

**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s23 application for award or variation of award  
s35 application to determine Tasmanian Minimum Wage

**The Minister administering the State Service Act 2000**

(T13917 of 2012)

(T13928 of 2012)

**Tasmanian Trades and Labor Council**

(T13938 of 2012)

**LEGAL PRACTITIONERS AWARD**

PRESIDENT P L LEARY  
DEPUTY PRESIDENT T ABEY  
COMMISSIONER B DEEGAN

**Wage Rates - Tasmanian Minimum Wage rate determined at \$606.00pw - s.47AB  
- supported wage varied – parental leave clause varied - operative date ffpp 1  
August 2012**

**ORDER BY CONSENT -**

**No. 2 of 2012  
(Consolidated)**

AMEND THE LEGAL PRACTITIONERS AWARD BY VARYING CLAUSE 16 – SUPPORTED WAGE SYSTEM FOR PERSONS WITH DISABILITIES; CLAUSE 17 – TASMANIAN MINIMUM WAGE; INSERTING NEW CLAUSE 17 – PARENTAL LEAVE; AND THE AWARD IS CONSOLIDATED:

## **1. TITLE**

This award is to be known as the "Legal Practitioners Award".

## **2. SCOPE**

This award is to apply to all employees appointed to positions requiring that the person be admitted or qualified for and entitled to be admitted, as a barrister or a practitioner of the Supreme Court of Tasmania under the provisions of the *Legal Profession Act 2007* as amended.

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## **4. DATE OF OPERATION**

This award is to come into operation from the first full pay period to commence on and from 1 August 2012.

## **5. AWARD INTEREST**

The following employee organisation is deemed to have an interest in this award pursuant to section 63(10) of the *Industrial Relations Act 1984*:

Community and Public Sector Union (State Public Services Federation Tasmania) Inc.

The following employer is deemed to have an interest in this award pursuant to section 62(4) of the *Industrial Relations Act 1984*:

Minister administering the State Service Act 2000

## **6. SUPERSESSION AND SAVINGS**

This award incorporates and supersedes the Legal Practitioners and Apprentice-at-Law Award No. 1 of 2011 (Consolidated) and No 1 of 2012.

**PROVIDED** that no entitlement accrued or obligation incurred is affected by the supersession.

## **7. DEFINITIONS**

The words and phrases set out below shall mean the following for the purposes of this award:

**ADC** means the Office of the Anti-Discrimination Commissioner.

**Administrative Work** means the exercise of an appropriate level of responsibility and discretion in undertaking functions of an administrative nature where administration is concerned with achievement of the organisation's corporate goals through planning, organising, directing and controlling resources or activities. Administration is also concerned with the development and implementation of policy to achieve set objectives and desired outcomes.

**Appropriate Levels of Fees** means the appropriate level of fees generated having regard to the nature, volume and availability of work to generate such fees.

**Basic Legal Work** means Legal Work that could be expected to be undertaken by a Legal Practitioner who does not have a substantial body of knowledge or expertise in the particular field of law. It does not involve issues of a complex or critical nature, nor is there decision making on priorities or deadlines. Precedent or procedures are clearly established and the exercise of independent Professional Judgement as to approach or process is not expected.

**Broad Direction** means that employees are expected to develop and achieve objectives for specific functions under their control that will ensure the attainment of results critical to the efficient operation of the work unit.

**Complex Legal Work** means Legal Work that requires the exercise of considerable Professional Judgement in the selection of the most appropriate approach and the application of a significant body of general or specialist legal knowledge.

There may be a variety of potential options from which to choose and precedent may not be clearly established or may be ambiguous. The work requires careful analysis of the subject or issues.

**Critical Legal Work** is a term used in the sense commonly accepted in relation to critical component, critical issue or critical decision. It means a cornerstone, or fundamental decision, requiring the exercise of considerable Professional Judgement of the effects of a decision within the discipline or field of work. The work may or may not be complex but carries greater risk or more serious consequences than Complex Legal Work.

**Direct Supervision** is where a person works under supervision with instruction provided. The employee is expected to apply only limited Professional Judgement, and deviations from normal routines; problems and unfamiliar situations are discussed with the supervisor. The exercise of discretion is restricted and the employee has only limited responsibility for the final outcome of work undertaken. Deadlines and priorities are given.

**General Direction** is where a person is expected to exercise the Professional Judgement necessary to undertake his or her work without supervision. Work is performed in accordance with broadly based standing instructions, policies and professional standards. Detailed or specific instructions are limited to unusual features. The person is expected to exercise discretion and a substantial degree of independent judgment in the performance of the work. They are responsible for the determination of priorities and achieving required outcomes in relation to their work.

