cement, whiting, diatomaceous earth, coal, coke or charcoal for any period exceeding one hour in any one day,

shall be paid 5 cents extra per hour or part thereof during which any such material is handled.

14. ESTIMATING SERVICE

In estimating the number of years service of an employee, mentioned in this award, the total time in the service of every employer engaged in the trade or trades covered by this award shall be taken into account to ascertain the minimum wage rate which shall be paid.

Provided that in respect to clerks, 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 relating to private industry employees shall be taken into account.

15. HOLIDAYS WITH PAY

- (a) All employees (other than casuals and part-time employees engaged to work less than 20 hours per week) 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 in Clause 7), 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 holiday, he 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.

16. HOURS

- (a) The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:
 - (i) 38 hours within a period not exceeding seven consecutive days, or
 - (ii) 76 hours within a period not exceeding fourteen consecutive days, or
 - (iii) 114 hours within a period not exceeding twenty-one consecutive days, or
 - (iv) 152 hours within a period not exceeding twenty-eight consecutive days.

- (b) The ordinary hours of work prescribed herein may be worked on any or all days of the week Monday to Friday, between 6.00 a.m. and 6.30 p.m. Subject to the constraints specified in subclause (a) herein, up to 8 1/2 hours (exclusive of meal breaks) may be worked on any one day without incurring overtime.
- (c) Where possible, the employer shall implement a system embracing the concept of "rostered leisure days" (R.L.D.s) or half rostered leisure days. The option of working 7 hours 36 minutes per day Monday to Friday will only be utilised where the demands of the business and availability of staff precludes any other reasonable alternative.
- (d) In circumstances whereby a system of R.L.D.'s applies, an employer, with the agreement of the majority of employees concerned, may in an emergency situation, substitute the day an employee is to take off for another day. An individual employee, with the agreement of the employer, may substitute the day he is to take off for another day. The agreement of the employee and employer, as the case may be, shall not be unreasonably withheld.
- (e) By agreement between the employee and the employer, employees may accrue up to a maximum of 13 R.L.D.'s, which shall be taken at a mutually agreed time.

17. MATERNITY LEAVE

- (a) Eligibility for Maternity Leave

An employee who becomes pregnant, shall upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (i) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
- (ii) Maternity leave shall mean unpaid maternity leave.

(b) Period of leave and commencement of leave

- (i) Subject to subclauses (c) and (f) hereof, the period of maternity leave shall be for an unbroken period of from 6 to 52 weeks and shall include a period of 6 weeks compulsory leave to be taken immediately following confinement.
- (ii) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (iii) An employee shall give not less than 4 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.
- (iv) 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 6 weeks immediately prior to her presumed date of confinement.
- (v) 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 (iii) hereof, if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a safe job

Where in the opinion of a duly qualified 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 duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (g), (h), (i) and (j) hereof.

(d) Variation of period of maternity leave

- (i) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period of 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.

(e) 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.

(f) 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
 - (a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (b) 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 duly qualified 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 duly qualified 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 52 weeks.
- (iii) For the purposes of subclauses (g), (h) and (i) 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 (c), to the position she held immediately before such transfer.

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 salary or wage to that of her former position.

(g) Maternity leave and other entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (c) and (f) hereof does not exceed 52 weeks:

- (i) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave), shall not be available to an employee during her absence on maternity leave.

(h) Effect of maternity leave on employment

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 an award.

(i) 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.

(j) Return to work after maternity leave

(i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than 4 weeks prior to the expiration of her period of maternity leave.

(ii) An employee, upon 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 (c) to the position which she held immediately before such transfer. 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 salary or wage to that of her former position.

(k) 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 under this subclause, 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 clause, 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) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

18. MEAL HOURS AND TEA MONEY

- (a) Not less than 30 minutes nor more than one hour shall be allowed for each meal. The employer shall notify the employee in advance of the time fixed for the meal and the time once fixed shall not be altered unless and until one week's notice of such alteration shall have been given by the employer to the employee concerned.
- (b) The interval for an evening meal shall, unless otherwise agreed, immediately succeed the usual weekday finishing time.
- (c) All work done during the meal interval and continuously thereafter until time for a meal is allowed shall be paid for at double rates.
- (d) Employees required to work overtime for more than 2 hours after the usual weekday finishing time or after 7.30 p.m. (whichever occurs first) shall be paid a meal allowance of \$4.80 unless they have been notified the day before of the intention to work overtime beyond the said finishing time. Employees who are so notified but who are not required to work such overtime shall be paid the meal allowance of \$4.80.

