



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

TasTAFE
(AG2023/5039)

TASTAFE GENERAL EMPLOYEES ENTERPRISE AGREEMENT 2023

Educational services

DEPUTY PRESIDENT BELL

MELBOURNE, 4 MARCH 2024

Application for approval of the TasTAFE General Employees Enterprise Agreement 2023 – objections that enterprise agreement not genuinely agreed – whether persons not covered who voted – whether necessary to explain effect of agreement by reference to the modern award - whether misrepresentations made by the employer – undertakings – s.218A variation to correct obvious error, defect or irregularity – application approved with undertakings.

[1] An application has been made for approval of an enterprise agreement known as the *TasTAFE General Employees Enterprise Agreement 2023* (the Agreement). The application was made pursuant to s 185 of the *Fair Work Act 2009* (the Act) by TasTAFE (TasTAFE/employer). The Agreement is a single enterprise agreement.

[2] The *notification time* for the Agreement under s 173(2) was 20 March 2023 and the Agreement was *made* on 24 November 2024. Accordingly, the *genuine agreement* requirements are assessed under the Act as those applying before 6 June 2023 and the *better off overall test* (BOOT) is that applying on and from 6 June 2023.¹

[3] During the application approval process, ‘Form F18’ declarations were respectively filed by the Australian Education Union (AEU), (CPSU), the Community & Public Sector Union and the United Workers’ Union (UWU) indicating opposition to the approval of the Agreement. Each of those three unions were bargaining representatives of employees and are entitled to be covered by the Agreement.

[4] I describe the objections below. Having regard to the nature and scope of the objections, I issued directions for the exchange of evidence and submissions, and further exchange of reply material, and listed the matter for a hearing (initially for 17 January 2024 but, following a joint request from the parties, on 23 January 2024).

¹ The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) made a number of changes to enterprise agreement approval processes in Part 2-4 of the Fair Work Act. Those changes broadly commenced operation on 6 June 2023, subject to various transitional arrangements that included those to effect described above.

[5] Each of TasTAFE and the AEU filed evidence and submissions. While the CPSU and UOW did not file material, they indicated their support of the AEU's position. TasTAFE filed two statements of Mr Vivek Foot (Senior Industrial Relations Specialist for TasTAFE). Mr Foot was cross-examined. The AEU filed statements for Mr Paul Nilssen (a TasTAFE employee and member of the AEU), Ms Emma Gill (Lead Organiser for the AEU, Tasmania), and Ms Lynne Dacey (an employee of TasTAFE and member of the AEU). The AEU witnesses were not required for cross-examination.

The objections

[6] The objections raised by the AEU fell into two broad categories, being whether there was 'genuine agreement' for the purposes of ss 186(2) and 188 of the Act and what were described as various 'NES/BOOT' issues.²

[7] As to the genuine agreement issues, they are summarised as follows (with all reference to legislation for this purpose being as it stood prior to 6 June 2023):

- *First*, the employer did not provide employees seven clear days of the time and place of voting nor provide a copy of the Agreement by the same time.³ That information and the Agreement were provided on 13 November 2023 for a voting period commencing on 20 November 2023.
- *Second*, the AEU submits that approximately 69 employees voted who were not entitled to vote.⁴ It was uncontroversial that 335 employees voted, with 197 of whom voting in favour of the proposed Agreement and 138 voting against. If all of the impugned cohort of 69 employees voted in favour of the proposed Agreement – which would bring the votes in favour down to 133 – the AEU submits I cannot be satisfied the Agreement was genuinely agreed.
- *Third*, the employer did not provide employees with information about the terms of the *Educational Services (Post-Secondary Education) Award 2020* (Award) and how the proposed Agreement differed from the Award.⁵ This submission was advanced in circumstances where, for the first time, TasTAFE would be covered by an enterprise agreement made under the Act. By Tasmanian legislative amendments, TasTAFE exited the Tasmanian public sector and became subject to the Federal industrial relations regime on 1 July 2022. Up until July 2022, TasTAFE's relevant industrial instruments were made under Tasmanian industrial law. At the time of the vote for the Agreement, those instruments continued to apply to employees as "copied State instruments" within the meaning of s768AH of the Act. The AEU's submission contended, in substance, that where employees had no experience or familiarity with the Federal Award, it was incumbent upon TasTAFE to provide such information.
- *Fourth*, while overlapping with the ground above, the AEU contends TasTAFE impermissibly failed to compare the proposed Agreement to the *Tasmanian State Service Award 2021* (Tas) (TSSA) or the *Public Sector Union Wages Agreement 2019*

² CB p.493, AEU Submissions, [20] – [25].

³ CB p.490, AEU Submissions, [5] – [7].

⁴ CB p.490, AEU Submissions, [8] – [19].

⁵ CB p.494, AEU Submissions, [26] – [32].

(Tas) (PSUWA).⁶ The TSSA and PSUWA were the “copied State instruments” referred to in the previous paragraph.

- *Fifth*, the AEU submits that the employer made a number of misleading statements to employees, such that the vote for the Agreement was not *genuinely agreed* within the meaning of s 188 of the Act. There are three categories of alleged misleading statements, being:
 - statements concerning a unilateral capacity of an affected person to have their dispute resolved by the Commission by arbitration (as opposed to an arbitration requiring consent of both parties).
 - statements concerning any “cap” on personal leave accruals;
 - statements concerning evening meal allowances.

[8] Finally, the AEU seeks amendments of the Agreement pursuant to s 218A of the Act, which allows amendments to correct an obvious error, defect or deficiency. Alternatively, the AEU submits that matter can be resolved by undertaking.

[9] Additionally, the AEU initially contended that the consultation clause in the Agreement did not meet the requirements of s 205 of the Act, although that objection was ultimately not pressed.

NES/BOOT issues

[10] As to the NES/BOOT issues, three discrete matters were raised, each pertaining to a term of the Agreement that was said to contravene a provision of the National Employment Standards (NES). Three specific issues were raised:

- First, cl 3.6 of the Agreement was said to permit TasTAFE to “require” employees to work on public holidays, in contrast to s 114 of the Act which only permits an employer to “request” employees to work on public holidays.
- Second, cl 5.1.2 of the Agreement dealt with re-crediting annual leave in circumstances where an employee on annual leave otherwise became entitled to another form of leave under the NES, such as leave due to illness.
- Third, cl 8.3 of the Agreement – which dealt with abandonment of employment – was said to do away with the requirement under s 117 of the Act to give notice.

[11] The AEU stated that these issues could be resolved by undertakings.

[12] The Agreement contains a ‘NES precedence’ clause at cl 1.3, which provides for the NES to prevail in the event of inconsistency between the NES and the Agreement in circumstances where the NES provides more favourable terms.

[13] The employer proffered an undertaking for the “abandonment” issue and otherwise submitted, correctly in my view, that the NES precedence clause in the Agreement was sufficient to address the other matters.

⁶ CB p.494, AEU Submissions, [26] – [32].

[14] In correspondence from chambers, I raised one discrete BOOT issue regarding casual overtime rates. As to the BOOT issue regarding casual overtime rates, the employer provided an undertaking that satisfied my concern about that matter. No bargaining representative took a different position. I am otherwise satisfied that the NES issues were addressed.

[15] Other than the above matter raised above dealing with casuals, no other BOOT issues were raised, and I am satisfied the Agreement passes the BOOT.

Genuine agreement issues

Issue 1 – notification of voting and provision of Agreement

[16] It was uncontroversial that the access period for the purpose of s 180(4) was 13 – 19 November 2023 inclusive, with voting occurring across 20 – 24 November 2023 inclusive.

[17] It is also uncontroversial that notification for the time and place of voting, and giving a copy of the proposed Agreement, first occurred by email at 9.10am on 13 November 2023. Given that the first day of voting was specified to be 20 November 2023, the information about voting and the copy of the proposed Agreement ought to have been provided by, at the latest, 11.59pm on 12 November 2023 if seven clear days were to be provided.

[18] TasTAFE ought to have undertaken the above steps to comply with s 180(2) – (4) of the Act but did not do so. Nonetheless, I am satisfied that these deficiencies are minor procedural or technical errors. Further, I am satisfied that employees covered by the Agreement were not likely to have been disadvantaged by the errors given the short delay and, in accordance with s 188(2), I am satisfied that the Agreement would have otherwise been genuinely agreed to but for those errors.

Issue 2 – coverage and voting cohort

[19] The AEU’s position was that there were approximately 69 employees who were not eligible to vote at all but who were otherwise on the voting roll. The impugned employees were in the following categories, which were identified by AEU witnesses based upon an analysis of employees listed in a Tasmanian ‘Government Directory’ database:

- a. human resources and industrial/employee relations consultants/officers;
- b. business/data analysts;
- c. business systems officers;
- d. operations managers;
- e. marketing staff; and
- f. general/senior managerial positions.

[20] By comparison, the AEU contends that the coverage clause for the Agreement does not extend to staff meeting the above descriptions, which the AEU describes as “professional” roles.

[21] Coverage under the Agreement is specified by clause 1.1, which is as follows (emphasis added):

“1.1 Agreement coverage

This Agreement covers:

- a) all TasTAFE employees who are engaged to perform clerical, administrative, technical, librarian, tutor and instructor roles;
- b) TasTAFE (ABN 54 248 304 374);
- c) Community and Public Sector Union (SPSFT);
- d) United Workers Union; and
- e) Australian Education Union.

The agreement does not cover:

- a) employees covered by any other enterprise agreement approved by the Fair Work Commission that applies to TasTAFE employees;
- b) TasTAFE Executive employees;
- c) General Manager(s);
- d) Head(s) of Centre;
- e) Senior Manager(s).”

[22] This issue was the subject of detailed written submissions and, from the employer, extensive oral submissions as well. I do not propose to summarise those matters here but I have attempted to distil them to the following propositions, which I consider are reflected by the evidence:

- First, prior to bargaining commencing, an email was sent to all staff⁷ foreshadowing bargaining that referred to “two Enterprise Agreement working groups” – one for “teaching staff” and another for “general staff”.
- Second, a Notice of Representational Rights (NERR) was issued on 24 March 2023 which was expressed to “cover employees that perform tutor and instructor, clerical, administrative, technical, professional (librarian), maintenance and cleaning work at TasTAFE”. Clearly this was not the NERR for “teaching staff”. The NERR was in similar, but not identical, form to the underlined part of cl 1.1, above, save that instead of “librarian”, the NERR referred to “professional (librarian)” and the NERR referred to “maintenance and cleaning work”. The NERR did not contain exclusions for the various senior employees listed in the exclusion to 1.1.
- Third, an “FAQ” document⁸ issued at around the same time as the NERR stated “There will be two enterprise agreements: one for teaching employees and another for general employees”.
- Fourth, in a general update to staff on 10 August 2023 about the “General Employees” enterprise agreement, the carve out for maintenance and cleaning work – described as Education Facility Attendants or EFAs – was noted. In short, where there were

⁷ CB p.768, email from the CEO dated 22 February 2023.

⁸ CB p.779.

previously two bargaining streams, there were now three: teaching, general staff and, from that point, EFAs as the third.

- Fifth, in October 2023, when a draft of the proposed Agreement was circulated at bargaining meetings, the specific carve out for very senior managers was included.
- Sixth, there was no evidence drawn to my attention to the effect that, during the course of bargaining, there was a cohort of staff such as HR, analysts, marketing staff and the like for whom bargaining was not taking place.

[23] TasTAFE submits that all of the impugned employees are covered by the “administrative” classification in cl 1.1 of the Agreement. The unions dispute this and contend they are professional roles, with such people ineligible to vote.

[24] While the Agreement coverage clause could have perhaps been better expressed, the contextual matters for bargaining in, firstly, two streams (i.e. teaching staff for one and general staff for the other) and then for a third (i.e. EFAs for maintenance and cleaning) provides strong support for a broad application of the “administrative” classification.

[25] Further, cl 2.3.2, titled “Classification descriptors”, contemplates a broad application of the classifications. Subclause 2.3.2.1 provides:

“2.3.2. Classification descriptors

2.3.2.1. Purpose

The purpose of classification descriptors is to categorise the wide range of occupations and different types of work across TasTAFE into distinct work value levels, to which salaries are aligned.

The classification standards are broad and describe the core features of work at each Level from seven perspectives called job components. The classification descriptors determine the appropriate classification for the duties assigned to employees.”

[26] The actual classification descriptors are contained in Schedule 3 of the Agreement, ranging from Level 1 (at the most junior) to Level 7 (at the most senior). Each classification contains a narrative-based approach to classification, rather than specific duties or tasks, at least certainly for the higher levels. They describe (under headings) matters such as “Focus”, “Content and framework”, “Expertise”, “Interpersonal Skills”, “Judgement”, “Influence of outcomes”, and “Responsibility for outcomes” at all levels.

[27] For example, the “Focus” requirements of a Level 4 employee are:

“Work within a defined field requiring the evaluation/coordination and/or integration of diverse and varied operational procedures and practices. The work requires detailed planning, organising, directing, controlling and coordinating of resources and related activities. The work requires in-depth research, analysis, investigation and evaluation to develop and implement complex practices, systems and processes to meet difficult operational and service delivery requirements. Specialised work in a particular discipline to provide authoritative advice and expertise to support a range of complex activities.”

[28] For the “Context and framework” section of a Level 7 employee, the descriptor includes:

“The function or program activities have a direct and significant effect on organisational outcomes and the achievement of corporate objectives. Considerable operational autonomy with operational direction according to government policy and broad corporate objectives. A complex specialised environment which requires the development, implementation and modification of program-specific strategy, policy, principles, systems and processes that reflect corporate strategy, policy, regulatory or technological developments. ...”

[29] While I consider that contextual material is sufficient to support the employer’s contention about the impugned employees, any doubt is removed when historical resource to the TSSA and PSUWA is considered. Historically, all TasTAFE employees other than executives were covered by one of three sets of State industrial instrument, namely:

- Teachers were covered by the *TasTAFE Teaching Staff Industrial Instrument 2021* and the *TasTAFE Teaching Staff Award*;
- EFAs were covered by the *Facility Attendants (Tasmanian State Service) Award* and other correlative agreements; and
- all other employees were covered by the TSSA and PSUWA.

[30] The TSSA⁹ itself contained two streams: a “General Stream” and a “Professional Stream” (see, for example, Part II cl.3 “Salaries” of the TSSA). The genesis of those two streams arose from the “translation” from four earlier Tasmanian awards, being the Professional Employees Award, the Administrative and Clerical Employees Award, the Operational Employees Award and the Technical Employees Award (see “Appendix 1 – Translation Arrangements” of the TSSA)¹⁰.

[31] For the Administrative and Clerical Employees Award¹¹ (which were translated to the TSSA), the definitions for Level 6 and Level 7 classification standards (by way of example only) respectively referred to “human and material resources” and “human resource management or accounting”. The Level 8 standard contemplated the “exercise of technical or professional skill and judgement”. Contrary to the AEU’s contention, the Agreement can and does cover human resources employees. While I have not exhaustively set out each category in dispute, I am satisfied that each of those employees are also covered by the Agreement for similar reasons.