**General Supervision** is where a person is expected to exercise a degree of independence in undertaking their day-to-day work. Their Professional Judgement is such that they are not subject to the same level of control as a person receiving Direct Supervision. General instructions are given on the required objectives or outcomes and the employee is encouraged to exercise some discretion and choice in selecting the most appropriate method for completing the allotted tasks.

**LACT** means the Legal Aid Commission of Tasmania.

**Legal Practitioner** means a person appointed to a position that requires that the person be admitted, or qualified for and entitled to be admitted, as a barrister or a practitioner of the Supreme Court of Tasmania under the provisions of the *Legal Profession Act 2007*.

**Legal Work** means work requiring the application of professional legal knowledge by a Legal Practitioner.

**Novel Legal Work** means Legal Work requiring a major degree of creativity, originality, ingenuity and initiative and is of a type not normally encountered in the day-to-day operations of the work unit.

**OCS** means the Office of the Crown Solicitor.

**ODPP** means the Office of the Director of Public Prosecutions.

**OPC** means the Office of Parliamentary Counsel.

**OSG** means the Office of the Solicitor-General.

**Paralegal** means an employee who undertakes administrative and clerical work of a legal nature that does not require the skills or experience of a legal practitioner.

**Principal** means in the case of:

- ADC the Anti-Discrimination Commissioner
- the LACT, the Director
- the ODPP, the Director of Public Prosecutions;
- the OCS, the Crown Solicitor;
- the OSG, the Solicitor-General;
- the OPC, the Chief Parliamentary Counsel;
- Tasmania Police, the Commissioner of Police
- the Supreme Court of Tasmania, the Registrar
- the TPT, the Chief Executive Officer
- An employee not covered by the list appearing above, the relevant Head of Agency for that employee

or any person acting in these positions from time to time.

**Professional Development** means the acquisition of professional knowledge and expertise acquired through experience in the practice of the law.

**Professional Judgement** means the application of professional knowledge and expertise in defining objectives, solving problems, establishing guidelines, reviewing the work of others, interpreting information and providing and assessing advice or recommendations and other matters that have an element of latitude or decision making.

**Routine Legal Work** means Legal Work that requires a body of knowledge or expertise in the particular field of law. It does not involve issues of a complex or critical nature. Precedent or procedures are usually clearly established. It requires independent decision making in respect of day-to-day work, with complex, critical or novel aspects referred to more senior Legal Practitioners. The exercise of Professional Judgement as to approach or process is undertaken in consultation with more senior Legal Practitioners.

**Specific Direction** means where precise instructions are given with little or no choice provided.

**TPT** means The Public Trustee.

## **8. SALARIES**

The salaries payable to employees in the table below are to be determined by reference to the classification standards set out in Clause 9 of this award.

<b>OLD LEVELS</b>	<b>1-Jul-08</b>	<b>NEW LEVELS</b>	<b>1-Oct-10 3% and Restructure</b>
Level 1		<b>Level 1 Legal Practitioner (LP)</b>	
1 <sup>st</sup> increment	\$42,391	<b>LP 1.1</b>	\$46,614
2 <sup>nd</sup> increment	\$48,120	<b>LP 1.2</b>	\$51,039
3 <sup>rd</sup> increment	\$53,848	<b>LP 1.3</b>	\$55,463
		<b>LP 1.4*</b>	\$58,731
<b>PROMOTION</b>			
Level 2		<b>Level 2 Legal Practitioner (LP)</b>	
1 <sup>st</sup> increment	\$65,808	LP 2.1	\$67,782
2 <sup>nd</sup> increment	\$69,682	LP 2.2	\$71,772
3 <sup>rd</sup> increment	\$73,595	LP 2.3	\$75,803
4 <sup>th</sup> increment	\$76,803	LP 2.4	\$79,752
5 <sup>th</sup> increment	\$80,010	LP 2.5	\$83,743
		LP 2.6*	\$86,188
<b>PROMOTION</b>			
Level 3		<b>Level 3 Legal Practitioner(LP)</b>	
1 <sup>st</sup> increment	\$84,283	LP 3.A	\$86,811
2 <sup>nd</sup> increment	\$88,566	LP 3.1	\$91,223
3 <sup>rd</sup> increment	\$90,701	LP 3.2	\$94,525
4 <sup>th</sup> increment	\$94,978	LP 3.3	\$97,928
5 <sup>th</sup> increment	\$98,184	LP 3.4	\$101,453
		LP 3.5*	\$105,106
		LP 3.6**	
<b>PROMOTION</b>			
Level 4		<b>Level 4 Legal Practitioner(LP)</b>	
1 <sup>st</sup> increment	\$101,396	LP 4.A	\$108,455
2 <sup>nd</sup> increment	\$109,945	LP 4.1	\$115,978
3 <sup>rd</sup> increment	\$114,864	LP 4.2	\$121,501
		LP 4.3*	\$127,023
		LP 4.4**	

\* means progression to this salary point may occur after 12 months of being at the previous level or date of restructure whichever is the later.