19. OVERTIME

For all time of duty outside the ordinary hours or before the time fixed for commencing work, or after the time fixed for ceasing work, payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter. Where requested by an employee and agreed to by

the employer, time off in lieu of payment for overtime may be taken. Time off shall be calculated by multiplying the hours worked by the appropriate overtime rate.

A junior employee under the age of 18 years shall not be required to work overtime unless he or she so desires.

For the purpose of determining the appropriate hourly rate for overtime purposes, the appropriate weekly rate shall be divided by forty. Provided that the work 'forty' shall be replaced by 'thirty-eight' as at 1 August 1985.

20. PART-TIME EMPLOYEES

- (a) Part-time employees engaged to work 20 or more hours per week shall be entitled to the annual leave, holidays and sick leave as prescribed in Clauses 9, 15 and 29, provided that payment therefor 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 one thirty-eighth of the relevant rate above set out.

- (b) Part-time employees engaged to work less than 20 hours per week shall be paid per hour one thirty-eighth of the weekly rates prescribed for the work he or she performs.

In addition thereto such employees shall receive 20 per cent of the ordinary hourly rate in respect of each hour for which he or she is paid; such additional amount to be payment in lieu of annual leave, sick leave and public holidays.

21. PAYMENT OF WAGES

- (a) Wages shall be paid weekly, not later than Thursday in each week. Provided that where agreement is reached between an employer and a majority of employees wages may be paid fortnightly on the basis of one week's wages in arrears and one week's wages in advance.
- (b) On the completion of the first full pay period and when any change is made in the weekly rate, the employee shall be notified in writing of the amount of wages to which he is entitled, the amount of deduction made therefrom, and the net amount being paid to him, provided also that such notification shall be given not less than once in each year of service.

- (c) At the discretion of the employer, wages may continue to be paid by the current method or by direct transfer into an employee's bank (or other recognised financial institution) account.
- (d) Where an employer elects to pay employees by direct transfer the employer shall pay to employees, in addition to any other entitlements, an amount to cover government fees and charges for one deposit and one withdrawal per pay. Provided that this payment shall only be made where payment by direct transfer is introduced subsequent to 1 December 1988.
- (e) An employer shall give employees at least three months notice of the introduction of payment by direct transfer.

22. PENALTY PROVISIONS

The penalty rates prescribed in Clauses 19 - Overtime and 27 - Saturday, Sunday and Holiday Work are applicable to part-time and casual employees. In the case of casual and part-time employees who are in receipt of a 20% loading, such loading shall be paid for all hours worked including overtime. Provided the penalty additions prescribed in Clauses 19 and 27 shall be calculated on the ordinary time rate excluding this loading.

23. PROTECTIVE CLOTHING

Clean overalls and gloves shall be provided by the employer to all employees employed on the work mentioned in Clause 13 - Dirty Work Allowance. Such overalls and gloves shall remain the property of the employer.

24. RATIO OF JUNIORS TO ADULT EMPLOYEES

- (a) Except as prescribed in subclause (b) hereof the maximum number of juniors to be employed shall not exceed the ratio of 2 juniors to every one adult.
- (b) For employees classified in Group 1, subclause 1, Division A of Clause 8 an employer shall not employ juniors in a proportion to adults exceeding one junior to every 3 or fraction of 3 adults.

25. REST PERIOD

An employee shall be allowed a 10 minute paid rest period during the day. As a consequence of the introduction of the 38 hour week on 1 August 1984 it is expressly agreed that such rest period shall be taken as opportunity offers and if necessary on a staggered basis with the view of increasing productivity. Provided that no employee shall be required to work for more than five hours without a break.