[32] In summary, I am satisfied that there were no voting irregularities of the kind or magnitude referred to by the AEU. While the employer acknowledged that four senior executive employees who were not covered by the Agreement – being “Heads of Centres” - who should not have voted in fact voted, in the context of the vote outcome I consider that a minor technical error for which dispensation is granted under s 188(2).

[33] Of the 418 employees eligible to vote, 335 were declared to cast an eligible vote. 197 voted to approve and 138 opposed. Even if the 4 ineligible voters were assumed to have all voted in favour, the vote was comfortably passed in the affirmative.

⁹ CB p.523.

¹⁰ CB p.675.

¹¹ CB p.1099.

Issues 3 & 4 – provision of information and the Award

[34] It is convenient to deal with issues 3 & 4 together, as they both concern the contention that the effect of the Agreement was not properly explained to employees.

[35] As a preliminary introduction to issues 3 and 4, it is necessary to outline some of the features of the industrial instruments applying to employees prior to the proposed coverage of the employees by the Agreement.

[36] As submitted (uncontroversially) by the AEU, prior to 1 July 2022, the immediate predecessor of TasTAFE was as a public sector employer within the Tasmanian public service. During this period, employees of the former TasTAFE were employed under the *State Service Act 2000* (Tas), with relevant employees being covered by the TSSA and the PSUWA.

[37] Aspects of the TSSA have been set out above. It is not necessary to summarise them in detail but it suffices to note that, other than for wages, the TSSA addressed a wide range of terms and conditions of employment for employees covered by that instrument. For example, it addressed classifications, it established various allowances (including meal and travel), workplace flexibility arrangements, hours of work (including overtime), provisions for weekend and shift work, various types of leave and other matters.

[38] The PSUWA was primarily focussed upon setting wage or salary rates (although not exclusively – eg a personal leave accumulation scheme). Schedule 1 of the PSUWA specified salaries for employees covered by the TSSA and did so by reference to the classification codes used in the TSSA. The PSUWA was expressed to apply with effect from 1 July 2019 to 30 June 2022. It was also expressed to prevail over the TSSA to the extent of any inconsistency.

[39] Effective from 1 July 2022, TasTAFE was established as a body corporate in its current form by the *TasTAFE (Skills and Training Business) Act 2021* (Tas), which relevantly took effect on 1 July 2022. By that Act, the employer continued as TasTAFE in its current form.

[40] Aspects of these arrangements were the subject of a decision of Commissioner Lee in *Application by Australian Education Union (284V)* [2023] FWC 391, which again are matters I consider to be uncontroversial.

[41] Saliently, upon TasTAFE becoming a national system employer on 1 July 2022, a number of Tasmanian state industrial instruments applied as “copied State instruments” to employees by force of the Act.¹² The TSSA and PSUWA were, relevantly to the present application, two (of the seven) “copied State instruments” that applied to employees at that time by reason of the Act.¹³

[42] For new employees taking up employment with TasTAFE after 1 July 2022, no copied State instrument automatically applied to their employment. The industrial instruments that would instead apply to new employees were those established by Commonwealth law and made by the Commission, which were accepted to be the *Miscellaneous Award 2020* and the *Educational Services (Post-Secondary Education) Award 2020*.¹⁴

¹² *Australian Education Union (284V)* [2023] FWC 391 at [4].

¹³ *Australian Education Union (284V)* [2023] FWC 391 at [5].

¹⁴ *Australian Education Union (284V)* [2023] FWC 391 at [6].

[43] The view of the UWU was that such an order was appropriate to avoid non-transferring employees being covered by what they described as the inferior terms and conditions of the *Miscellaneous Award 2020*. To similar effect, the AEU sought such an order for reasons including to ensure equity across staff and to avoid different and “worse off” conditions for non-transferring employees. It was for these reasons that the AEU and the UWU applied to the Commission for an order that the copied State instruments also apply to new employees. The applications were opposed by TasTAFE.¹⁵ The unions’ application prevailed.

[44] Orders in the form sought by the AEU and UWU were made by Commissioner Lee, such that since 13 July 2023, the TSSA and PSUWA also applied to any new employee of TasTAFE engaged on or after 1 July 2022.¹⁶

[45] Returning to the application before me, in the AEU’s written submissions, after making an observation that “substantial” changes from an existing enterprise agreement were required to be explained, the AEU put the issue as follows (footnotes omitted):

“30. The same can be said for several aspects of the Proposed Agreement. The circumstances required TasTAFE to compare the terms of the TSSA and PSUWA to the Proposed Agreement and provide employees with information about the terms of the Award and how they compared to the Proposed Agreement. This was a reasonable step for TasTAFE to have taken when considering its employees limited knowledge of the Award, its resources and access to human resources and industrial relations expertise. TasTAFE did not explain to relevant employees how the Proposed Agreement differed from the Award or the PSUWA. This failure meant that relevant employees did not understand how the terms of their employment would change in relation to the Award and PSUWA if they voted in favour of the Proposed Agreement. This was not a minor procedural or technical error but is a matter of significance given the material differences between the TSSA, Award and Proposed Agreement. The application should be dismissed on this basis.”¹⁷

[46] At paragraph [31] of the AEU’s written outline, it identified the following matters it said “were not identified nor explained to relevant employees as either less beneficial to or omitted from the Award. For example:

(a) clause 10.4 of the Award provides for a minimum two-hour engagement for part-time employees, compared to there being no minimum engagement for part-time employees in the Proposed Agreement;

(b) clause 23.8 of the Award provides that any direction by an employer to take annual leave, in circumstances where there is an excessive annual leave accrual, must not result in the employee having less than six weeks annual leave accrued, compared to clause

¹⁵ *Australian Education Union (284V)* [2023] FWC 391 at [8] – [10].

¹⁶ On 24 March 2023, Commissioner Lee made an order (PR760521), effective 31 March 2023, that (relevantly) the TSSA and PSUWA would apply to a non-transferring employee from that date. Upon an application by TasTAFE to appeal, that order was stayed pending hearing and determination of the appeal or further order. The appeal was heard and determined on 13 July 2023 by dismissing the appeal, which lifted the stay application from 13 July 2023.

¹⁷ CB p.495.

5.1 of the Proposed Agreement which does not require an employee to maintain a minimum annual leave accrual of six weeks;

(c) clause 32.1(b) of the Award only requires an employee with less than one year of service to give one week's notice of termination, compared to the two weeks required by the Proposed Agreement;

(d) clause 33.1 of the Award provides employees over the age of 45 with more than five years of service to four weeks of notice and an additional week of notice when they are redeployed to a role with a lower rate of pay, compared to the flat four weeks of notice in the Proposed Agreement;

(e) the Proposed Agreement omits the entitlement to paid rest breaks provided at clause 15.3 of the Award;

(f) the Proposed Agreement omits the entitlement to clothing, footwear and laundry allowances at clause 18.3 of the Award;

(g) the Proposed Agreement omits the entitlement to having travel time between places of work paid as time worked and all travel fares reimbursed by the employer at clause 18.3(e) of the Award;

(h) the Proposed Agreement omits the entitlement to a vehicle allowance at clause 18.3(g) of the Award;

(i) the Proposed Agreement omits the entitlement to minimum overtime payments at clause 20.1(e) of the Award; and

(j) the Proposed Agreement omits the entitlement to annual leave loading at clause 23.3 of the Award.”

[47] In the AEU's reply submissions, it stated that:

“7. It was reasonable for TasTAFE to provide a comparison between the terms of the Proposed Agreement and the Award because:

- (a) the relevant employees do not have knowledge of, or experience with, the terms and conditions in the Award, a modern award that has never applied to the relevant employees;
- (b) the relevant employees do not have knowledge of, or experience of their legal entitlements as national system employees;
- (c) the relevant employees do not have knowledge of, or experience in being covered by an enterprise agreement that is underpinned by the Award.

8. Absent a comparison between the Proposed Agreement and the Award, relevant employees cannot know the effect of the terms of the Proposed Agreement and whether the BOOT test could be satisfied.”

[48] In part, the resolution of issues 3 & 4 concern the adequacy of an “Explainer”¹⁸ document provided by TasTAFE to employees. The “Explainer” is a document titled “Explainer – What’s in the proposed Enterprise Agreement?” Excluding a cover page, the Explainer was 14 pages long and was comprised of a table with five columns, which were structured as follows:

- Column 1 was titled “Current (TSSA) Provision” and contained a description of the relevant TSSA clause title.
- Column 2 was titled “Where can I find it?”, which provided a specific reference by clause number and page in the TSSA.
- Column 3 was titled “Proposed (EA) Provision” and contained the title of the equivalent clause in the Agreement.
- Column 4 was titled “Where can I find it?”, which provided a specific reference by clause number and page in the Agreement.
- Column 5 was titled “Explanation”, where brief narrative text about the changes in question was given.

[49] As the AEU Reply Submissions correctly note¹⁹, the Explainer was first circulated to employees on 13 November 2023, being the first day of the access period.

[50] The Explainer was made available to employees in the email sent at 9.10am on 13 November 2023, through the inclusion of a weblink to TasTAFE’s enterprise bargaining page. The email prominently drew attention to the link and that it contained access to “the full proposed EA, incorporated material, fact sheets/explainers”.

[51] In addition to the Explainer, TasTAFE provided further explanatory information on specific topics. That included:

- A document called the “Triennium Sick Leave Explainer”. The Triennium scheme was a specific scheme that was being “retired” and replaced with an “accumulation” scheme. The Sick Leave Explainer was directed at that issue.
- A document called “Revised proposed salary scale for general employees”. As would be expected from the title of that document, it set out the detail of classifications (including some changes) and what the new pay scales would be.

[52] As stated above, the AEU submits that “TasTAFE did not explain to relevant employees how the Proposed Agreement differed from the Award or the PSUWA”.²⁰ There is no dispute that TasTAFE did not prepare a comparison document that specifically sought to explain how the Agreement differed from the Award or the PSUWA, nor the effect of the Agreement by express reference to either of those industrial instruments.

[53] In Mr Foot’s evidence, he also describes five “face-to-face drop in sessions” across the different campuses, which were held between 13 - 16 November 2023. Those meetings were for general staff, who were able to attend on paid time. Mr Foot says that hard copies of the proposed Agreement and copies of the explanatory material were available at those meetings

¹⁸ CB p.1024, Witness Statement of Vivek Foot, exhibit VF-27.

¹⁹ CB p.503 at [4].

²⁰ CP p.495, AEU Submissions, [30].

and that he (and another employee for the employer) explained the nature of the voting process and answered questions.

[54] The employer's position on this matter is encapsulated from the following submission:

"It has been held by the Fair Work Commission on multiple occasions that, where a proposed enterprise agreement is replacing an existing enterprise agreement, an employer will satisfy the obligation in section 180(5) of the FW Act where the explanation provided to employees refers to the existing enterprise agreement and not the modern award that is the reference instrument."²¹

[55] That proposition was made by reference to a number of decisions of the Commission.²² It is unnecessary to recount each of the details of each of those authorities and whether they stand for the absolute proposition stated. For example, in *Australian Nursing and Midwifery Federation v Uniting Church in Australia Property Trust (Q.)*; *Australian Workers' Union, The; United Workers' Union* [2020] FWCFB 848, that Full Bench noted (my emphasis):

"[84] Of course, the fact that the 2013 Agreement covered and applied to the employees at the time the Agreement was made, does not necessarily mean that an explanation involving a comparison between the Agreement and the relevant modern awards was unnecessary. However, as Wesley Mission points out, not only did the relevant modern awards not apply to the relevant employees, but reference to the relevant awards in the Agreement is minimal and the particular circumstances are that:

- a) the classifications that apply under the Agreement are entirely self-contained;
- b) clause 3.3.1 expressly provides that the Agreement operates to the exclusion of the otherwise relevant award;
- c) clauses 6.5.4 and 6.5.5 refer to awards, but only in the context of the allowances provided under those clauses being paid in lieu of all other award entitlements; and
- d) clause 11.5.2 merely reinforces s.206 of the Act, to the effect that the base rate of pay under the Agreement must not fall under the relevant modern award.
- e) Clause 3.2(u) defines: "Trainee shall mean any person employed and remunerated in accordance with the National Training Wage rates as defined in the *Aged Care Award 2010*."

[56] In the circumstances of the matter before me I am satisfied that it was not necessary for the employer to provide an explanation by reference to the Award. The Award did not apply to the employment of any employee and, so far as any generalised comparison for that Award was to have been made, I consider it would have been actively confusing for employees in circumstances where a more appropriate explanation was, at the same time, being given by reference to the TSSA. It is also not lost on me that the AEU's application in 2022 for the copied

²¹ CB p.474, TasTAFE Outline of Submissions, [32].

²² They were: *Australian Nursing and Midwifery Federation v Uniting Church in Australia Property Trust (Q.)*; *Australian Workers' Union, The; United Workers' Union* [2020] FWCFB 848 at [82] and [94]; *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v DDP Electrical Services Pty Ltd* [2020] FWCFB 18 at [33]; *The Australian Workers' Union v Skout Solutions Pty Ltd* [2021] FWCFB 119 at [60]-[62]; and the comments of a Full Bench in *Construction, Forestry, Maritime, Mining and Energy Union v Ditchfield Mining Services Pty Limited* [2019] FWCFB 4022 at [71] (cited in *Skout* at [61]).

state awards to apply to non-transferring employees was, at least in part, to avoid (from the AEU's perspective) "worse off" conditions under the Award. While that submission was made in a different context, it does not lend support to the proposition that it was necessary for a proposed comparison to have been made between the Agreement and the Award in circumstances where the Agreement was replacing the TSSA and PSUWA.

[57] The fact that employees were being asked, for the first time, to approve an enterprise agreement under the Act does not alter the outcome, in my view. It can be accepted that "relevant employees do not have knowledge of, or experience with" modern awards. However, the same can be said of many employees. Even employees who have been employed by a national system employer for many years might have little or no knowledge or experience with modern awards, for the simple reason that their employment has been subject to consecutive 'roll over' agreements.

[58] The position regarding the PSUWA is somewhat different. As to the PSUWA, the AEU is correct with its submission that there was no reference in the explanatory material to the PSUWA. It is also the case that, unlike the Award, the PSUWA *was* an industrial instrument that applied to employees and would continue to apply if the employer's application for approval of the Agreement was refused.

[59] Arguably the most significant element of the PSUWA was wages. However, as Mr Foot's evidence discloses, by the time of the vote, the wage levels required by the PSUWA had been surpassed. Moreover, I am satisfied that the explanations that were provided about salaries (including the "Explainers" set out above) were sufficient.

[60] While the PSUWA's continuing role for wage rates had been surpassed, the PSUWA continued to provide relevant terms of employment for some employees concerning personal leave accumulation, novated leases and dispute resolution. The specific explanations given to employees in the various "Explainer" documents addressed those topics. There was considerable detail concerning wages, as was there for the Sick Leave Explainers. There was no change to the position for novated leases and the explanatory material noted that.