\*\* means progression to this salary point may occur after 24 months of being at the previous level.

## **9. CLASSIFICATION STANDARDS**

The following classification standards apply to positions in which Legal Practitioners are employed under the terms of this award:

### **LEVEL 1 LEGAL PRACTITIONER**

A Legal Practitioner with less than 3 years' relevant post-admission experience, and may include a graduate legal practitioner.

#### **General Descriptors - Level 1**

A junior Legal Practitioner who:

- undertakes Basic Legal Work but with Professional Development may undertake Routine Legal Work where functions are within his or her skill and competence;
- initially works under Specific Direction but with increasing Professional Development would be expected to work under Direct Supervision or General Supervision as appropriate to the nature of the work being undertaken and the skills and knowledge of the Legal Practitioner;
- with Professional Development and under Direct Supervision or General Supervision as appropriate, would be able to conduct - negotiations or consultations appropriate to the work at this level;
- with Professional Development, would be expected to develop an appreciation of the strategic context within which the Legal Work is undertaken;
- under supervision, provide legal advice in support of the management by paralegal staff of deceased estates, trusts, administration orders, conveyancing transactions, preliminary criminal prosecution phases, and debt recovery matters;
- assists more senior Legal Practitioners with research, preparation, drafting and other appropriate tasks as directed;

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the conduct and carriage, including as counsel, of preliminary, interlocutory and ancillary matters relating to civil, family and criminal proceedings;
- assist more senior practitioners in the conduct of indictable criminal matters;
- the conduct and carriage, including as counsel, of straightforward summary criminal, and lower court civil proceedings;
- undertaking straightforward conveyancing transactions;

- drawing and settling straightforward commercial documents, using established precedents and limited independent drafting skills;
- drafting straightforward legislation, assisting with the preparation of more complex legislation and attending Parliament as required to assist, under Direct Supervision, in the passage of legislation;
- drafting advice for Government and agencies on straightforward legal matters;
- taking instructions for straightforward wills, powers of attorney and deeds;
- providing straightforward legal advice, in both face to face and telephone settings, on a wide range of legal issues;
- undertaking community legal education;
- the conduct and carriage of straightforward administrative investigations.

(a) **LEVEL 2 LEGAL PRACTITIONER**

A Legal Practitioner with more than 2 years' relevant post-admission experience.

**General Descriptors - Level 2**

A moderately experienced Legal Practitioner who:

- undertakes Basic Legal Work and progresses to undertaking Routine Legal Work;
- may initially work under General Supervision or Direct Supervision, but with Professional Development would be expected increasingly to function with General Direction;
- has acquired a body of relevant professional knowledge in a field relevant to the nature of the duties performed;
- has the skills, under the General Supervision or General Direction of a more senior Legal Practitioner, to undertake negotiations or consultations relevant to the nature of the duties performed;
- has an understanding of the strategic context within which the Legal Work is undertaken;
- exercises Professional Judgement as to approach or process in consultation with more senior Legal Practitioners;
- undertakes legal research in respect of own work and at the request of more senior Legal Practitioners in relation to more complex matters;

- assists more senior legal practitioners with research, preparation, drafting and other appropriate tasks as directed.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of prosecutions for, and defence of, regulatory and summary offences, including appearances in all relevant courts and tribunals at first instance;
- the carriage and conduct of prosecutions for, and defence of, indictable crime, including appearances before relevant courts;
- the carriage and conduct of civil litigious and family law matters as counsel, solicitor, or instructing solicitor before all courts and tribunals at first instance;
- the carriage and conduct as solicitor of commercial and conveyancing matters which include the requirement for independent drafting of documents, and negotiation of outcomes;
- advising Government and Agencies on a wide range of legal matters that have a limited capacity to affect good government, including matters requiring detailed legal research and the interpretation of relevant statutes;
- drafting less difficult legislation, assisting with the preparation of more complex legislation and attending Parliament as required to assist in the passage of legislation;
- drafting more complex wills, deeds of family arrangement, and enduring powers of attorney;
- providing legal advice in support of the management by paralegal staff of deceased estates, trusts, administration orders, conveyancing transactions, preliminary criminal prosecution phases, and debt recovery matters;
- the conduct and carriage of more complex investigations;
- the conduct of straightforward mediations and assisted dispute resolution procedures;
- preparing and delivering legal education presentations and seminars for specialist or professional audiences;
- reviewing and determining straightforward applications in the Probate Jurisdiction of the Supreme Court.

**(b) LEVEL 3 LEGAL PRACTITIONER**

An experienced Legal Practitioner who has significant relevant experience.

