

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

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

CATHOLIC EDUCATION AWARD

FULL BENCH:

PRESIDENT P L LEARY

COMMISSIONER T J ABEY

COMMISSIONER J P McALPINE

State Wage Case July 2004 – applications to vary private sector awards – 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)

ORDER BY CONSENT

No. 2 of 2004

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

THE **CATHOLIC EDUCATION AWARD** IS VARIED IN THE FOLLOWING MANNER:

1. By deleting from PART III – SALARIES AND RELATED MATTERS, CLAUSE 3 – MINIMUM WAGE and inserting in lieu thereof the following:

“3. 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 Part III – SALARIES AND RELATED MATTERS, Clause 4 - Supported Wage System 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 sub clause (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 sub clause (c)(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 sub clause (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 sub clause (b)(i)

(d) Application of Minimum Wage to Certain Employees

Due to existing applicable award 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.

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

(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 (T11548 of 2004) and all the previous safety net and state wage case adjustments."

2. By deleting from PART III – SALARIES AND RELATED MATTERS, CLAUSE 4 – SUPPORTED WAGE SYSTEM and inserting in lieu thereof the following:

"4. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) of this clause) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

PROVIDED that this subclause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

PROVIDED FURTHER that this subclause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under *the Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the above Act, or if a part only has received recognition, that part.

(b) For the Purposes of this Subclause:

'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.

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

'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.

'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.

'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.

(c) Supported Wage Rates

Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

Assessed capacity(paragraph (d))	% of prescribed award rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

PROVIDED that the minimum amount payable shall be not less than \$61 per week.

(d) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to a supported wage employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

(e) Lodgment of Assessment Instrument

- (i) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this clause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof."

3. By deleting from PART IV – ALLOWANCES, CLAUSE 1 – COST RELATED ALLOWANCES and inserting in lieu thereof the following:

"1. COST RELATED ALLOWANCES

(a) Meal

- (i) Where an employee is required by the employer to continue in attendance for a period greater than 1.5 hours (90 Mins) after normal finishing time, the employer shall provide either a meal or the appropriate meal allowance of \$12.70.
- (ii) If an employee is required to return to work within 3 hours of normal finishing time, the employer shall provide either a meal or the appropriate meal allowance described in (i) of this subclause.

(b) Travel

If an employee is requested by the employer to travel in order to fulfil designated duties, the employee shall be provided with:

- (i) adequate travel time within the school day and this travel time shall be included in the employee's overall rostered duties; and
- (ii) transport or, if no school transport is available, payment at the rate of 40 cents per kilometre."

5. By deleting from PART V – HOURS OF WORK AND OVERTIME, CLAUSE 4 – OVERTIME – SCHOOL SUPPORT EMPLOYEES and inserting in lieu thereof the following:

"4. OVERTIME – SCHOOL SUPPORT EMPLOYEES

- (a) Subject to sub-clause (c) of this clause, the employer (as defined) may require an employee to work reasonable overtime from time to time. No overtime shall be worked without prior approval of the employer or a person authorised by the employer to approve overtime work.

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

- (b) The provisions of subclause (a) above do not apply to employees employed in accordance with the Parental Leave part-time work provisions of this award, Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 4 – Parental leave, subclause (g), sub-sub-clause (viii) Extension of Hours of Work.
- (c) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (i) any risk to employee health and safety;
 - (ii) the employee's personal circumstances including any family responsibilities;
 - (iii) the needs of the workplace and enterprise;
 - (iv) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (v) any other relevant matter.
- (d) In computing overtime each day shall stand-alone.
- (e) For all time worked in excess of the ordinary hours of work, Monday to Friday, payment shall be made at the rate of time and one half for the first two hours and double time thereafter.
- (f) For all time worked on a Saturday or Sunday, payment shall be made at the rate of double time.
- (g) For all time worked on a holiday with pay as prescribed in Part VI – LEAVE AND HOLIDAYS WITH PAY, Clause 1 – Holidays With Pay, payment shall be made at the rate of double time and one half.
- (h) An employee required to work overtime for more than one and a half hours shall either be supplied with an adequate meal by the employer or be paid meal money of \$12.70.

PROVIDED that such payment is made on the day on which the overtime is worked, prior to the meal break being taken.
- (i) Where an employee has performed duty on overtime, the employee may be released from duty for a period not exceeding the period of overtime actually worked subject to the conditions herein.
 - (i) An employee may only be released from duty in lieu of payment for overtime at the request of the employee and with the agreement of the employer. Such agreement shall be in writing, shall be made at the time when or before the overtime is worked and be kept with the time and wages records.

This document is translated from the original order and is not in itself a legal document. No responsibility is taken for any discrepancy that may arise between this document and the order that was printed and published by the Printing Authority of Tasmania.

- (ii) Any such leave so accumulated must be taken, or committed to be taken, within 12 months after the accrual of 20 hours.
- (iii) This provision shall only apply in respect of overtime worked between Mondays to Friday inclusive. Normal penalties for overtime worked on Saturday and Sunday shall apply for those days.
- (j) Where subclause (i) is not applied and an employee is required to attend school after leaving other than to carry out rostered duties and the duty is not continuous with completion of ordinary working hours, the employee must be paid a minimum of two hours pay at the relevant rate."

OPERATIVE DATE

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

Tim Abey
COMMISSIONER

23 August 2004