[61] The position for dispute resolution is, I accept, different and the AEU's contentions for that matter are more soundly based. I have separately noted that the employer has provided an undertaking to ensure that arbitrations before the Commission can be pursued unilaterally, and not requiring consent. I consider that undertaking addresses any residual concern about that facet of the PSUWA.

[62] The AEU did not otherwise refer to any term of the PSUWA that it considers was substantial or material and that ought to have been, but was not, explained to employees. For avoidance of doubt, the AEU's submissions regarding misleading conduct about personal leave accumulation overlaps to a degree with this issue, which is the matter I address in the next section.

[63] Notwithstanding there being any express reference to the PSUWA in the employer's explanatory material, I do not consider that this renders the subsequent Agreement approval by the ballot of employees as one not genuinely agreed. The PSUWA was an instrument with confined subject matter and explanations about the effect of the Agreement were provided in relation to those matters.

Issue 5 – whether misleading conduct

[64] The final issue concerns alleged misleading conduct that is said to preclude the Agreement being “genuinely agreed”. As summarised earlier, there are three discrete categories of alleged conduct, which concern statements about a “cap” on personal leave accruals, statements concerning dispute resolution, and statements concerning meal allowances.

The dispute resolution term

[65] Dealing with the dispute resolution term first, the AEU’s position was that the dispute term in the Agreement precluded arbitrations before the Commission unless made by consent. The material filed by TasTAFE took a different view.

[66] TasTAFE’s position was that *“the [dispute] clause duplicates clause 31 of the Education Award almost word for word.”* TasTAFE’s position was that such a clause permitted a party to unilaterally proceed to an arbitration to resolve a dispute. I do not consider TasTAFE’s interpretation of the dispute clause in the Award to be correct. This was an important issue and the AEU’s position on it was correct. Consistent with the AEU’s understanding of the operation of that clause, I understand that such a clause – presumably to avoid infringing on the judicial power of the Commonwealth – does not purport to compel a party to participate in an arbitration. The position for enterprise agreements has been treated differently, for the reason that enterprise agreements have been voluntarily entered into (at least by the employer).

[67] Following discussion with the parties about this matter at the hearing, TasTAFE subsequently proffered an undertaking to make clear that arbitrations under the Agreement will not require the consent of both parties. I am satisfied with that undertaking and consider it resolves any concern about that matter.

Personal leave accruals

[68] As to the statements regarding “caps” on personal leave accruals, that issue occupied the primary focus of the AEU at the hearing.

[69] There are two categories of statements relied upon by the AEU.

[70] The first category contains exhortatory statements issued by TasTAFE to employees encouraging them the vote “Yes” to the proposed Agreement. Beginning on 9 November 2023, TasTAFE issued an email to staff stating (relevantly, underlining added):

“ ...

Say Yes to:

Pay increases of: 3.5% (Year 1) 3% (Year 2) 3% (Year 3)

3 paid Christmas close down days

No cap on personal leave accrual

Up to 30 days a year for family and diversity leave

Generous parental leave - increase to 18 weeks and removal of the distinction between the primary and non primary caregiver

Retention of a range of existing benefits”

[71] That statement, adopting the same exhortation to say “Yes” to “*No cap on personal leave accrual*” was repeated in subsequent correspondence to staff, including at least on 13, 14, 16 and 20 November 2023.

[72] The second statement relied upon by the AEU concerning the “cap” was expressed slightly differently. In an email on 16 November 2023 (16 November email) by the TasTAFE CEO to staff, it relevantly stated (with the uncontentious aspects under various headings omitted for brevity, the contentious parts are marked with underline):

“Colleagues

Under the Fair Work jurisdiction as your employer it is our obligation to provide you with accurate information regarding current and proposed employment conditions for our staff.

As we progress to voting on the General Employees Enterprise Agreement it is important to ensure that the information provided is accurate and I personally wanted to dispel any misinformation that may be circulating.

Firstly, we are currently in the “access period” for the proposed **General Employee Enterprise Agreement** only. Next week from November 20th – 24th General Staff will have the opportunity to vote either yes or no to their proposed agreement. Details and the full proposed agreement have been made available to our General Staff they can be accessed Pages Enterprise Bargaining (tastafe.tas.edu.au).

Inaccurate claims have been made this week regarding proposed employment conditions, and it is important that you are made aware of the facts.

Pay increases, not wage cuts

...

Independent arbitration remains

...

No changes to penalty rates

...

No changes to hours

There is no change to ordinary hours; there is no change to span of hours; there is no change to overtime; there is no shift work and no nightwork in the proposal.

There are no changes to permanency. People can be employed on a full-time part-time, fixed-term or casual basis, permanency remains our preferred employment status.

Retiring the triennium approach to personal leave, moves all employees to single personal leave scheme; we are proposing to remove the cap on personal leave so that it accrues; 20 days personal leave a year (pro rata), there is no distinction between sick and carers leave.

In terms of meals a 30-minute lunch break after 5 hours is included, there are no plans to change current practices There are no changes to evening meal allowances.

Consultation is a must

...

Lengthy and inclusive bargaining process

...

What happens if the offer is rejected?

...

Should you have any questions relating to information you are hearing, or the General Employee EA voting process please contact the Industrial Relations Team via [email address omitted]

Finally, can I encourage all staff covered by the proposed General Employees Enterprise Agreement to inform yourselves and take the time to cast your vote next week.”

[73] While not specifically referred to by the AEU, I also note TasTAFE’s primary “Explainer” document contained a statement referring to the cap being “removed”. In the section for “Personal Leave” in the Explainer, the “Explanation” statement given was expressed as follows (emphasis added):²³

“Entitlement for full time employees is 20 days per year (part time employees pro rata) accrued over the year
Notice and evidence requirements remain;
Enterprise Agreement provides for two days unpaid carers per occasion leave where personal leave has been exhausted;
Personal Leave cap removed for all employees
On registration all Triennium Personal Leave Scheme employees move to Personal Leave system under EA. Those employees will be translated to a Personal Leave entitlement that is the equivalent of 20 days annual accrual for their length of service minus any personal leave taken.”

[74] The AEU’s position is that the statements, above, concerning the personal leave “cap”:

- firstly, represented that there an existing cap would be “removed”; and
- secondly, that those representations were false or misleading because there was no “cap” that could be removed.

[75] The basis of the AEU’s contention that the impugned representations were misleading rested upon the effect of section 96 of the Act and its application to the TSSA and PSUWA upon becoming “copied State instruments” on 1 July 2022.

²³ CB p.1032.

[76] As set out above, on 1 July 2022, TasTAFE became a national system employer and, by automatic operation of the Act, the TSSA and PSUWA applied – by force of the Act – as “copied State instruments” to TasTAFE.

[77] Also by force of the Act, the NES applied to TasTAFE from 1 July 2022. Section 768AQ of the Act, which was applicable, deals with the interaction between the NES and a copied State instrument. Section 768AQ states:

“To the extent that a term of a copied State instrument for a transferring employee is detrimental to the employee, in any respect, when compared to an entitlement of the employee under the National Employment Standards, the term of the instrument is of no effect.”

[78] The relevant term of the NES relied upon the AEU is s 96 of the Act. That section provides:

“96 Entitlement to paid personal/carer’s leave

Amount of leave

(1) For each year of service with an employer (other than periods of employment as a casual employee of the employer), an employee is entitled to 10 days of paid personal/carer’s leave.

Accrual of leave

(2) An employee’s entitlement to paid personal/carer’s leave accrues progressively during a year of service (other than periods of employment as a casual employee of the employer) according to the employee’s ordinary hours of work, and accumulates from year to year.”

[79] The significance ascribed by the AEU to the alleged misrepresentations was, in summary, that employees were being misled with an illusory promise of a benefit to which they were already entitled. As summarised by the AEU in its Outline of Submissions in Reply (emphasis added):

“17. ... The effect of these representations was that relevant employees should agree to the Proposed Agreement because it offered a new term of employment (unlimited personal leave accrual) to which relevant employees were already entitled. The quantum of personal leave accrual, be it 10 days under the NES or 20 days under the Accumulation Scheme, was immaterial to the misleading nature of this representation.”

[80] TasTAFE does not directly take issue with the AEU’s contention that representations were made to the effect that a “cap” will be removed but, rather, TasTAFE takes issue that there was any misleading representation. TasTAFE’s written submissions summarise its position as follows (footnotes omitted, emphasis added):²⁴

²⁴ CB p.476, TasTAFE Outline of Submissions.

“48. As noted above, there are currently two personal leave schemes in place: the Accumulation Scheme and the Triennium Scheme. Under the Accumulation Scheme, personal leave accrual is subject to a cap of 1911 hours or 1976 hours for employees who work a 38 hour week (260 days).

49. Under clause 5.4 of the General Agreement, General Employees will be entitled to 20 days of personal leave per year (pro rata for part-time employees). This is double the NES entitlement to 10 days of personal leave per year. There is also no cap on the accrual of personal leave, as is stated in the second paragraph of the clause.

50. TasTAFE agrees that section 96(2) of the FW Act provides for the progressive accrual of personal/carer's leave. However, in circumstances where TasTAFE will provide General Employees with double the NES entitlement to personal/carer's leave, it would have been open to TasTAFE to cap the accrual of personal leave that exceeded the NES entitlement. It has elected not to do so.

51. Employees in the Accumulation Scheme currently have a cap on their personal leave accrual as noted above. In the explanatory materials, in accordance with its obligations under the FW Act, TasTAFE has explained the removal of this cap under the General Agreement. The personal leave changes were then summarised in the Dreher Email. TasTAFE submits that, having regard to the change in approach under the General Agreement, this was not a misleading or false representation.”

[81] Dealing with the first question as to whether there was a representation to the effect that there was a personal leave “cap” being “removed”, I am satisfied that such representations were conveyed by the Explainer document (in the “Personal Leave” section above) and in the 16 November email. Both documents expressly refer to a “removal” of a cap. Those statements were arguably made in two of the most significant documents provided to employees in relation to the vote, and if they were misleading, they had the potential to be misleading in a material way.

[82] It is not necessary to consider whether the exhortatory statements “*No cap on personal leave accrual*” conveys a representation that a cap is being *removed*, although I am doubtful they do in isolation. The latter categories of statement may have caused “confusion or wonderment”, but I do not consider this would be sufficient to lead to a conclusion they were misleading.²⁵

[83] Having found that the representations were made, it is necessary to consider if they were misleading. I do not consider the representations regarding the removal of the personal leave cap to be misleading.

[84] There was no dispute that the personal leave Accumulation Scheme, prior to TasTAFE becoming subject to the Act and NES on 1 July 2022, contained a cap.

[85] But upon TasTAFE becoming a national system employer on that date, I do not consider that the NES operated to unconditionally remove the entirety of the “cap” that existed as part of the personal leave Accumulation Scheme under the TSSA and PSUWA.

²⁵ See *Campomar Sociedad Limitada v Nike International Ltd* [2002] HCA 12 at [106].

[86] Section 96(1) of the Act establishes an entitlement to 10 days personal leave per year. Section 96(2) provides that an employee’s “entitlement” accrues from year to year (and with no cap). However, the “entitlement” referred to in s 96(2) can only be the entitlement under s 96(1). Section 96(2) does not operate on the *different* entitlements established by the copied State instruments applying to TasTAFE and its employees after 1 July 2022.

[87] Of course, where there is a conflict, the NES prevails. Section 768AQ further makes it clear that a term of a copied State instrument is of no effect only *to the extent* that a term of a copied State instrument is detrimental to the employee when compared to the NES.

[88] In the present case, the NES establishes 10 days of personal leave each year, uncapped as it accrues year to year. The interaction of the 20 day capped Accumulation Scheme under the copied State instruments and the NES entitlements would present challenges in an assessment of whether the capped Accumulation Scheme would, in a given instance, be detrimental to an employee compared to the NES entitlement. But it is plainly clear that in many circumstances employees would be demonstrably better off under the Accumulation Scheme compared to the NES, such as where an employee who might take 15 days personal leave per year for a number of years. Even if the residual 5 days (out of the 20) was separately accounted for and capped, the employee would remain 5 days better off each year.

[89] Hence, the “cap” imposed by the TSSA/PSUWA still had real work to do under the copied State instruments, even though it now had less work to do (due to the NES) and there might attract (potentially significant) administrative challenges in ensuring entitlements were properly accounted for without contravening the NES. It was not misleading for TasTAFE, in those circumstances, to make statements about the removal of that cap.

[90] It follows that I reject this ground of the AEU’s objections.

[91] For completeness, I note that TasTAFE further contends that, in assessing whether there was a misleading representation, that representation would need to be assessed in all the circumstances, which includes statements issued by the AEU. TasTAFE contends that those broader circumstances would also be relevant to assessing the materiality of any misrepresentation and whether that would affect the overall conclusion as to whether the Agreement was genuinely agreed to by employees. Having regard to my findings above, it is unnecessary to consider these further matters in the context of this issue.

Meal allowances

[92] The final misrepresentation that is said to exist concerns a statement about meal allowances, made in the 16 November email, and how those allowances were said to persist under the Agreement by reference to the TSSA.

[93] In short, the AEU contends that the statement in the 16 November email that “*There are no changes to evening meal allowances*” was false or misleading because:

“Clause 3.5.6 of the Proposed Agreement provides an evening meal allowance of \$18.23 and Part IV clause 2(d) of the TSSA provides an evening meal allowance of \$27.55. TasTAFE’s statement was false or misleading in that the Proposed Agreement provided around a \$9.00 reduction in the evening meal allowance payable.”

[94] At the time of the vote, the evening meal allowance of \$28.00,²⁶ not \$27.55²⁷ (as the AEU's submission states), although nothing turns on this difference. There is no dispute that cl.3.5.6 of the Agreement provides an overtime meal entitlement of \$18.23.

[95] Given the change from \$28.00 to \$18.23, the statement in the 16 November email about evening meal allowances not changing was plainly incorrect.

[96] TasTAFE accepts that the statement in the 16 November email "is not correct in relation to **overtime** meal allowances" (original emphasis), although it contends it was correct for evening meal allowances paid "during travel".²⁸ In those circumstances, TasTAFE submits that, at most, the statement was "ambiguous rather than false and misleading".²⁹

[97] I do not accept that the statement was merely ambiguous, as TasTAFE contends. To assert there are "no" changes, in a short and unqualified proposition, clearly conveys exactly just that – there were "no" changes being made to evening meal allowances. The distinction between *overtime* meal allowances and *travel* time meal allowances is not persuasive. The representation was misleading.

[98] However, I do accept TasTAFE's submission that the overall context in which the misleading representation was made is to be considered. In this case, the context in which the statement in the 16 November email was made was in response to highly critical communications being circulated by the AEU and CPSU in opposition to the proposed Agreement.