### **General Descriptors - Level 3**

An experienced Legal Practitioner who:

- primarily undertakes Routine Legal Work under General Direction but may be required to undertake Complex Legal Work and/or Legal Work of a sensitive nature under the Direct Supervision or General Supervision of a more senior Legal Practitioner;
- possesses a substantial body of professional knowledge, and may have specialised expertise in a relevant area of law;
- has the expertise and specialised skills necessary to undertake negotiations or consultations relevant to the nature of the duties performed;
- provides legal guidance involving a substantial degree of independent Professional Judgement;
- has a well-developed understanding of the strategic context within which the Legal Work is undertaken;
- where required, provides supervision, guidance and assistance to Legal Practitioners of a lower classification level, including allocating work, or undertaking the role of leader of a small unit requiring the coordination of the work of a number of Legal Practitioners;
- may be required to undertake Administrative Work including managing a small team of Legal Practitioners, a small work unit or allocating work across a broad range of Legal Practitioners or clerical staff;
- has responsibility for ensuring that subordinate legal practitioners uphold the highest professional standards;
- has the proven ability to guide and train other Legal Practitioners and or paralegal staff in Routine Legal Work.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of prosecutions for, and defence of, complex regulatory and summary offences, including appearances in all relevant courts and tribunals both at first instance and on appeal;
- the carriage and conduct of prosecutions for, and defence of, indictable crime and appearances in all courts and tribunals of first instance;
- the carriage and conduct of complex civil litigious and family law matters as counsel, solicitor or instructing solicitor before all courts and tribunals at first instance;

- under the general supervision of more senior legal practitioners, undertake appellate matters before the Supreme Court of Tasmania, the Court of Criminal Appeal, the Full Court of the Supreme Court of Tasmania, the Family Court of Australia or the Full Court of the Family Court of Australia;
- the carriage and conduct as solicitor of commercial and conveyancing matters on behalf of the Crown and its instrumentalities, requiring the preparation, negotiation and settling of complex commercial issues and documentation in circumstances where there is a high degree of reliance on independent drafting and professional judgement;
- advising Government Agencies and instrumentalities on a wide range of complex legal matters which require substantial legal research and the interpretation of relevant statutes;
- under the supervision of the Solicitor-General, assisting in the preparation and presentation of constitutional matters;
- providing legal advice in support of the management by paralegal staff of complex matters involving the administration of deceased estates, trusts, administration orders, conveyancing transactions, preliminary criminal prosecution phases and debt recovery matters;
- the conduct and carriage of complex, critical and novel investigations;
- the conduct of complex mediations and assisted dispute resolution procedures;
- preparing and delivering legal education presentations and seminars for specialist and professional audiences;
- drafting moderately sensitive, complex and novel legislation, consulting and advising Ministers, Departments and Members of Parliament with respect to such legislation and attending Parliament to assist in the passage of legislation as required;
- reviewing and determining more complex applications in the Probate Jurisdiction of the Supreme Court.

(c) **LEVEL 4 LEGAL PRACTITIONER**

A very experienced Legal Practitioner with an extensive body of relevant professional legal knowledge, significant expertise in a relevant area such as to be able to provide expert legal advice within that area of specialty and the demonstrated capacity to lead and supervise other Legal Practitioners.

**General Descriptors - Level 4**

A very experienced Legal Practitioner who:

- undertakes Routine Legal Work, Complex and Critical Legal Work, which may be of a sensitive nature;
- operates under General Direction and exercises personal Professional Judgement in the determination of overall strategies, priorities and work standards in respect of his or her own work;
- possesses an extensive body of professional knowledge, expertise and specialised skills and operates in accordance with broad objectives applying a high degree of Professional Judgement;
- provides a high level of professional advice based on an in-depth and comprehensive knowledge of the field of law within which the person practices;
- assumes responsibility for the direction and control of subordinate Legal Practitioners including leading, directing, supervising and coordinating specific projects, a work unit, or work team and undertaking Administrative Work relevant to the work unit or team;
- has an in-depth understanding and knowledge of the strategic context within which the Legal Work is undertaken;
- has an involvement in the development of policy and the establishment of professional principles;
- has responsibility for ensuring that subordinate Legal Practitioners uphold the highest professional standards;
- may be required to undertake Administrative Work relevant to the nature of the duties performed;
- may have the responsibility to directly provide policy and strategic advice to the relevant Principal on matters of significance.