26. RIGHT OF ENTRY OF UNION OFFICIALS

- (a) For the purpose of interviewing employees on legitimate union business, an officer of an organisation of employees, accredited as hereinafter provided, may enter the employer's premises during regular meal or crib-time of employees on each day of the week on the following conditions:
- (i) that he produces his authority to the gatekeeper or such other person as may be appointed by the employer for that purpose;
 - (ii) that he interviews employees only at recognised places where they are taking their meal or crib;
 - (iii) that not more than one representative of each of not more than 3 unions be on the premises at any one time;
 - (iv) that no one representative visit the premises more than once in each week; and
 - (v) that if the employer alleges that a representative is unduly interfering with his work or is offensive in his methods, or is creating dissatisfaction amongst his employees, or is committing a breach of the previous conditions, the employer may refuse the right of entry, but the representative shall have the right to bring such refusal before the Secretary for Labour.

- (b) An officer shall be a duly accredited representative of an organisation if he be the holder for the time being of a certificate which has not been cancelled or revoked, signed by the secretary and bearing the seal of the organisation and bearing the signature of the holder. The certificate shall be in the following form or in a form not materially different therefrom:

(Name of Organisation)

This is to certify that
whose signature appears hereunder, is a duly accredited representative of the abovenamed organisation for the purpose of the Wholesale Trades Award.

(Seal)

.....
Secretary

.....
Signature of Holder of Certificate

(This certificate is strictly not transferable)

27. SATURDAY, SUNDAY AND HOLIDAY WORK

(a) Saturday Work

For all time worked on a Saturday, payment shall be made as follows -

- (1) Where the employer's business premises are regularly open for normal business and require manning on Saturday, payment shall be made at the rate of double time with a minimum payment as for 3 hours worked.
- (2) Where the employer's business premises are not open for normal business, payment shall be made at the rate of one and one half times the ordinary rate for the first 2 hours and double time thereafter.

(b) Sunday Work

For all time of duty on a Sunday payment shall be made at the rate of double time with a minimum payment as for 4 hours worked.

(c) **Holiday Work**

For all time of duty on any of the holidays mentioned in Clause 15, payment shall be made at the rate of double time and one half with a minimum payment as for 4 hours worked.

- (d) Where requested by an employee and agreed to by the employer, time off in lieu of payment for overtime may be taken. Time off shall be calculated by multiplying the hours worked by the appropriate overtime rate.

28. SAVING

Any employee who is in receipt of a wage in excess of that herein prescribed at the date hereof shall not have his wages reduced as a result of this award.

29. SHIFT WORK

Shift work may be introduced to meet the needs of an employer's business where required. Provided that the provisions applying to such shift work shall be discussed firstly between the employer and the employees concerned and secondly by the relevant parties to the Award prior to shift work being introduced.

The above variations to be operative from the first pay period commencing on or after 1 September 1988.

30. SICK LEAVE

- (a) An employee, (other than one engaged as a casual, or a part-time employee engaged to work less than 20 hours per week) 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:

- (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, as soon as possible and where practicable within one hour of the commencement of the employee's normal working day, inform the employer of his 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) 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 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.

- (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 his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.
- (d) Any sick leave accumulation standing to the credit of an employee as at 1 August 1984 shall be adjusted in the ratio of 38/40.

31. START AND FINISHING TIME

For the purpose of this award, the 'start time' shall mean dressed and ready for work at the work station. Similarly, an employee shall remain at the work station until the conclusion of the working day. This clause was inserted as a consequence of the introduction of the 38 hour week with the objective of increasing productivity.

The start and finish time may vary from day to day and/or between employees or sections of employees. Provided that the start and finishing time once set shall only be varied by one week's written notice or by agreement between the employer and the employee.

CONDITIONS FOR EMPLOYEES IN DIVISION B - COMMERCIAL TRAVELLERS

32. 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) as an employee in any one or more 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 of the holidays prescribed by Clause 15, and if any such holiday falls within the 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 such holiday.

(c) Calculation of Continuous Service

For the purposes 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 part of the period of continuous service;
- (iii) any absence with reasonable cause, proof whereof shall be upon the employee.

(d) Proportionate Leave on Termination of Service

If after one 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, he shall be paid at his ordinary rate of wage as follows:

13 1/3 hours for each completed month of continuous service.