[99] For example, on 15 November 2023, the AEU sent an email titled "Vote NO – your conditions under attack".³⁰ It was a lengthy email, and it is unnecessary to summarise, but it advocated many reasons why the AEU was urging staff to vote "no" to:

- “• Reject Wage Cuts
- Save your right to independent arbitration
- Stop cuts to pay rates for weekends and evenings
- Protect conditions like lunch breaks, access to permanency, triennium sick leave and evening meal allowances
- Save your right to be consulted at work”

[100] The AEU's email invited staff to attend one of two online webinars that had been organised for 5pm on 16 November and 1pm on 17 November 2023. While the distribution list identifying to whom that email was sent was not before me, I expect that the email was at least sent to the AEU's members and I also infer the email was sent to non-members given the invitation at the end of the email to "Join your union".

[101] An email sent by the CPSU to staff on 15 November 2023³¹ was to similar effect (and, I infer, to a similar distribution list). It urged staff to vote no and also invited staff to the same

²⁶ CB p.608.

²⁷ See CB p.316 for an earlier version of the TSSA where the rate was \$27.55.

²⁸ CB p.521, Witness Statement of Mr Foot, [94].

²⁹ CB p.477, TasTAFE Outline of Submissions, [56].

³⁰ CB p.1059-1065.

³¹ CB p.1066-1071.

information sessions referred to in the AEU email. Under the heading “There are a range of issues we need to discuss Including”, the CPSU listed the first item as (original emphasis):

- “• The proposed Agreement **cuts your lunch break** to thirty minutes, there are **no rights to permanency**, will see **triennium sick leave scrapped**, and introduces **cuts to evening meal allowances.**”

[102] The same CPSU email also indicated that an organiser would be “leafleting” between 11.30am and 1pm on 16 November 2023. While the exact timing of when flyers were being issued is unclear (as is the extent of distribution), Mr Foot gives evidence of “joint flyers” from the AEU, CPSU, and UWW being circulated on or around 15 November 2023. Two of those flyers were in evidence.³² They appear professionally prepared, or at least prepared by a person competent in layout and messaging. They were each prominently headed “VOTE NO!”. One of those flyers had a head “VOTE NO TO: CUTS TO YOUR CONDITIONS” and, under that heading, stated:

“The proposed agreement cuts your lunch break to half an hour, no rights to permanency, abolishment of triennium sick leave and cuts to evening meal allowances.”

[103] I have extracted the text of the 16 November email above. Mr Foot’s evidence, which I accept, was that the email was drafted “in response to the union communications.” On its face, the email indicates to a reasonable reader that it was responsive to alleged “misinformation that may be circulating”, which itself would have alerted an interested reader to the sources of that information, if it wasn’t plainly clear that it was a reference to the material circulated by the unions.

[104] The 16 November email was not the final word on the subject. In evidence was an annotated version of that email as a joint union response (and I make the same observations as to the quality of that publication as their earlier flyers). In the sentence “There are no changes to evening meal allowances”, the word “no” was crossed out and a new text bubble linked to it stating (among other items) “we’re cutting them by about \$9.”

[105] Another item of contextual relevance is the Explainer document, although in this case I do not consider it is particularly informative by its anodyne statement that the rate has been “updated” and it does not assist TasTAFE’s position. For completeness, the Explainer relevantly stated:³³

“Overtime meal allowance rate updated and consistent across all meal-times.
The Enterprise Agreement allows for a further meal allowance to be paid where overtime exceeds four hours and a meal is not supplied.
Any meal allowances for day travel captured by Travel Allowance”

[106] In *Australian Municipal, Administrative, Clerical and Services Union v Yarra Valley Water Corporation* [2013] FWCFB 7453, the Full Bench made the following observation that I concur with in relation to assessing misleading statements in the course of bargaining for an enterprise agreement (footnotes omitted):

³² CB p.1072-1073.

³³ CB p.1028.

“[28] A false representation or a material non-disclosure by an employer in the course of bargaining for an enterprise agreement may constitute a reasonable ground for believing under s.188(c) of the Act that an enterprise agreement has not genuinely been agreed to by employees if it could reasonably be expected to have had the effect of deceiving those employees into voting for something which, if they had known the true position, they would not have voted for. The question in this appeal is whether the misleading representations in the Emails and the Table could reasonably be expected to have had this effect.”

[107] Both parties accepted – and relied upon - the correctness of the above statement. As is commonly the case, however, the difference between the parties was to its application to the facts at hand.

[108] On balance, I am satisfied that the Agreement was genuinely agreed to by employees notwithstanding the misleading statement about evening meal allowances in the 16 November email. While meal allowances are an important topic and the email was a significant communication, it was but one email and the impugned statement a single part of a much longer document. Further, the email itself was clearly responsive to other material in circulation – the so-called “misinformation”. That itself is important in drawing attention to an interested reader on that topic that there were two sides to the issue. It is also likely that staff were exposed to one or more of the unions’ communications about that issue. I do not consider it reasonable to impute on employees an unquestioning attitude to the statement by TasTAFE (assuming, perhaps generously, it was widely read) in circumstances where there was an active and well-communicated “no” campaign being mobilised.

[109] Finally, I have had regard to the outcome of the vote. It passed with a majority of about 59 percent. While that represents a relatively close margin, the margin could not be described as slim.

[110] In all the circumstances, the meal allowance misrepresentation could not reasonably be expected to have had the effect of deceiving employees, or a sufficient number of them, into voting for something which, if they had known the true position, they would not have voted for.

[111] If I were wrong about the above conclusion, I consider that an appropriate undertaking would be, if proffered, adequate to cure a concern that the Agreement was not genuinely agreed to. However, as I am of the view that the Agreement was genuinely agreed to notwithstanding the misrepresentation made, it is not appropriate to request an undertaking.

Conclusion

[112] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement. Pursuant to s.201(3), the undertakings are taken to be a term of the Agreement.

[113] Subject to the undertakings referred to above, and having regard to the material contained in the application and filed in relation to it, I am satisfied that each of the requirements of ss 186, 187, 188, 190, 193 and 193A as are relevant to this application for approval have been met.

[114] Pursuant to s.202(4) of the Act, the model flexibility term prescribed by the *Fair Work Regulations 2009* is taken to be a term of the Agreement.

[115] Each of the AEU, CPSU and UWU, being bargaining representatives for the Agreement, has given notice under s 183 of the Act that it wants the Agreement to cover them. In accordance with s 201(2), I note that the Agreement covers those organisations.

[116] The Agreement was approved on 4 March 2024 and, in accordance with s 54 of the Act, will operate from 11 March 2024. The nominal expiry date of the Agreement is 1 December 2026.

Variation to correct obvious error

[117] Clause 3.5.7 of the Agreement is titled “Work outside of ordinary hours” and contains a rate table for certain hours worked. In TasTAFE’s Form17A declaration, “TasTAFE notes that the table in clause 3.5.7 of the Agreement has been included in error and has no work to do in circumstances where the hours specified will be paid as overtime” (emphasis added).

[118] That proposition is accepted by the AEU (and other unions). The AEU proposes a variation to cl 3.5.7 under s 218A of the Act so that the clause reads as follows:

“3.5.7 Minimum payment for work on a Sunday

If you work on a Sunday, you will be paid a minimum of 4 hours’ pay at the appropriate rate.”

[119] TasTAFE submits that in circumstances where the table has no work to do, is not necessary to vary the Agreement as proposed by the AEU. However, TasTAFE states it has no objection to this course if this is the Commission's preference.

[120] Section 218A of the Act permits the Commission to vary an enterprise agreement to correct or amend an obvious error, defect or irregularity (whether in substance or form). I have previously set out the consideration and circumstances where an enterprise agreement may be varied under s 218A³⁴. It is not necessary to repeat those matters here. In the present circumstances, there is no dispute that there is an error. While that error is not immediately evident from the face of the document, it is an obvious error, defect and irregularity when considering the Agreement as a whole. I consider it appropriate to vary the Agreement in the form proposed by the AEU and will make an order to that effect.

Order

[121] I order, pursuant to s 218A of the Act, that the Agreement be varied to correct an obvious error, defect and irregularity by deleting the heading and text of clause 3.5.7 and replacing them with the following:

“3.5.7 Minimum payment for work on a Sunday

³⁴ Application by Burnside War Memorial Hospital Incorporated [2023] FWCA 3198.

If you work on a Sunday, you will be paid a minimum of 4 hours' pay at the appropriate rate."

[122] The variation will operate from 4 March 2024.



DEPUTY PRESIDENT

Appearances:

W Spargo of Lander & Rogers for the Applicant
H Pill of Hall Payne Lawyers for the AEU

Hearing details:

2024.
Melbourne (by video link via Microsoft Teams):
January 23.

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2023/5039

Applicant: Application by Grant Dreher T/A TasTAFE

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Lyndene Bowen, Acting Chief Executive Officer, have the authority given to me by TasTAFE to give the following undertakings with respect to the TasTAFE General Employees Enterprise Agreement 2023 ("the Agreement"):

1. That clause 3.2.3 of the Agreement be replaced with:

"If you are a casual employee, you will be paid:

- a) the minimum hourly rate for each ordinary hour worked for the classification in which you are employed; plus*
- b) a loading of 25% of the minimum hourly rate.*

Casual loading for overtime hours worked will be paid per 3.5.2.

As a casual employee, you will be paid for at least 3 consecutive hours of work on each occasion you are required to attend work.

Offers and requests for conversion from casual employment to full-time employment or part-time employment will take place as in the NES."

2. Notwithstanding the terms of clause 8.3 of the Agreement, TasTAFE undertakes to provide notice or a payment in lieu in accordance with section 117 of the *Fair Work Act 2009* (Cth) where there is a dismissal at its initiative, other than in cases of serious misconduct.
3. Notwithstanding the terms of the second paragraph of clause 3.1 of the Agreement, TasTAFE undertakes that where the employment of an employee is terminated during the probationary period:
 - a. TasTAFE will provide two weeks' notice of termination or a payment in lieu of notice; and
 - b. the employee may terminate the employment on one week's notice.

4. That clause 6.1(c)(ii) be replaced with:

"If the dispute remains unresolved, the FWC may use any method of dispute resolution it is permitted by the Act to use and it considers appropriate for resolving

the dispute, including its power to arbitrate the dispute (regardless of whether both parties consent)."

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

A handwritten signature in black ink, appearing to be 'Zee', written above a horizontal line.

Signature

29.01.2024

Date



Note - the model flexibility term is taken to be a term of this agreement. This agreement is to be read together with an undertaking given by the employer. The undertaking is also taken to be a term of this agreement. A copy of these terms can be found at the end of the agreement.

TasTAFE General Employees

Enterprise Agreement **2023**

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1. Welcome

1.1. Agreement coverage

This Agreement covers:

- a) all TasTAFE employees who are engaged to perform clerical, administrative, technical, librarian, tutor and instructor roles;
- b) TasTAFE (ABN 54 248 304 374);
- c) Community and Public Sector Union (SPSFT);
- d) United Workers Union; and
- e) Australian Education Union.

The agreement does not cover:

- a) employees covered by any other enterprise agreement approved by the Fair Work Commission that applies to TasTAFE employees;
- b) TasTAFE Executive employees;
- c) General Manager(s);
- d) Head(s) of Centre;
- e) Senior Manager(s).

1.2. Commencement and duration

This Agreement starts 7 days after the date this Agreement is approved by the Fair Work Commission.

The nominal expiry of this Agreement is 1 December 2026.

1.3. Operation of the Agreement

This Agreement replaces any prior Industrial agreements or copied State Instruments that may otherwise apply to employees whose employment is within the scope of this Agreement.

The National Employment Standards (NES) are to be read and interpreted alongside this Agreement. If there is an inconsistency between this Agreement and the NES (and the NES provides a greater benefit) the NES provision will apply.

1.4. No extra claims

For the duration of this Agreement, no extra claims will be made in relation to matters covered by this Agreement. TasTAFE may implement changes in the workplace through policies, procedures and directions while following consultation requirements.

1.5. Definitions

“the Act” means the *Fair Work Act 2009* (Cth).

“Agreement” means the TasTAFE General Employees Enterprise Agreement 2023.

“Award” means the *Educational Services (Post-Secondary Education) Award 2020*.

“Casual employee” has the meaning given by Section 15A of the Act.

“Continuous service” is work for TasTAFE (or its predecessors) on a regular and systematic basis including any period of authorised leave or absence.

“Cultural” means without limitation: cultural and ceremonial obligations under Aboriginal or Torres Strait Islander lore, customary or traditional law; or family, customary or community obligations.

“Our, we, us or TasTAFE” means TasTAFE (ABN 54 248 304 374).

“You, my, I or employee” means a person employed by TasTAFE who is covered by this Agreement.

“FWC” means Fair Work Commission.

“Household” means any people who usually live with you.

“Immediate family” means:

- a) spouse, former spouse or couple in a “significant relationship” (as defined below);
- b) de facto partner or former de facto partner;
- c) child;
- d) parent;
- e) grandparent;
- f) grandchild;
- g) sibling;
- h) child, parent, grandparent, grandchild or sibling of your spouse or de facto partner (or former spouse or de facto partner); and
- i) a person related to you according to Aboriginal or Torres Strait Islander kinship.

This definition includes step-relations (for example, step-parents and step-children) and adoptive relations.

“Medical certificate” means a certificate issued by a registered health practitioner in the area of practice in which they are registered or licensed.

“NES” means the National Employment Standards as detailed in Part 2-2 of the Act.

“Primary caregiver” means a person who is in the principal role of providing care and attention to a child. You may be requested to provide evidence that would satisfy a reasonable person of your primary caregiver status.

“Registered health practitioner” means a health practitioner registered or licensed as a health practitioner under an appropriate law of Australia.

"Significant relationship" means significant relationship as defined within the *Relationships Act 2003* (Tas).

"Standard rate of pay" means your rate of pay (exclusive of all allowances and penalty payments) as detailed in Schedule 1 – Pay Scale.

"Statutory declaration" means a declaration made in writing and meeting the requirements of the *Oaths Act 2001* (Tas).

"Union(s)" means a union that is covered by this Agreement and is registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

2. Money matters

2.1. How will I be paid?

Your salary is paid fortnightly in arrears by direct deposit into a bank account nominated by you.

2.2. How will my pay be increased?

2.2.1. Annual fixed increase

During the nominal term of this Agreement, we will increase your pay as per Schedule 1:

- a) 3.5% from the first full pay period on or after the registration of this Agreement;
- b) 3% effective from the first full pay period on or after 1 December 2024; and
- c) 3% effective from the first full pay period on or after 1 December 2025.

2.2.2. Salary progression

Progression from one Level to another is via promotion.

Promotion occurs when an employee is selected by us to advance to a position at a higher Level in the pay scale (at Schedule 1) where they will work in-line with the relevant classification descriptors (at Schedule 3).

Progression within a Level is via incremental progression (as detailed at 2.2.2.1). You may however advance through more than one salary increment within the same Level, as determined by us. This is called accelerated progression.

You may be appointed or promoted to any increment within a Level, as determined by us.

2.2.2.1. Incremental progression

Progression within a Level from one increment to the next is to occur on the anniversary date of appointment, predicated upon an assessment of the requirements established in the employee's performance management plan from the previous 12 months and certification that performance has been satisfactory.