Work at this level may typically involve, depending on the operational area within which the legal practitioner is employed:

- the carriage and conduct of prosecutions for, and defence of, highly complex, novel or critical regulatory and summary offences, including appearances in all relevant courts and tribunals both at first instance and on appeal;
- the carriage and conduct of highly complex criminal trials and actions in all courts, principally the Criminal Court and the Court of Criminal Appeal as senior counsel;
- the carriage and conduct of highly complex civil litigious matters in all courts and tribunals but principally in the Supreme Court and the Full Court of the Supreme Court as senior counsel;
- the carriage and conduct of highly complex, critical and novel family law matters in all relevant courts but principally in the Family Court and the Full Court of the Family Court as senior counsel;
- acting as senior counsel in Tasmanian and Federal Courts, and Tribunals as required;
- acting as a senior legal adviser in relation to major commercial undertakings which are of a high level of commercial and political significance to the State;
- negotiating, drafting and completing matters of a highly complex commercial or financial nature;
- advising in matters that have a high level of legal significance to the State or the development of the law and which may require complex legal research or statutory interpretation;
- giving substantial assistance in the preparation and presentation of constitutional matters;
- drafting highly sensitive, complex and novel legislation, consulting and advising Ministers, Departments and Members of Parliament with respect to such legislation, attending Parliament as required to assist in the passage of legislation and appear before, and provide assistance to, select committees;
- advising on legal, policy and other matters of significance and strategic importance to a GBE Board or other entity;
- reviewing and determining highly complex applications in the Probate Jurisdiction of the Supreme Court;
- the conduct of highly complex, critical or novel mediations and assisted dispute resolution procedures;
- hearing and determining applications for matters such as the taxation of costs and settling appeal books in the Supreme Court jurisdiction.

## **10. SALARY PROGRESSION AND ADVANCEMENT BETWEEN CLASSIFICATIONS**

A Legal Practitioner is to advance to the next salary progression point within a classification on the certification by the relevant Principal of satisfactory performance for a period of not less than one year at the existing level and of apparent capacity to accept greater responsibility. Certification will be undertaken in the context of the Operational Area Performance Management System, or such other system as is approved for use by the relevant Principal.

Satisfactory performance will be assessed using a variety of criteria but will include:

- Legal skills and knowledge
- Application of legal skills and knowledge
- File management skills
- Ethical standards
- Probity
- Fee generation against allocated budget
- Client satisfaction
- Team skills and achievements
- Management and supervision of staff where applicable
- Administrative achievements where applicable
- Contribution to output and Agency objectives

Advancement between classifications is dependent on a merit-based selection for an advertised position at the next or higher classification level.

## **11. EMPLOYMENT**

Employment as a legal practitioner will be in accordance with the *State Service Act 2000*.

## **12. PRACTISING CERTIFICATES AND PROFESSIONAL DEVELOPMENT**

Where any legal practitioner employed under the terms of this award is required to hold a Practising Certificate and to pay the prescribed fee, such fees will be paid by the relevant operational area.

Legal practitioners employed under the terms of this award acknowledge that they have

an individual responsibility to ensure that they maintain the currency of their legal knowledge and skills within their area of expertise or employment.

### **13. PROFESSIONAL CONDUCT**

All legal practitioners employed under the terms of this award:

- (a) are to observe the same rules and standards of professional conduct and ethics as those that a private legal practitioner is, by law or the custom of the legal profession, required to observe in the practice of the legal profession; and
- (b) is subject to the same professional duties as those to which a private legal practitioner is, by law or the custom of the legal profession, subject.

### **14. FEE GENERATION**

All legal practitioners in billing areas have the responsibility of ensuring that appropriate levels of fees are generated.

### **15. GENERAL TERMS AND CONDITIONS OF EMPLOYMENT**

- (a) Subject to sub-clause (b) below the terms and conditions of Legal Practitioners employed under this award are to be the same as the terms and conditions of employment contained in the Tasmanian State Service Award as varied from time to time.
- (b) Where any term or condition of employment contained in the Tasmanian State Service Award is inconsistent with any term or conditions of this award, the terms of this award shall, to the extent of any such inconsistency prevail.

### **16. SUPPORTED WAGE SYSTEM FOR PERSONS WITH DISABILITIES**

This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

In this clause:

**'approved 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

**'assessment instrument'** means the tool 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 Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

**'relevant minimum wage'** means the minimum wage and includes any incremental adjustment prescribed in this award for the class of work for which an employee is engaged

**'supported wage system'** (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**'SWS wage assessment agreement'** means the document in the form required by the Department of Education, Employment and Workplace Relations that records the employee's productive capacity and agreed wage rate

(a) Eligibility Criteria

- (i) Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.
- (ii) This schedule 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 employment.

(b) Supported Wage Rates

Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed Capacity (subclause (c))	Relevant Minimum Wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

**PROVIDED** that the minimum amount payable must be not less than \$76 per week.

Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

(c) Assessment of Capacity

- (i) For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.
- (ii) All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

(d) Lodgement of SWS Wage Assessment Agreement

- (i) All SWS wage assessment agreements under the conditions of this clause, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with Tasmanian Industrial Commission.
- (ii) All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Tasmanian Industrial Commission to the union by certified mail and the agreement will take effect unless an objection is notified to Tasmanian Industrial Commission within 10 working days.