(e) Payment in Lieu Prohibited

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

(f) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees, and part-time employees engaged to work less than 20 hours per week shall be paid an amount equivalent to the minimum wage as prescribed in subclause 3, Division A of Clause 8.

(g) Successor or Assignee

Where the employer is a successor or assignee or transmittee of a 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 purposes of this clause, be deemed to be in the service of the employer.

(h) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued. Where practicable, and unless otherwise mutually arranged between the employer and the employee, at least 2 weeks' notice shall be given to the employee that his annual leave is to be taken.

(i) Broken Leave

The leave prescribed by this clause may be taken in 2 periods, if by mutual agreement.

(j) Disputes

Any disputes arising out of this clause shall be determined by the Secretary for Labour, whose decision shall be final.

33. EXPENSES AND ACCOMMODATION

- (a) In addition to the remuneration payable under subclause 1, Division B of Clause 8, all expenses actually and properly incurred by the traveller in the discharge of his duties shall be paid by the employer. First-class hotel accommodation (as approved by the United Commercial Travellers' Association of Australia) and meals shall be allowed for or provided by the employer.
- (b) For the purposes of this clause, expenses incurred in reasonable towing charges or actually incurred in garaging a motor vehicle whilst on the employer's business shall be deemed to be reasonable expenses.
- (c) Car parking fees actually incurred shall be deemed reasonable expenses where the employer requires the traveller to bring his car into an area where street parking is prohibited or restricted.

34. GENERAL CONDITIONS

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

- 10. Casual Employees
- 11. Compassionate Leave
- 12. Contract of Employment
- 13. Dirty Work Allowance
- 14. Estimating Service
- 15. Holidays with Pay
- 17. Maternity Leave
- 18. Meal Hours & Tea Money
- 19. Overtime
- 20. Part-time Employees
- 21. Payment of Wages
- 22. Penalty Provisions
- 23. Protective Clothing
- 24. Ratio of Juniors to Adult Employees
- 25. Rest Period
- 26. Right of Entry of Union Officials
- 27. Saturday, Sunday and Holiday Work
- 28. Saving

35. HOURS

The ordinary hours of employment shall be 40 per week, to be worked in 5 days of 8 hours each, between the hours of 7.30 a.m. and 5.45 p.m. Monday to Friday inclusive.

36. LOCOMOTION

- (a) All means of locomotion required shall be provided and maintained by the employer, but where a traveller by arrangement with his employer provides his own car he shall be paid in addition to the weekly rate prescribed in subclause 1, Division B of Clause 8, an amount of 8.8 cents per kilometre for each kilometre travelled by his car in connection with his employment, including that travelled to and from his place of residence for the purposes thereof. Provided that a town traveller who is required by his employer to use his own car on any day shall be paid not less than \$4.36 in respect of each such day or at the rate of 8.8 cents per kilometre, whichever shall be the greater amount.
- (b) Notwithstanding anything contained in subclause (a) hereof, the employer and employee may make any other arrangement as to car allowance not less favourable to the employee.

37. SICK LEAVE

- (a) An employee (other than one engaged as a casual, or a part-time employee engaged to work less than 20 hours per week) 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 -
 - (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, within 48 hours of the commencement of such absence, inform the employer of his inability to attend for work, and as far as may be practicable, state the nature of the illness or injury and the estimated duration of the 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 (whether in the employment of one employer or of more) to sick leave credit in excess of 2 weeks of ordinary working time.
 - (v) For the purpose of administering paragraph (iv) of this subclause, an employer may within one month of this award coming into operation or within 2 weeks of the employee entering his 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.
- (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 his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

38. SPECIAL ALLOWANCES

- (a) An employee required by his employer to remain away from his home address over a weekend shall be paid a special allowance of \$3.29 per day plus first-class hotel accommodation and meals.

- (b) An employee required by his employer to work at trade fairs, exhibitions, or agricultural shows after 6 p.m. Monday to Friday, or on a Saturday, Sunday, or a public holiday shall be paid at the rate of \$1.64 per hour for every hour worked with a minimum of 3 hours.