Performance is determined through an outcomes plan (or equivalent performance process otherwise named). The outcomes plan must, as a minimum, contain:

- a) a list of the performance outcomes and specific requirements for an individual employee according to the duties and responsibilities required by their role;
- b) be reviewed annually and involve at least one discussion between the employee and their manager;
- c) involve a discussion concerning the employee's training and development needs; and
- d) include a clear statement of outcomes including whether the employee's performance has met the required standards and agreed training or development

needs have been undertaken, whether salary progression will be approved and/or any action is being considered where underperformance is identified.

Your manager will advise of the time of the performance discussion and of any relevant issues pertaining to it. You will be allowed sufficient time to prepare and to participate in the discussion in a diligent manner.

You will not be disadvantaged by delay in the timing of your performance discussion. In the event your assessment is satisfactory, and you have been available to undertake performance discussions, you will progress to the next increment in your level on your anniversary date. This does not apply to appraisal points where a performance discussion – as detailed in 2.2.2.2 – is required to progress to the next increment (unless accelerated progression applies).

2.2.2.2. Appraisal points

To progress through appraisal points (as detailed in Schedule 1 – Pay Scale) you must:

- a) be assessed as meeting performance criteria set out in your outcomes plan;
- b) outcomes plans that relate to appraisal points are to specify performance requirements and goals that demonstrate performance at the upper end of the duties and responsibilities that are expected at the relevant Level; and
- c) demonstration of particular competencies or achievement of particular qualifications may be required in order for appraisal points to be satisfied.

2.3. What is the minimum rate I will be paid?

2.3.1. Salary structure

The pay scale is located in Schedule 1.

ICT 1 and Library Technician progression pathways are further detailed in Schedule 1.

2.3.2. Classification descriptors

2.3.2.1. Purpose

The purpose of classification descriptors is to categorise the wide range of occupations and different types of work across TasTAFE into distinct work value levels, to which salaries are aligned.

The classification standards are broad and describe the core features of work at each Level from seven perspectives called job components. The classification descriptors determine the appropriate classification for the duties assigned to employees.

2.3.2.2. Best fit

The job components have equal weight or effect and no description within a component has more importance than another.

Some descriptors, however, are more relevant in describing different types of work than others, and therefore will have more influence in classifying that work. Naturally, not each

and every descriptor applies to any individual job. These descriptors are appropriately used when particular job components and the overall theme or 'feel' of a particular band provides the 'best fit' to an employee's duties.

In using the descriptors, it is important to consider particular organisational arrangements, such as the reporting relationships above and below and specifically assigned duties.

2.3.2.3. Similarity of descriptors

The descriptors of some job components at different bands are similar because of shared requirements which mean the key differences in different work value levels lie in other features of the work.

2.3.2.4. Qualifications and essential requirements

Qualifications

We may determine that a qualification is essential according to the nature of the work to be undertaken. The qualification may be provided by a university, a vocational education organisation or a registered and accredited training provider.

Essential requirements

The employer may determine that certain requirements need to be met according to the nature of the work to be undertaken.

2.3.2.5. Classification descriptors and model

The work associated with each Level in the classification structure is described by way of seven job components. These components are:

- 1) Focus: The primary purpose of work at each Level, including the range of objectives and activities.
- 2) Context and framework: The operating environment and decision-making framework for work at each Level.
- 3) Expertise: The qualifications, knowledge and experience required for work at a particular Level.
- 4) Interpersonal skills: Oral and written communication skills and the ability to lead people and manage relationships.
- 5) Judgement: Critical thinking, problem solving and decision-making requirements of each Level.
- 6) Influence of outcomes: The influence and effect that work of a satisfactory standard would have on the outcomes required of each Level.
- 7) Responsibility for outcomes: The principal responsibilities of work at each Level.

Full classification descriptors are located in Schedule 3.

2.4. What are my superannuation benefits?

Super simplified

- a) superannuation is paid to your nominated fund fortnightly;
- b) superannuation rates are determined by legislation as detailed below; and
- c) if you are a member of the RBF contributory scheme at the time this Agreement comes into effect, you remain a member of the RBF contributory scheme.

Definitions for this clause:

"Complying superannuation scheme" means a superannuation scheme that is a complying superannuation fund for the purposes of the *Superannuation Industry (Supervision) Act 1993* (Cth).

"Fund" means a superannuation fund that is nominated under section 20(1) of the *Public Sector Superannuation Reform Act 2016 (PSSR Act)* (Tas) to be a default fund.

"NRP" means the normal rate of pay for an employee, namely an employee's annual rate of salary (as specified in Schedule 1 – Pay Scale) including applicable allowances.

"C%" means the relevant "charge percentage" specified in Section 19 of the *Superannuation Guarantee (Administration) Act 1992* (Cth).

"WP" means the workers compensation weekly payment paid to an employee.

"AS" means the actual average fortnightly salary paid to an employee while on parental leave.

"EmpCont" means additional employer superannuation contribution.

Superannuation arrangements for employees are in:

- a) the *Public Sector Superannuation Reform Act 2016* (the PSSR Act); and
- b) any regulations made for the purpose of the PSSR Act.

The employer will comply with all requirements of the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* (Cth). In the event no stapled fund or fund otherwise elected in writing by the employee applies, you are required to be a member of the fund, unless you elect in writing to us to become a member of another complying superannuation scheme.

If you had superannuation arrangements before the start of this Agreement, your superannuation arrangements will continue to remain in place.

2.4.1. Additional employer superannuation contributions

The provisions of this clause apply in addition to the rights, entitlements or obligations of us or you under the PSSR Act.

2.4.1.1. Accumulation scheme members

For any period of unpaid parental leave, in the first 12 months we will make fortnightly employer superannuation contributions on your behalf to the fund (or to another complying superannuation scheme if you have elected so in writing), at the following rate:

$$\text{EmpCont} = (\text{NRP}/26) \times \text{C}\%$$

For any period of paid parental leave that you take on half pay, as outlined in Clause 5.7 parental leave, we will make additional fortnightly employer superannuation contributions on your behalf to the fund (or to another complying superannuation scheme if you have elected so in writing), at the following rate:

$$\text{EmpCont} = 0.5 \times (\text{NRP}/26) \times \text{C}\%$$

For any period you are absent from work, either totally or partially due to a workers compensation claim, and you are in receipt of a workers compensation weekly payment, we will make additional employer superannuation contributions on your behalf to the fund (or to another complying superannuation scheme if you have elected so in writing), at the following rate:

$$\text{EmpCont} = \text{WP} \times \text{C}\%$$

2.4.1.2. Defined benefit scheme members

In this clause:

“Defined benefit scheme” means the RBF contributory scheme.

For any period of parental leave, in the first 12 months when you are not paid a salary or are paid salary of half your standard rate of pay and you elect not to pay, or you are precluded by the rules of the defined benefit scheme from paying your own contributions, we will make additional employer superannuation contributions on your behalf for that period to the fund (or to another complying superannuation scheme if you have elected so in writing), at the following rate:

$$\text{EmpCont} = [(\text{NRP}/26) - \text{AS}] \times \text{C}\%$$

For any period you are absent from work, either totally or partially due to a workers compensation claim and you are in receipt of a workers compensation weekly payment and you elect not to pay, or are precluded by the rules of the defined benefit scheme from paying your own contributions to the defined benefit scheme, we will make additional employer superannuation contributions on your behalf for that period to the fund (or to another complying superannuation scheme if you have elected so in writing), at the following rate:

$$\text{EmpCont} = \text{WP} \times \text{C}\%$$

2.5. What allowances and reimbursements may I receive?

2.5.1. Higher duties allowance (HDA)

If you act in a role at a higher classification, you will receive a higher duties allowance. This applies only when you are requested and agree to perform duties that are classified higher than your substantive level for a period of 5 or more consecutive working days.

You will be paid an allowance equal to the difference between your standard salary level and the minimum salary level of the duties being undertaken at the higher classification band.

If you act in a role at a higher classification for a period of 12 months or more, you will be eligible for applicable incremental progression within that higher classification, including in the event that any appraisal points apply.

2.5.2. Travel allowance and expenses

Except in the event where we organise and pay for accommodation, you will be paid a travel allowance if you are required to travel for work and require accommodation for work.

Travel allowance rates will be no less than those detailed in the relevant Australian Taxation Office determination.

2.5.3. First aid

If we appoint you to perform first aid duties and you are a current holder of an appropriate first aid qualification, you will be paid a first aid allowance as detailed in Schedule 2. If you are a part-time employee, this allowance will be paid pro-rata.

We will pay for the cost of first aid training if we appoint you to undertake first aid duties.

2.5.4. Correctional facilities allowance

If you work at a prison (including the Risdon Prison Complex, Ron Barwick Prison, Mary Hutchinson Women's Prison, a remand centre or associated administrative or training building), you will receive a corrections allowance of 7.5% of your base salary. This allowance is payable for all periods of paid leave. Eligibility is subject to having:

- a) regular contact with and a requirement to supervise inmates; and
- b) responsibility for the safety, containment and security of assigned inmates.

2.5.5. On-call allowance

If, by way of roster or direction, you are put on-call, you must be readily contactable and fit and able to resume duty.

If you are part of an on-call roster, you can claim an allowance (as detailed in Schedule 2) each day you are rostered on-call.

If you are required to respond to calls without being recalled to a worksite, the following applies:

- a) the on-call allowance is inclusive for time spent working on business-related matters for a call of 30 minutes duration or less;

- b) if there is a further call, or time spent working takes more than 30 minutes total per day, the relevant overtime rate and minimum call-out period of 2 hours will apply;
- c) any calls or time spent working that fall within the initial 2-hour period specified in (b) are included within that period and payment;
- d) if actual time worked exceeds 2 hours, the applicable overtime provisions in this agreement will apply.

No payment will be made to you for any period that you do not remain contactable or are not at the required degree of readiness to perform work when you are rostered.

2.5.6. Recall

If you are recalled to attend a worksite – outside of your usual finishing time – for overtime without receiving prior notice you will be eligible to receive recall payment as follows:

- a) for the first recall a minimum payment of 3 hours at the relevant overtime rate; or
- b) if time worked exceeds 3 hours, all further time worked will be paid at overtime rates.

This payment does not apply if the work is continuous (subject to a meal break of no more than 1 hour) with the completion or start of ordinary working time.

2.5.7. Testing and tagging allowance

If you are required to test and tag electrical appliances and extension cords to ensure compliance with Australian Standards, you will be paid an allowance as detailed in Schedule 2. You are required to successfully complete the testing and tagging course conducted by an accredited training provider as a prerequisite to undertaking these duties.

2.5.8. Camping allowance

If you are required to go on camp and remain away from home and stays overnight in a tent, standing camp, hut, shelter or other similar type of accommodation you will be eligible for camping allowance. This will be in lieu of other travel allowances. It will not apply when commercial accommodation has been provided. Rates are detailed in Schedule 2.

2.6. Can I access salary sacrifice arrangements?

You may elect to sacrifice a proportion of your salary to a complying superannuation scheme of your choice in accordance with the relevant legislation.

You may be able to access salary sacrifice arrangements for the purposes of:

- 1) making additional superannuation contributions;
- 2) obtaining a novated lease on a motor vehicle;
- 3) purchasing work-related computer software;
- 4) and other valid benefits as mutually agreed with TasTAFE.

If you are covered by the RBF defined benefit superannuation scheme, in addition to being able to salary sacrifice voluntary payments to a complying superannuation scheme of your choice, you will also be able to salary sacrifice the compulsory contribution. This will mean that the rate of employee contributions will be adjusted to reflect differing tax arrangements.

If we make a salary sacrifice arrangement with you, you can vary the arrangement by providing us with four weeks' notice of the intended change in writing.

If we make a salary sacrifice arrangement with you, we encourage you to obtain (at your expense) independent financial advice.

Other than normal processing costs, you will meet all costs associated with a salary sacrifice arrangement, including any fringe benefit tax.

Salary for all purposes, including superannuation for employees entering into a salary sacrifice agreement, will be determined as if a salary sacrifice agreement did not exist.

2.7. Supported wage system

Some people we employ may be eligible for a supported wage because of the effects of disability. This is detailed in Schedule 4 Supported Wage System.

2.8. Traineeships

We recognise the importance of supporting trainees to help develop Tasmania's future workforce.

Within the first 6 months following approval of this agreement, TasTAFE will create a tailored policy to support trainees in the organisation to apply in the event any trainees

are employed in the future. While this is being produced, the terms, conditions and rates for trainees will be per Schedule E of the *Miscellaneous Award 2020*.

2.9. Annualised salaries

Unless you are a casual employee, if your role is required for less than 52 weeks a year – by agreement in writing with the employer – you may annualise your salary over a 52-week period.

3. How and when you work

3.1. Probation period

All full-time and part-time employees are employed subject to a 6-month probation period.

Termination of employment within the probation period requires 1 week of notice by either party or payment in lieu of notice by us.

3.2. What types of employment are there?

On appointment, we will provide you (other than casuals) with a letter of appointment stating your classification; standard rate of pay and type of employment.

3.2.1. Full-time employment

If you are a full-time employee, you are engaged to work ordinary hours of 36 hours and 45 minutes (36.75 hours) a week.

Subject to other clauses in this Agreement, these hours are worked as 7 hours and 21 minutes each day.

3.2.2. Part-time employment

If you are a part-time employee, you:

- a) are employed to work less than the full-time hours of 36.75 a week;
- b) have predictable hours of work; and
- c) receive (on a pro-rata basis) the equivalent pay and conditions to full-time employees in the same classification.

3.2.2.1. Part-time pattern of work

When you start your employment with us, we will agree with you in writing a regular pattern of work that includes:

- a) the number of hours to be worked on each day of the week (the guaranteed hours);
- b) the times you will start and finish work each day; and
- c) when meal breaks may be taken and their duration.

You can change your pattern of work by agreement with us on a temporary or ongoing basis. Any changes must be in writing and cannot result in you working 36.75 hours or more ordinary hours a week. We will keep a copy of the original agreement and any variation of it and, at your request, give you a copy.

Unless otherwise mutually agreed, for any time worked in excess of your guaranteed hours agreed (or as varied) under this clause, you will be paid at the overtime rate in Clause 3.5.

Your regular pattern of work as agreed under this Clause (other than your guaranteed hours) may be changed by agreement.

The regular pattern of work of a part-time employee must not be changed from week to week or fortnight to fortnight.

3.2.3. Casual employment

If you are a casual employee, you will be paid:

- a) the minimum hourly rate for each ordinary hour worked for the classification in which you are employed; plus
- b) a loading of 25% of the minimum hourly rate.

The casual loading will not be paid for overtime hours worked.

As a casual employee, you will be paid for at least 3 consecutive hours of work on each occasion you are required to attend work.

Offers and requests for conversion from casual employment to full-time employment or part-time employment will take place as in the NES.