(e) Review of Assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

(f) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this clause will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

(g) Workplace Adjustment

An employer wishing to employ a person under the provisions of this schedule must 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.

(h) 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 schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (ii) During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.
- (iii) The minimum amount payable to the employee during the trial period must be no less than \$76 per week.
- (iv) Work trials should include induction or training as appropriate to the job being trialled.
- (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 will be entered into based on the outcome of assessment under subclause(c).

## **17. TASMANIAN MINIMUM WAGE**

In accordance with s.47 AB of the *Industrial Relations Act 1984* (the *Act*) the minimum weekly wage for an adult full time employee is the Tasmanian Minimum Wage as determined by the Tasmanian Industrial Commission pursuant to s.35 (10A) of the *Act*.

The Tasmanian Minimum Wage is \$606 per week operative from the first pay period commencing on or after 1 August 2012.

**PROVIDED** this clause has no application to employees engaged under a contract of training or to an employee who is in receipt of a supported wage assessment.

## **18. PARENTAL LEAVE**

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

### (a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of sixteen years who is placed with the employee for the purposes of adoption other than a child or step child of the employee or of the spouse or a child who has previously lived continuously with the employee for a period of six months.
- (ii) For the purposes of this clause, **'continuous service'** is work for an employer on a regular and systematic basis including any period of authorised leave or absence.
- (iii) **'Day of Placement'** means in relation to the adoption of a child by an employee the earlier of the following days:
  - (1) The day on which the employee first takes custody of the child for adoption; or
  - (2) The day on which the employee starts any travel that is reasonably necessary to take custody of the child for adoption.
- (iv) **'Eligible casual employee'** means a casual employee employed during a period of at least 12 months, either:
  - (1) on a regular and systematic basis for several periods of employment; or
  - (2) on a regular and systematic basis for an ongoing period of employment, and who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.
- (v) **'Employee'** includes full-time, part-time, permanent, fixed term and "eligible" casual employees.
- (vi) **'Expected date of birth'** means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child.
- (vii) **'Keeping in touch day'** means a day on which an employee performs work for the employer during the period of approved parental leave if:
  - (1) the purpose of performing the work is to enable the employee to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave; and

- (2) both the employee and the employer consent to the employee performing work for the employer on that day(s) or time(s); and
  - (3) the day is not within 14 days after the date of birth, or day of placement, of the child to which the period of leave relates; and
  - (4) the employee has not already performed 10 days of paid work that were keeping in touch days for the employer or another entity during the period of leave.
- (viii) **'Normal rate of pay'** means an employee's rate of salary and includes allowances which would have continued to be paid but for taking parental leave.

The normal rate of pay for a part-time employee with variable hours of work is calculated as the greater of the following:

- (1) the average of the hours worked by the employee over the preceding 12 months or;
  - (2) the actual hours of work at the time of commencement of leave.
- (ix) **'Parental Leave'** means adoption leave, maternity leave, special maternity leave and paternity leave, as appropriate.
- (x) **'Personal Leave'** for the purposes of this clause means absence due to personal illness or injury.
- (xi) **'Spouse'** means a person who is married or a person who is in a significant relationship within the meaning of the *Relationships Act 2003*.

A **'significant relationship'** is a relationship between two adult persons who:

- (1) have a relationship as a couple; and
  - (2) are not married to one another or related by family.
- (xii) **'Primary Care Giver'** means a person who assumes the principal role of providing care and attention to a child. The employer may require confirmation of primary care giver status.
- (xiii) **'State Service'** means an organisation listed in Schedule 1 of the *State Service Act 2000*.

(b) Entitlement

- (i) After 12 months continuous service parents are entitled to a combined period of up to 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of a child. For females, maternity leave may be taken and for

males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(ii) Parental leave is only available to one parent at a time in a single unbroken period, except both parents are entitled to access simultaneous parental leave in the following circumstances:

(1) for maternity and paternity leave an unbroken period of up to three weeks at the time of the birth of the child which includes one day of paid leave for the partner to attend the birth of the child;

(2) for adoption leave an unbroken period of up to three weeks at the time of placement of the child.

(iii) Right to request

(1) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:

(A) to extend the period of simultaneous unpaid parental leave provided for in this clause up to a maximum of eight weeks; and/or

(B) to extend the period of unpaid parental leave provided for in this clause by a further continuous period of leave not exceeding 12 months;

to assist the employee in reconciling work and parental responsibilities.

(2) The employer is to consider a request, according to this clause and having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(iv) An employee is eligible, without resuming duty, for subsequent periods of parental leave in accordance with the provisions of this clause.

(v) An employee employed for a fixed term contract has the same entitlement to parental leave, however the period of leave granted is not to extend beyond the term of that contract.

(c) Maternity Leave

After twelve months continuous service an employee is entitled to 12 weeks paid maternity leave which forms part of the 52 week entitlement provided in subclause (b)(i).

- (i) The 12 weeks paid leave is to be taken at the commencement of the period of maternity leave and must be taken in a consecutive period.
  - (ii) The rate of pay for an employee during the period of the paid absence is the normal rate of pay, as defined in Clause 2 (a) (vii) of this Part—
  - (iii) The employee may elect to take payment for the paid period of the absence,
    - prior to the commencement of the leave or;
    - over 12 consecutive weeks at a consistent rate of pay or;
    - over 24 consecutive weeks at a consistent rate of pay
  - (iv) Where an employee elects to take half pay over 24 weeks the payment beyond the 12 weeks does not increase the accrual of paid leave entitlements prescribed by this award.
  - (v) An employee is to provide written notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
    - (1) at least ten weeks' notice of the expected date of birth in a certificate from a registered medical practitioner stating that the employee is pregnant;
    - (2) at least four weeks' notice of the date on which the employee proposes to commence maternity leave and the period of leave to be taken.
    - (3) particulars of any period of paternity leave sought or taken by her spouse.
  - (vi) An employee is not in breach of this clause if failure to give the required notice is due to the date of birth occurring earlier than the presumed date.
  - (vii) Subject to subclause (c)(i) and unless agreed otherwise between the employer and employee, an employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.
  - (viii) An employee who continues to work within the six week period immediately prior to the expected date of birth, or an employee who elects to return to work within six weeks after the birth of the child is required to provide a medical certificate to the employer stating that she is fit to work on her normal duties.
- (d) Special Maternity Leave
- (i) An employee who has not yet commenced maternity leave and who suffers an illness related to her pregnancy or is required to undergo a pregnancy related medical procedure is to be granted any paid personal leave to which she is entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work.

- (ii) Where a pregnancy related illness or medical procedure is continuous with the commencement of maternity leave the aggregate of paid personal leave, special maternity leave and parental leave, including parental leave taken by a spouse, is not to exceed 52 weeks.
- (iii) Where the pregnancy of an employee terminates other than by the birth of a living child, not earlier than 20 weeks before the expected date of birth the employee is entitled to up to 52 weeks parental leave, including 12 weeks paid maternity leave, certified as necessary by a registered medical practitioner.

(e) Paternity Leave

An employee is to provide to the employer at least ten weeks notice prior to each proposed period of paternity leave, with:

- (i) A certificate from a registered medical practitioner which names the other parent, states that she is pregnant and the expected date of birth, or states the date on which the birth took place; and
- (ii) An employee is to provide written notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
  - (1) the proposed dates to start and finish the period of paternity leave; and
  - (2) that the period of paternity leave will be taken to become the primary care-giver of a child; and
  - (3) particulars of any period of parental leave sought or taken by the other parent.

An employee is not in breach of subclause (e) if the failure to give the required period of notice is due to the birth occurring earlier than expected, or due to the death of the mother of the child, or other compelling circumstances.

(f) Adoption Leave

- (i) After twelve months continuous service an employee identified as the primary care giver is entitled to 12 weeks paid adoption leave, which forms part of the 52 week entitlement.
- (ii) An employee is to notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where, through circumstances beyond the control of the employee, the adoption of a child takes place earlier than expected.
- (iii) Before commencing adoption leave, an employee is to provide the employer with a statutory declaration stating:
  - (1) the employee is seeking adoption leave to become the primary care-giver of the child; and
  - (2) particulars of any period of adoption leave sought or taken by the employee's spouse.
- (iv) An employer may require an employee to provide confirmation of the placement from the appropriate government authority.
- (v) Where the placement of a child for adoption with an employee does not proceed or continue, the employee is to notify the employer immediately and the employer is to nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- (vi) An employee is not in breach of this clause as a consequence of failure to give the required periods of notice if the failure is due to a requirement of an adoption agency to accept earlier or later placement of a child, or due to the death of a spouse, or other compelling circumstances.
- (vii) An employee seeking to adopt a child is entitled to unpaid leave to attend any compulsory interviews or examinations that are necessarily part of the adoption procedure. The employee and the employer are to agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. If available paid leave, other than personal leave, may be taken instead.
- (viii) An employee is not entitled to paid Adoption Leave unless the child that is, or is to be, placed with the employee for adoption:
  - (1) is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child; and
  - (2) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day of placement, or the expected day of placement of the child; and

- (3) is not (otherwise than because of adoption) the child of the employee or the employee's spouse or de facto partner.

(g) Variation of Period of Parental Leave

With the agreement of the employer an employee may shorten or extend the period of parental leave, provided the maximum of 52 weeks is not exceeded. Any such change is to be notified at least four weeks prior to the commencement of the requested changed arrangements.