3.2.4. Fixed-term employment

A fixed-term employee is a person employed to work for a specified period of time on a particular task or project as stated in their letter of offer.

We may (if you agree) change your employment status from fixed-term to permanent.

Our use of fixed-term contracts will be compliant with the requirements of the Act.

3.3. What are my hours of work?

If you are a full-time employee, your ordinary hours of work are 36 hours and 45 minutes (36.75 hours) a week.

If you are a part-time employee, your ordinary hours of work are pro-rata.

3.3.1. Span of hours

Ordinary hours of work are worked continuously (except for meal breaks) on:

- a) any of the days from Monday to Friday (inclusive) between 7 am and 7 pm.

3.4. When can I take a break?

If you work 5 hours or more, you will receive an unpaid meal break of 30 minutes.

We may stagger break times if necessary to meet operational requirements. You are not required to work through your break. In the event you were requested to, you will be paid 200% of your Standard Rate of Pay for all time worked until the meal break is given.

Breaks during overtime are detailed in Clause 3.5.

3.5. How will I be paid if I am required to work overtime or at different times?

3.5.1. What is overtime?

We may require you to work reasonable overtime in accordance with this section (3.5) and the Act. You will be given reasonable notice of the requirement to work overtime where practicable.

Overtime is all approved time worked in excess of, and outside of, your normal ordinary hours of duty which includes:

- a) Time worked in excess of 7 hours and 21 minutes on any one day, Monday to Friday inclusive; or
- b) Time worked outside the span of hours of 7am to 7pm; or
- c) Any time worked on a Saturday, Sunday or Holiday with Pay (subject to any other clauses in this Agreement).

3.5.1(a) does not apply to employees to whom 4.2(c) flex time applies; these employees may work up to 10 hours in any one day as ordinary hours as detailed at 4.2.

Consistent with s62 of the Act, you may refuse to work additional hours beyond. In determining whether additional hours are reasonable or unreasonable, the factors outlined in the Act will be applied.

3.5.2. What do I get paid if I work overtime?

Monday to Friday: Overtime will be paid at the rate of 150% of the relevant minimum rate for the first 3 hours and 200% of the relevant minimum rate after 3 hours.

Saturday and Sunday: Overtime will be paid at the rate of 200% for all time worked.

Public Holidays: Overtime will be paid at the rate of 250% for all time worked.

If you are a casual employee working overtime, you will be paid 175% of the minimum hourly rate for the first 3 hours and 225% of the minimum hourly rate after 3 hours.

3.5.3. What breaks do I get during overtime?

If you work overtime on any day, you receive a meal break of 20 minutes without deduction of pay after each 4 hours of overtime worked.

3.5.4. What breaks apply after I have worked overtime?

If you work overtime, you receive a break of at least 10 hours plus reasonable travelling time between the end of one period of duty and the start of the next.

If you have not had a break of at least 10 consecutive hours, you will be released at the end of the overtime until you have had 10 consecutive hours off duty. This will be without loss of pay.

If you resume duty without having a break of 10 consecutive hours, you will be paid at 200% of the minimum hourly rate for a full-time employee or part-time employee (or at 225% of the minimum hourly rate for a casual employee) until you are released from duty. You can then be absent until you have had a break of 10 consecutive hours. This will be without loss of pay.

3.5.5. Can I have time off in lieu instead of being paid overtime?

We may agree with you in writing for you take time off instead of being paid overtime you have worked. We will not put undue influence or pressure on you in relation to a decision you make regarding taking time off instead of being paid overtime. On each occasion you work overtime and agree to take time off instead, a written agreement will be kept.

We will document:

- a) the number of overtime hours that apply and when those hours were worked;
- b) confirmation of mutual agreement that you may take time off instead of being paid for the overtime;
- c) the time off you can take is the same as the number of overtime hours worked (one hour for one hour);
- d) time off must be taken at a mutually agreeable time, determined by you and your manager; and
- e) if you do not take the time off as intended, that you will be paid for the overtime you worked at the rates specified in Clause 3.5.2.

We will keep a copy of any agreement under this clause as an employee record.

If, on the termination of your employment, time off for overtime worked by you to which this clause applies has not been taken, we will pay you for the overtime. This will be at the overtime rate applicable to the overtime when it was worked.

3.5.6. Meal allowance while working overtime

If you are required to work more than 1 hour of overtime after your ordinary time of finishing work and you have not been given 24 hours' notice, you will be either provided with a meal or paid a meal allowance of \$18.23.

If the overtime exceeds 4 hours, a further meal allowance of \$14.60 will be paid if a meal is not supplied.

3.5.7. Work outside of ordinary hours

All work by you outside of ordinary hours (which is not overtime) is paid at the following rates:

	Full-time and part-time employees (% of minimum hourly rate)	Casual employees (% of minimum hourly rate)
Monday to Friday (outside 7.00 am – 7.00 pm)	115	140
Saturday (all day)	150	150
Sunday (all day)	200	200

If you are required to work on a Sunday, you will be paid a minimum of 4 hours' pay at the appropriate rate.

3.6. How will I be paid if I am requested to work on a public holiday?

If applicable to your employment category and pattern of work, you receive all statutory and government holidays specified in s4, s5 and Schedule 1 and 2 of the *Statutory Holidays Act 2000* (Tas) without loss of pay.

For the avoidance of doubt, this includes Easter Tuesday.

You will further be eligible for any other day that is declared or prescribed as a public holiday or bank holiday in Tasmania.

If you are required to work on a public holiday, all work will be paid at 250% (double time and a half) of your standard rate of pay.

If you are required to work on a public holiday, you will be paid a minimum of 4 hours' pay at the appropriate rate.

With mutual agreement, you may substitute another day for a day that would otherwise be a public holiday under the NES or *Statutory Holidays Act 2000* (Tas). If you work a substituted day, you will be paid at your standard rate of pay.

If we ask you to work on the substitute day you will be paid as if you worked on a public holiday unless another day is mutually agreed and taken in substitution.

3.7. Review of the Education Manager role

A working party of TasTAFE, union and staff representatives will be formed to review the role and responsibilities of an Education Manager and the relationship with Education Team Leaders.

The review is to commence within the first 12 months of the Agreement being endorsed and will be completed prior to the expiry of this Agreement.

The scope of the review will be:

- a) to understand the requirements, scope and operational duties of the Education Manager role in addition to how their role operates within the broader management of delivery teams.

This review will be used to inform whether Education Manager positions should remain in the TasTAFE General Employees Enterprise Agreement or be transferred to the TasTAFE Teaching Employees Enterprise Agreement in the future to form part of a stronger career pathway for teachers into management.

4. Making it work for you

4.1. How can I work away from the office?

Working from home arrangements are specified in TasTAFE's Working from Home Guidelines.

4.2. Flex time for day work

This clause applies to full-time employees and part-time employees only.

The application of the part-time pattern of work at Clause 3.2.2.1 does not stop you from accessing flex time as detailed here. These provisions are applied pro-rata for part-time employees.

We may agree to work ordinary hours according to flex time arrangements, to which the following applies:

- a) the ordinary hours are to be worked between 7 am and 7 pm on any day Monday to Friday and include core hours of 10am to 12pm and 2pm to 4pm;
- b) during core hours absences from the workplace by employees are to be kept to a minimum;
- c) up to 10 hours may be worked as ordinary time on any given day;
- d) ordinary hours are reconciled over a 4-week cycle; and
- e) a maximum of up to 10 hours in credit or debit of 10 hours may be carried forward from one 4-week cycle to the next.

4.3. Request for flexible working arrangements

You may request a change in working arrangements.

This clause applies if you make a request for a change in working arrangements under Section 65 of the Act.

This clause supplements or deals with matters incidental to the NES and is in addition to Section 65 of the Act.

We can only refuse a Section 65 request for a change in working arrangements on reasonable business grounds as defined therein. Consistent with s65B of the Act, you may apply to Fair Work to arbitrate regarding your request in the event we cannot agree.

4.3.1. Responding to your request

Before responding to a request made under Section 65, we will discuss the request with you and genuinely try to reach agreement on a change in working arrangements. We will try to reasonably accommodate your request in regard to:

- a) your needs because of your circumstances;
- b) the impact for you if changes are not made; and

- c) any reasonable business grounds for refusing the request.

4.3.1.1. What our written response will include if we refuse your request

If we refuse your request and cannot reach an agreement with you, our written response will include details of the reasons for the refusal, including the business grounds for the refusal and how they apply.

We will also indicate the following in our written response:

- a) if there are any changes in working arrangements we can offer you to better accommodate your circumstances; and
- b) describe what changes we can make if we can offer you any changes in working arrangements.

4.3.1.2. What our written response will include if a different change in working arrangements is agreed

If mutual agreement is reached on a change in working arrangements that differs from that initially requested by you, then we will provide you with a written response to your request describing the agreed change in working arrangements.

4.4. How can I vary this Agreement to suit my needs?

4.4.1. Individual flexibility agreements

Through mutual agreement, the terms relating to any of the following may be changed to meet the genuine needs of both you and TasTAFE:

- a) arrangements for when work is performed; or
- b) overtime rates; or
- c) penalty rates; or
- d) allowances.

An agreement must:

- a) be genuinely made and without coercion or duress by TasTAFE;
- b) only be made after you have started employment with us;
- c) be in writing and include:
 - i. names (your name and TasTAFE);
 - ii. the conditions that are to be varied and how they are varied;
 - iii. how the agreement results in you being better off overall at the time the agreement is made; and

- iv. the date the agreement will start.
- d) the agreement will be signed by us and you (if you are under 18 years of age, it will be signed by your parent or guardian).

If we wish to initiate the making of an agreement, we will:

- a) give you a written proposal; and
- b) ensure you understand the proposal.

An agreement will result in you being better off overall at the time the agreement is made.

An agreement only requires the approval or consent of us and you (and your parent or guardian if you are under 18). We will keep a copy of the agreement on your file and provide a copy to you.

An agreement may be cancelled at any time in mutual written agreement or by giving 4 weeks' written notice to the other party.

4.5. Right to disconnect

You are not required to monitor, read or respond to emails, phone calls or any other kind of communication from us outside of your hours of work (including during periods of leave) unless arrangements have been agreed with you. This agreement will be in writing (at a minimum, via email).

5. Time out

5.1. What annual leave do I get?

If you are a full-time employee, you receive 4 weeks of paid annual leave a year.

Your rate of pay during annual leave is the standard rate of pay you would have received for the ordinary hours of work during the time of annual leave.

If you are a part-time employee, you receive annual leave as a proportion to the hours worked compared to a full-time employee (pro-rata).

If you are a casual employee, you do not receive paid annual leave.

All annual leave must be approved before it begins.

We may direct you to take leave in the event your accrual is at least 8 weeks. This direction must be reasonable, per s 93(3) of the Act.

With mutual agreement in writing, we may cash out up to 2 weeks of accrued paid annual leave in a 12-month period to you. This agreement must not result in your remaining accrued entitlement to paid annual leave being less than 4 weeks. This agreement must be in writing and will be at least the full amount that would have been payable to you had you taken the leave you have cashed out.

5.1.1. Close down periods

We may specify a close down period each year, taking place between Christmas and New Year's Day. During this time we will close down our operations. We will give you notice as soon as practicable of our intention to close down. Unless mutually agreed with the majority of employees, you will receive at least 28 days notice.

All directions regarding close down will be made in writing.

In the event the CEO determines that TasTAFE will close for the period beginning Christmas Day and ending New Year's Day (including days that are not holidays with pay per this Agreement), employees who work in those areas that are closed will be entitled to 3 close down days with pay to cover those usual working days without deduction from annual leave.

If you are eligible to receive these days, but are directed to work on any of those 3 close down days, the day will be carried forward as an additional day off in lieu. This day off in lieu must be used by 30 June of the next calendar year or it will be forfeit.

5.1.2. Sickness and compassionate circumstances during annual leave

If you are on annual leave and get sick, you may apply to have your annual leave re-credited. A medical certificate from a registered health practitioner, in addition to a sufficient personal leave balance, is required.

If you are on annual leave and experience circumstances that qualify for compassionate leave under Clause 5.5, you may apply to have your annual leave re-credited. If requested, evidence that would satisfy a reasonable person may be required.

5.2. Can I purchase more leave?

We want to help you balance work and personal commitments where possible. To do this, you can (subject to approval) purchase additional leave of up to 8 weeks over 12 months.

Purchased leave spreads the cost of the additional leave across a period of up to 12 months (26 pays), reducing your pay accordingly.

5.2.1. Eligibility

All permanent employees with at least 1 year of service can apply for purchased leave. Your manager (appropriately delegated) must approve the purchase of leave.

If you currently have annual leave (more than 20 days) or long service leave (more than 65 days), you are unable to apply for purchased leave unless you have approved arrangements to clear your excess leave, such as a planned long-term break.

5.2.2. Conditions

You may purchase additional leave of at least 1 week in 1-week blocks up to a maximum of 8 weeks.

Approval is for 12 months and a new application must be made each year.

You are unable to have secondary purchased leave applications. All outstanding deductions must be repaid before a new application starts.

Deductions from salary will start in the first available pay period after approval.

Any permanent salary increases or decreases (such as increase, increment, promotion, reclassification, allowances or transfer) will affect the total cost of the purchased leave if leave is taken at a different salary than it was purchased at. These changes in your salary may result in the need to adjust the total amount or cost of your purchased leave as necessary.

Purchased leave deductions will be reconciled at the end of the application period:

- a) any overpayment caused by you taking purchased leave at a higher salary than it was purchased at will be deducted from the next available pay; and
- b) underpayments due to a reduction in salary or unused purchased leave at the end of the application period will be refunded in the next available pay.

Purchased leave cannot be rolled over from one period to the next. Any under or overpayments must be reconciled at the end of the agreed purchased leave payment period.

The cost of the additional leave (including maintenance of normal superannuation contributions) will be by fortnightly pre-tax deduction.

Purchased leave can be taken in conjunction with all leave provisions. Where a public holiday falls within a period of purchased leave, the public holiday is not counted as a day of leave.

Purchased leave cannot be accessed at half pay.

If you take purchased leave, and your employment ends before you have paid for any leave already taken, you agree that we will deduct the amount you still owe us from your final payment (and we will reimburse you for any untaken purchased leave).

5.3. What long service leave do I get?

The *Long Service Leave (State Employees) Act 1994* (Tas) applies to you as described in the *TasTAFE (Skills and Training) Business Act 2021* (Tas).

If you have completed at least 10 years of continuous employment with us, you will receive long service leave. This will be calculated in accordance with the *Long Service Leave (State Employee) Act 1994* (Tas).

5.4. What personal leave do I get?

Personal leave includes sick leave and carer's leave. It applies if you are not fit for work because of personal illness or injury. It also applies if you need to provide care or support to a member of your immediate family or household because of illness, injury or unexpected emergency.

If you are a full-time employee, you receive 20 days of personal leave a year. This is cumulative and will accrue with each pay period. There is no cap on the amount of personal leave you can accrue.

If you are a part-time employee, you receive personal leave on a pro-rata basis.