(h) Parental Leave and Other Entitlements

- (i) An employee may, in lieu of or in conjunction with parental leave, access any accrued annual leave or long service leave entitlements subject to the total amount of leave not exceeding 52 weeks.

(ii) Unpaid leave

- (1) A period of unpaid leave is available according to this clause and may form part of an employee's parental leave entitlement.
- (2) Any period of parental leave without pay in excess of 20 working days is regarded as leave without pay for accrual purposes, including for annual leave, personal leave but does not break an employee's continuity of service.

(iii) Keeping in Touch Days

- (1) This provision enables an employee to perform work for the employer on a keeping in touch day while they are on approved parental leave. If the employee does so, the performance of that work does not break the continuity of the period of paid or unpaid parental leave.
- (2) The employer cannot request an employee attend on a keeping in touch day until a minimum of 6 weeks (42 days) after the birth, or day of placement, of the child. However, the employee may request to the employer that they attend a keeping in touch day 14 days after the date of birth, or day of placement, of the child.
- (3) An employee is eligible to perform paid work for the employer up to 10 working days as keeping in touch days for each of the periods prescribed below:
  - (A) a period of paid or unpaid parental leave taken during the employee's available parental leave period; and
  - (B) a period of unpaid parental leave taken as an extension of the leave referred to in paragraph (A) for a further period immediately following the end of the available parental leave period.

- (4) The period worked by the employee as a keeping in touch day may be for part of a single day.
  - (5) If, during a period of unpaid parental leave, an employee performs work for the employer on a keeping in touch day taking that leave or performing that work does not have the effect of extending the period of unpaid parental leave.
  - (6) If, during a period of paid parental leave, an employee performs work for the employer on a keeping in touch day performing that work will extend the period of that paid leave but will not extend the period of unpaid parental leave.
- (i) Transfer to a Safe Job
- (i) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee is to be transferred to a safe job, if the employer deems it practicable, until maternity leave commences.
  - (ii) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such time as is certified necessary by a registered medical practitioner.
- (j) Returning to Work After a Period of Parental Leave
- (i) An employee is to notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.
  - (ii) An employee is to notify of their intention to return to work on a part-time basis after a period of parental leave at least 8 weeks prior to the expiration of leave to enable the employer to satisfy the requirements of these provisions.
  - (iii) When an employee returns to work after a period of parental leave an employee is entitled to undertake the duties allocated to them immediately before proceeding on parental leave and which the employee would have continued to undertake but for taking parental leave:
    - (1) if the female employee was moved to safe duties because of the pregnancy – immediately before the move; or
    - (2) if the female employee began working part-time because of the pregnancy – immediately before the part-time work began; or
    - (3) otherwise – immediately before the employee commenced maternity leave, except duties for which the employee was in receipt of a higher or more responsible duties allowances, unless the employee resumes those duties upon returning to work.

- (iv) If those duties no longer exist, the employer is to assign similar duties at the same classification, as appropriate, to the employee.
- (k) Right to Request
- (i) An employee entitled to parental leave pursuant to the provisions of subclause (b)(i) may request the employer to allow the employee to return from a period of parental leave on a part-time basis until the child reaches school age to assist the employee in reconciling work and parental responsibilities.
  - (ii) The employer is to consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of suitable replacement staff, loss of efficiency and effectiveness, the specialised nature of the work and the impact on customer service.
  - (iii) An employee may return to work on a modified basis that may involve the employee:
    - (1) working on different days or at different times, or both; and/or
    - (2) working on fewer days or for fewer hours or both, and/or
    - (3) undertaking different duties at the same classification;
 

than the employee worked immediately before commencing parental leave, other than for an employee to whom subclause (i) of this Parental Leave clause applied.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged or promoted or transferred for a fixed-term as a result of another employee proceeding on parental leave.
  - (ii) Prior to engagement, a replacement employee is to be informed of the fixed-term nature of the employment and of the rights of the employee who is being replaced, including that the engagement may be subject to variation according to subclause (g) and the right to request provisions of subclause (b)(iii).
  - (iii) Nothing in this subclause is to be construed as requiring an employer to engage a replacement employee.

(m) Communication During Parental Leave

- (i) Where an employee is on parental leave and a decision has been made to introduce significant change at the workplace, the employer is to take reasonable steps to:
  - (1) make information available in relation to any significant effect the change is to have on the status or responsibility level of the duties assigned to the employee prior to commencing parental leave; and
  - (2) provide an opportunity for the employee to discuss any significant effect the change is to have on the status or responsibility level of the duties assigned to the employee prior to commencing parental leave.
- (ii) The employee is to take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee is to also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with subclause (m)(i) above.

Tim Abey  
**Acting President**

10 August 2012