To use personal leave, you need to:

- a) notify your manager as soon as possible and specify the likely length of the absence;
- b) provide a medical certificate or a statutory declaration for all absences of 3 consecutive days or more; and
- c) if you take 5 days of personal leave without a medical certificate in 12 months of continuous paid employment (including periods of paid leave), supply a medical certificate or – if not reasonably practicable to provide a medical certificate – statutory declaration for remaining personal leave you access; and
- d) if we request it, provide us with evidence that would satisfy a reasonable person the leave has been taken for a valid reason as detailed in this clause.

5.4.1. Unpaid carer's leave

If you have used your paid personal leave, you may receive 2 days of unpaid carer's leave for each time a member of your immediate family or household requires care or support because of:

- a) a personal illness or injury; or
- b) an emergency.

This clause applies to all employees, including casuals.

We may approve additional unpaid carer's leave upon application.

5.5. What compassionate leave do I get?

Compassionate leave is leave in the event of a life-threatening illness, injury or death of a member of your immediate family or household, including the stillbirth or miscarriage of your child.

If you are a full-time employee, you receive compassionate leave of up to 10 days of paid leave for each permissible occasion.

If you are a part-time employee, you receive paid leave on a pro-rata basis.

If you are a casual employee, you receive unpaid leave.

We may request evidence that supports the reason for the leave. A failure to provide notice or (if required) evidence that would satisfy a reasonable person to support the reason for the leave, means you will not receive the leave.

We acknowledge you may have important relationships outside of those in your immediate family or household that are not captured by this clause, and we will consider an application for compassionate leave in those circumstances on a case-by-case basis.

5.6. What support is available for family and domestic violence?

Family and domestic violence is violent, threatening or other abusive behaviour by a member of your immediate family, a member of your household or your current or former intimate partner that seeks to coerce or control you and causes you harm or to be fearful.

We will support you if you experience family and domestic violence. We will never detail access to family and domestic violence leave on payslips and will not disclose the nature of the leave.

If you are a full-time employee, you receive 20 days of paid family and domestic violence leave a year.

If you are a part-time employee, you receive paid leave on a pro-rata basis.

If you are a casual employee, you receive 10 days of paid leave a year.

We may ask for evidence, which can include:

- a) documents issued by the police;
- b) documents issued by a court;
- c) family violence support service documents; or
- d) a statutory declaration.

Family and domestic violence leave is credited at the beginning of the calendar year and does not accumulate or accrue.

TasTAFE will seek to provide further support for those experiencing family and domestic violence through Contact Officers for domestic and family violence. TasTAFE will nominate Contact Officers, who will be trained in family violence and related issues such as sensitivity, privacy, raising awareness, providing access to support and referral services, proposing reasonable adjustments to work arrangements, family violence risk assessment and risk management.

TasTAFE will notify employees of the name of the nominated Contact Officer(s). You may seek their support – in addition to that of your supervisor, union, HR or colleague – throughout this process and they may liaise with us on your behalf if appropriate.

5.7. What parental leave do I get?

5.7.1. While pregnant

If you are pregnant, you may be required to take parental leave within 6 weeks before the birth if you are unable to provide us with a medical certificate stating:

- a) you are fit for work; or
- b) you are fit for work, but it is inadvisable you remain in your position.

5.7.1.1. Transfer to a safe job

You may transfer to a safe job during your pregnancy if we receive a medical certificate stating you are fit for work, but it is inadvisable you remain in your position. Paid, no safe job leave, may apply if we cannot find an appropriate safe job.

5.7.2. Stillbirth, death or hospitalisation of a child

In the event your child is stillborn, you may be eligible to receive unpaid parental leave. You will also have access to compassionate leave in Clause 5.5.

In the event of hospitalisation of your child immediately after their birth, through mutual agreement, you may choose to not take unpaid parental leave while the child is in hospital.

5.7.3. Loss of pregnancy

You have access to compassionate leave in Clause 5.5. You may also be eligible for unpaid special maternity leave as in the NES.

5.7.4. Paid parental leave

Full-time employees and part-time employees receive paid parental leave. Casual employees do not receive paid parental leave.

If you are a parent of a newborn child, you are eligible for paid parental leave. You will receive 18 weeks of paid parental leave in the event of the birth or adoption of a child. Upon approval, this may be 36 weeks at half pay.

If you are the birthing parent, you remain eligible for this leave if the pregnancy terminates after 20 weeks.

The rate of pay for the period of paid parental leave will be calculated at your standard rate of pay.

Paid parental leave operates differently to unpaid parental leave and entitlements differ depending on who has responsibility for the care of the child. Unpaid parental leave will operate as in the NES.

5.7.4.1. Applying for and taking parental leave

You may apply for and take parental leave in accordance with the NES. The notice and evidence requirements are in Section 74 of the Act.

5.7.5. Unpaid parental leave

Except as specified in the NES, you may access paid leave at the same time as unpaid parental leave.

If you are an eligible (per the NES) full-time employee or part-time employee, you will receive 12 months of unpaid parental leave.

You may take up to 100 days of flexible unpaid parental leave during the 24-month period starting on the date of birth or adoption of a child.

If you are a casual employee, you must meet the following criteria to receive 12 months of unpaid parental leave:

- a) you have been working for us regularly for at least 12 months; and
- b) you have a reasonable expectation of continuing work with us on a regular basis, had it not been for the birth or adoption of a child.

5.7.5.1. Extending or reducing your unpaid parental leave

If you have not fully used your initial period of unpaid parental leave, you may extend your period of parental leave a further 12 months, bringing the total unpaid parental leave period to 24 months.

If we agree, you may also reduce your period of unpaid leave.

5.7.6. While on parental leave

You may request and take keep-in-touch days leave in accordance with the NES.

If we make a decision that will have a significant effect on the status, pay or location of your pre-parental leave position, we will take all reasonable steps to give you information about (and an opportunity to discuss) the effect of the decision on that position.

5.7.7. Return to work

If you take parental leave, you may return to work in accordance with the requirements in the NES. The notice of return to work after parental leave is in the NES. We may employ replacement employees for the period of parental leave in accordance with the NES.

5.7.8. Grandparent as the primary caregiver

After 12 months of continuous service, if you are (or will be) the primary caregiver at the time of the birth or adoption of your grandchild, you receive 16 weeks of paid grandparent leave that forms part of the entitlement to 52 weeks of unpaid grandparent leave.

To be eligible for the paid and unpaid grandparent leave, you must be the person who meets the child's physical needs more than anyone else from the time of birth or adoption.

The period of leave begins at the time of birth or placement of the child and is taken in a continuous period.

The paid component of grandparent leave is paid for at the standard rate of pay.

All other conditions for a primary caregiver entitled to parental leave applies to you if you are the primary caregiver from birth or placement.

5.7.9. Adoption leave

5.7.9.1. Paid adoption leave

After 12 months of continuous service, an employee identified as the adoptive parent at the time of the adoption of their child is entitled to 18 weeks' paid adoption leave continuous from the day of placement.

5.7.9.2. Unpaid adoption leave

An employee identified as the primary caregiver at the time of the adoption of their child is entitled to 52 weeks' unpaid parental leave. This will be reduced by any amount of paid adoption leave accessed by that employee in accordance with this subclause.

Adoption leave applies only if the child to be adopted is under 16 at the day of placement; has not already lived continuously with you for 6 months or more before the date of placement; and is not your or your spouse's child.

Unpaid leave may be utilised in order to attend compulsory interviews or examinations that are part of the adoption process.

The rate of pay for an employee during the period of the paid adoption leave is the standard rate of pay as defined in 1.5.

5.7.9.3. Notice requirements

You are to notify us at least 10 weeks in advance of the date of commencement of adoption leave. We may agree to an alternative timeframe if there are circumstances beyond your control relating to the adoption date. In the event adoption does not proceed as planned, the leave will not be applicable.

You are further to provide evidence that would satisfy a reasonable person of your eligibility for adoption leave and whether you are the primary caregiver.

5.7.10. Lactation breaks and facilities

So you can better combine the needs of work and parenting, you will receive reasonable time and access to suitable facilities at TasTAFE to express milk, breastfeed or carry out any other activity necessary for breastfeeding and expressing while at work.

5.8. Family and diversity leave

Your eligibility for family and diversity leave will depend on your circumstances and whether they fit the listed categories below.

Depending on your circumstances, we may grant paid leave up to the maximum amount listed for each category. The total amount of paid leave under family and diversity leave categories in any calendar year is 30 days. If requested, you will need to supply evidence that would satisfy a reasonable person regarding your eligibility for leave. Applicable notification requirements will be communicated to you by your manager or a People, Safety and Culture Team Member.

Family and diversity leave is paid at your standard rate of pay and will not be paid out on termination.

5.8.1. For foster and kinship carers

If you are a legally recognised foster carer or kinship carer, up to 10 days of paid leave a year (non-cumulative) may be accessed to support you to fulfil responsibilities uniquely associated with this important role. The leave is not intended to supplement other forms of leave that may be applicable (such as personal leave) but for specific purposes associated with foster or kinship care (including but not limited to):

- a) meeting and attending appointments with foster care providers, workers or birth families;
- b) providing formal crisis/emergency care; and
- c) providing formal respite care.

5.8.2. For surrogacy

If you have completed 12 months of continuous service and have entered a formal non-commercial surrogacy arrangement to give birth to a child in accordance with the *Surrogacy Act 2012* (Tas), you receive up to 6 weeks (30 work days) consecutive of paid leave in relation to the birth of the child. This leave is non-cumulative.

5.8.3. Affirming gender

We recognise the importance of providing a supportive environment if you affirm your gender.

If you wish to affirm your gender to a gender that is different to your birth sex, you may take up to 4 weeks of paid gender affirmation leave (in a single block, or one or more blocks) and 48 weeks of unpaid gender affirmation leave to undertake the process of affirming your gender. This leave is non-cumulative.

The process of affirming your gender may involve a change of name, address or pronouns, adopting the dress and style of your gender identity, hormone replacement therapy and sex reassignment/other directly related surgeries. The 48 weeks of unpaid gender affirmation leave is inclusive of any paid gender affirmation leave or other paid leave.

If you are affirming or considering affirming your gender, you can also access our confidential, professional counselling and support services through our employee assistance program partners.

You must give your manager as much notice as possible, but at least 4 weeks' notice of when you would like to take your gender affirmation leave. If you cannot give at least 4 weeks' notice, you and your manager can agree that you will give less than 4 weeks' notice.

During any paid gender affirmation leave, you will be paid for the ordinary hours you would otherwise have worked.

You can take personal leave, annual leave or long service leave during the gender affirmation leave, but this will not extend the period of the gender affirmation leave.

5.8.4. Disability leave

If you have a disability, you receive up to 5 days of paid disability leave a year. The leave is to enable you to be absent from duty for the purpose of activities (including attending appointments) associated with your long-term physical or psychological disability. The leave is available to access from the first day of appointment and is non-cumulative, not paid out on termination of employment and is paid at your standard rate of pay.

You may also be eligible for accessibility leave per TasTAFE's Accessibility Leave Policy.

5.8.5. Cultural leave

If you are an Aboriginal or Torres Strait Islander employee, you receive up to 5 days of paid Cultural leave a year. The leave is to enable you to be absent from work to engage in Cultural practices and meet Cultural expectations as an active Aboriginal or Torres Strait Islander community member. This may include participating in significant Cultural events and activities, complying with Cultural observations and/or fulfilling Cultural observations. Cultural leave is available to access from the first day of appointment and is non-cumulative, not paid out on termination of employment and is paid at your standard rate of pay.

5.8.6. Reproductive leave

You receive up to 10 days of paid leave due to menstruation, perimenopause, menopause, polycystic ovarian syndrome and endometriosis, IVF and other assisted reproductive health services. Reproductive leave is available to access from your first day of appointment and is non-cumulative and not paid out on termination of employment.

5.9. What jury leave do I get?

If you are required for jury service, you will be granted the necessary leave without loss of pay. You can claim out-of-pocket expenses as determined by the court.

You must advise us as soon as the jury duty notification is received.

If you are required for jury service but are on annual leave, you will be credited with the time of annual leave that was occupied by the jury service. You can take the annual leave at the end of the original period of leave or at a later date by agreement with us.

5.10. Community service leave

You can take paid community service leave while engaged in a voluntary emergency management activity, including reasonable travel and rest time. There is no limit on the amount of community service leave you can take. If requested, you may be required to provide evidence to support this leave that would satisfy a reasonable person.

You engage in a voluntary emergency management activity if:

- a) the activity involves dealing with an emergency or natural disaster;
- b) you engage in the activity voluntarily;
- c) you were either requested to engage in an activity, or it would be reasonable to expect that such a request would have been made if circumstances had permitted; and
- d) you are a member of (or have a member-like association with) a recognised emergency management body.

If you take community service leave, you will provide:

- a) notice of the absence as soon as possible (this may be after the leave starts); and
- b) the expected length of absence.

5.11. What leave do I get if I am in the Australian Defence Force?

If you are a permanent employee who is a part-time member of any of the Australian Defence Forces, you receive up to 20 days of paid defence force leave a year for:

- a) undertaking initial training upon becoming a part-time member of Australia's Defence Forces; and
- b) undertaking Australian Defence Force service.

You may also receive unpaid leave if required to perform additional Australian Defence Force service in excess of 20 days a year. We will further consider applications for additional paid leave for clauses under a) and b).

You will be required to provide a certificate or evidence of eligibility before accessing both paid and unpaid leave. This must be signed by a suitably authorised representative of the Australian Defence Force.

Defence force leave will count as continuous service. However, where the period of absence is more than 6 months in any year, it is not to be taken into account in accruing leave.

If you are a fixed-term employee who has been engaged continuously for 3 months, you are also eligible for this leave, but any period of defence force leave does not extend the end date in your letter of offer.

5.12. Leave without pay

Leave without pay is governed per TasTAFE's Leave Without Pay Policy.

6. We need to talk

6.1. What is the process for dealing with disputes?

- a) If you raise a dispute about a matter under this Agreement or in relation to the NES, your manager will try to resolve the dispute through discussion with you (and any other employees concerned) in the first instance.
- b) If the dispute is not resolved by discussion with you (and any other employees concerned) in first instance, senior levels of management will then try to resolve it in a timely manner through discussion with you (and any other employees concerned).
- c) If the dispute is unable to be resolved and all appropriate steps have been taken under a) and b) above, a party to the dispute may refer it to the FWC.
 - i. The parties may agree on the process to be followed by the FWC in dealing with the dispute. Options may include mediation, conciliation or consent arbitration.
 - ii. If the dispute remains unresolved, the FWC may use any method of dispute resolution it is permitted by the Act to use and it considers appropriate for resolving the dispute.

A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under this clause.

While procedures are being followed under this clause in relation to a dispute:

- a) work must continue in accordance with this Agreement and the Act; and
- b) you must not unreasonably fail to comply with any direction given by us about performing work, whether at the same or another workplace, that is safe and appropriate for you to perform.

This clause is subject to any applicable work health and safety legislation.

7. Changes in the workplace

7.1. When will I be consulted about changes?

7.1.1. Consultation about major workplace change

If we decide to make major changes in the production, program, organisation, structure or technology of TasTAFE and it is likely to have significant effects, we will give notice of the change to all employees (and their representatives) who may be affected and discuss with affected employees (and their representatives):

- a) the introduction of the change;
- b) the likely effects on employees; and
- c) measures to avoid or reduce the adverse effects of the change on employees.

We will start discussions as soon as practicable after a definite decision has been made.

If you are affected by the change, we will provide in writing to you (and your representative) all relevant information, including:

- a) the nature of the change;
- b) the expected effect on you; and
- c) any other matters likely to affect you.

We will not share confidential or commercially sensitive information.

We will promptly consider matters raised by you or your representative about the change in the course of the discussion under this clause.

Significant effects on you may include:

- a) termination of employment;
- b) major changes in the composition, operation or size of our workforce or in the skills required;
- c) loss of (or reduction in) job or promotion opportunities;
- d) loss of (or reduction in) job tenure;
- e) alteration of hours of work;
- f) the need for you to be retrained or transferred to other work or another location; or
- g) job restructuring.

Where this Agreement makes provision for alteration of any of the matters defined at (a) – (g) above, the alteration is considered to not have significant effect.

7.1.2. Consultation about changes to rosters or hours of work

If we propose to change your regular roster or ordinary hours of work (aside from employees whose working hours are irregular, sporadic or unpredictable), we will consult with you and your representative.

For consultation, we will:

- a) provide you and your representative information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- b) invite you to give your view about the impact of the proposed change (including any impact on your family or caring responsibilities) and also invite your representative to give their views about that impact.

We will consider any views given under this clause.

This is to be read in conjunction with any other provisions of this Agreement concerning the scheduling of work or the giving of notice.

7.2. What happens if my role is redundant?

In the event of redundancy, and following consultation with you in line with 7.1.1 regarding this major change, the following will apply.

7.2.1. Redeployment

Our priority will be to identify suitable alternate duties in the event your position is redundant.

If you are transferred or redeployed within TasTAFE, you do not receive redundancy payment. This will be at all times consistent with requirements of s120 of the Act.

If (because of redundancy) you are transferred to new duties and a lower standard rate of pay applies, we will give you 4 weeks' notice of the change paid at your higher rate of pay.

7.2.2. Calculation of redundancy repayment

In the event of termination due to redundancy, you will receive the below redundancy payment. Redundancy payments are based on your total continuous full-time equivalent employment years of service.

The total redundancy payment will be as follows:

- a) 4 weeks' salary (pro-rata for part-time employees); and
- b) 2 weeks' pay for each year of service.

Up to a maximum total payment of 48 weeks' pay.

If you are a full-time employee, you receive the full 4-week pay component.

If you are a part-time employee, you receive a payment based on 4 weeks' pay multiplied by the greater of the following:

- a) your full-time equivalent percentage based on your contracted hours of employment as at the date of separation; or
- b) your full-time equivalent percentage based on the average hours worked in the 12-month period immediately before the date of separation.

The minimum total redundancy payment if you are a full-time employee is 16 weeks' pay. The minimum total payment if you are a part-time employee is the greater of the calculation above or a payment based on 16 weeks at your part-time weekly pay.

For this clause only, a week's pay means your standard rate of pay inclusive of any higher duties allowance you receive at separation, as well as any other allowances in this Agreement you would receive were you to be absent on annual leave.

Any periods of employment with us or the Tasmanian State Service for which a redundancy, termination payment or workplace renewal incentive payment has been made does not count as service.

If you are a casual employee or have less than 12 months of continuous service with us, you will not receive a redundancy payment.

7.2.3. Within the notice period

If you are given notice of termination due to redundancy, you can take up to one day a week during the notice period to seek other employment without loss of pay. We may ask you for proof of attendance at an interview to support this time. If we ask you for proof and you do not provide it, you will not receive payment for the time taken.

If you have been given notice of termination due to redundancy, you may choose to not work the notice period and still receive your redundancy benefits and payments under 7.2 as if you had worked the notice period.

8. Leaving TasTAFE

8.1. How much notice is needed if I resign or I am terminated?

We may terminate your employment by the giving of written notice in accordance with the following:

From start of employment and up to the completion of 3 years	2 weeks' notice
3 years and up to the completion of 5 years	3 weeks' notice
5 years and over	4 weeks' notice

In addition to the period of notice above, if you are 45 years or older with 2 or more years of service, you receive an extra week of notice.

Payment in lieu of the period of notice must be made if the appropriate period of notice is not given or in circumstances where it is agreed the period of notice is to be waived and payment in lieu substituted.

If you choose to resign, we require a minimum of 2 weeks of notice in writing. This allows for an effective handover to occur. For this reason, planned leave may not be approved within the notice period.

If we have given notice of termination under this clause, you can take one day off during the notice period without loss of pay for the purposes of seeking other employment. Any time off is to be taken at times that is convenient to you after consultation with us.

8.2. Summary dismissal

We have the right to dismiss you for serious misconduct, as defined per the relevant *Fair Work Regulations 2009*. If this happens, your salary will be paid up to the time of dismissal only. In the event of summary dismissal, the notice period will not be paid.

8.3. Abandonment of employment

You must inform us when you are absent from work. You shall be deemed to have abandoned employment in the event of your absence from work for 5 consecutive working days without prior written notice and/or explanation, and when we have made reasonable attempts to contact you. If you are deemed to have abandoned employment, you will receive payment for work up to the end of the last day worked in accordance with the NES.

8.4. Payment of termination of employment

If your employment is terminated for any reason (by you or by us), we will pay you as soon as practicable and no later than 7 days after your employment ends.

9. Other arrangements

9.1. Union matters

We recognise the right of unions to represent employees who are members (or eligible to become members) of unions. We acknowledge your right to be represented by (and meet with) your union representative in the workplace.

Unions can exercise their right of entry as in the Act.

We will allow you (subject to appropriate authorisation) to make a deduction from salary on each pay day to a union in respect of an amount of money specified in such authorisation.

9.1.1. Union delegates

Subject to any conditions herein, union workplace delegates will have access to up to 10 days of paid leave a year for the following purposes:

- a) to attend union-endorsed union courses and attend union conferences, including time associated with travel;
- b) to represent the interests of members in industrial tribunals, prepare before negotiations with management and participate in consultative committees; and
- c) to participate in union forums and committees (such as national conferences, executive meetings and branch committees).

Access to leave under (a) & (c) requires 4 weeks' notice and is subject to application, approval and consideration of operational requirements.

Access to leave under (b) requires at least 48 hours' notice, though we may waive this requirement.

Access to leave without pay so a union delegate can work with a union will be considered on a case-by-case basis.

9.1.2. Noticeboards

We permit noticeboards of suitable sizes to be erected in our campuses and training facilities to allow communication on workplace issues between employees and their unions.

9.2. Transitional arrangements

Triennium sick leave

Upon registration, all employees on the triennium sick leave scheme will transfer to the personal leave system as specified in this Agreement.

Those employees will be translated to a personal leave entitlement that is the equivalent of 20 days annual accrual for their length of service minus any personal leave taken.

Translation

Upon registration of this Agreement, all covered employees will transition from the existing pay scale to the new proposed pay scale detailed at Schedule 1. The associated translation is detailed below.

Library Technicians and Technicians (ICT) will – on translation – continue to operate within their updated progression path as detailed in Schedule 1.

Employees previously employed under the Professional stream will translate to the next equivalent Level (and increment) per Schedule 1 and then progress consistent with this Agreement.

Translation table

Movement from current Band to new classification for the General stream, reflecting new start Level through to top of Level

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B1R1L1	1.1	
B1R1L3	1.1	
B1R2L2	1.1	
B1R2L4	1.1	
B1R2L5	1.1	
B2R1L2	1.1	
B2R1L3	→	Level 1.1
B2R1L4	→	Level 1.2
B2R1L5	→	Level 1.3
B2R1L6	→	Level 1.4
B3R1L2	2.1	
B3R1L3	→	Level 2.1
B3R1L4	→	Level 2.2
B3R1L5	→	Level 2.3
B3R1L6	→	Level 2.4
B4R1L2	3.1	
B4R1L3	→	Level 3.1
B4R1L4	→	Level 3.2
B4R2L2	→	Level 3.3

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B4R2L3	→	Level 3.4
B4R2L4	→	Level 3.5
B4R2L5	→	Level 3.6
B5R1L2	4.1	
B5R1L3	→	Level 4.1
B5R2L1	→	Level 4.2
B5R2L2	→	Level 4.3
B6R1L2	5.1	
B6R1L3	→	Level 5.1
B6R1L4	→	Level 5.2
B6R2L2	→	Level 5.3
B6R2L3	→	Level 5.4
B6R2L4	→	Level 5.5
B6R2L5	→	Level 5.6
B7R1L2	6.1	
B7R1L3	→	Level 6.1
B7R2L2	→	Level 6.2
B7R2L3	→	Level 6.3
B8R1L2	7.1	
B8R1L3	→	Level 7.1
B8R2L2	→	Level 7.2
B8R2L3	→	Level 7.3

Movement from current Band to new classification for the Teacher Assistant stream, reflecting new start Level through to top of Level

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B2R1L2	1.1	
B2R1L3	→	Level 1.1
B2R1L4	→	Level 1.2
B2R1L5	→	Level 1.3
B2R1L6	→	Level 1.4

Movement from current Band to new classification for Library Technician stream, reflecting new start Level through to top of Level

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B3R1L2	2.1	
B3R1L3	→	Level 2.1
B3R1L4	→	Level 2.2
B3R1L5	→	Level 2.3
B3R1L6	→	Level 2.4
B4R1L2	3.1	
B4R1L3	→	Level 3.1
B4R1L4	→	Level 3.2
B4R2L2	→	Level 3.3
B4R2L3	→	Level 3.4
B4R2L4	→	Level 3.5
B4R2L5	→	Level 3.6

Movement from current Band to new classification for Technician stream, reflecting new start Level through to top of Level

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B2R1L2	1.1	
B2R1L3	→	Level 1.1

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B2R1L5	→	Level 1.3
B3R1L2	2.2	
B3R1L4	→	Level 2.2
B4R1L2	3.2	
B4R1L4	→	Level 3.2
B4R2L2	→	Level 3.3
B4R2L3	→	Level 3.4
B4R2L4	→	Level 3.5
B4R2L5	→	Level 3.6

Movement from current Band to new classification for the Canteen Assistant stream

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B1R1L1	→	Level 1.1
B1R1L3	→	Level 1.1
B1R2L2	→	Level 1.1
B1R2L4	→	Level 1.1
B1R2L5	→	Level 1.1

Movement from current Band to new classification for the Canteen Supervisor stream

Current Bands, Ranges and Levels	Translation Level	New classification per Schedule 1
B2R1L2	1.1	
B2R1L3	→	Level 1.1
B2R1L4	→	Level 1.2
B2R1L5	→	Level 1.3
B2R1L6	→	Level 1.4

SIGNATORIES

SIGNED FOR AND ON BEHALF OF TasTAFE

Signed: 

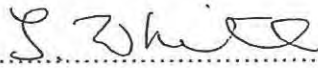
Name:

Position held:

Address:

Date:

SIGNED FOR AND ON BEHALF OF Community and Public Sector Union (SPSU), in its capacity as bargaining representative

Signed:  Name: Thirza White Position held: General Secretary Address: 157 Collins St Hobart Date: 29.11.23

SIGNED FOR AND ON BEHALF OF Australian Education Union, in its capacity as bargaining representative

Signed: Sabol.

Name: Tristan Sabol.

Position held: TAFE Division President

Address: 32 Patrick Street Hobart.

Date: 5/12/23.

SIGNED FOR AND ON BEHALF OF United Workers Union in its capacity as bargaining representative

Signed: [Signature]

Name: Lyndal Ryan

Position held: Director

Address: 71 Leichhardt St, Kingston ACT 2604

Date: 04/12/2023

Schedule 1 – Pay Scale

Level	Existing Salaries	3.5% ffppooa* registration (\$)	3% ffppooa* 1 December 2024 (\$)	3% ffppooa* 1 December 2025 (\$)
1.1	64,061	66,303	68,292	70,341
1.2	65,241	67,524	69,550	71,637
1.3	66,790	69,128	71,201	73,338
1.4	67,732	70,103	72,206	74,372
		Promotion	Promotion	Promotion
2.1	71,868	74,383	76,615	78,913
2.2	73,225	75,788	78,062	80,403
2.3	75,088	77,716	80,048	82,449
2.4	76,195	78,862	81,228	83,665
		Promotion	Promotion	Promotion
3.1	80,255	83,064	85,556	88,123
3.2	82,379	85,262	87,820	90,455
3.3	83,752	86,683	89,284	91,962
		Appraisal point	Appraisal point	Appraisal point
3.4	85,903	88,910	91,577	94,324
3.5	88,741	91,847	94,602	97,440
3.6	90,062	93,214	96,011	98,891
		Promotion	Promotion	Promotion
4.1	96,116	99,480	102,464	105,538
4.2	97,476	100,888	103,914	107,032
		Appraisal point	Appraisal point	Appraisal point
4.3	98,362	101,805	104,859	108,005
		Promotion	Promotion	Promotion
5.1	104,872	108,543	111,799	115,153
5.2	108,264	112,053	115,415	118,877
5.3	110,995	114,880	118,326	121,876
		Appraisal point	Appraisal point	Appraisal point

Level	Existing Salaries	3.5% ffppooa* registration (\$)	3% ffppooa* 1 December 2024 (\$)	3% ffppooa* 1 December 2025 (\$)
5.4	112,931	116,884	120,390	124,002
5.5	114,856	118,876	122,442	126,116
5.6	116,312	120,383	123,994	127,714
		Promotion	Promotion	Promotion
6.1	124,295	128,645	132,505	136,480
6.2	126,761	131,198	135,134	139,188
		Appraisal point	Appraisal point	Appraisal point
6.3	128,277	132,767	136,750	140,852
		Promotion	Promotion	Promotion
7.1	135,259	139,993	144,193	148,519
7.2	139,997	144,897	149,244	153,721
		Appraisal point	Appraisal point	Appraisal point
7.3	141,578	146,533	150,929	155,457

*ffppooa means first full pay period on or after.

ICT 1 Technicians – progression pathway

See Schedule 5 for ICT 1 associated additional and/or supplementary classification descriptors. Schedule 5 further details any classification standards or supplementary descriptors that apply ICT 2 – ICT 4.

ICT 1 progression level	Equivalent General pay scale level
1.1	Level 1.1
1.2	Level 1.3
1.3	Level 2.2
1.4	Level 3.2
	Appraisal point
1.5	Level 3.3
1.6	Level 3.4
1.7	Level 3.5
1.8	Level 3.6

Library Technician stream – progression pathway

Progression level	Equivalent General pay scale level
LT 1	Level 2.1
LT 2	Level 2.2
LT 3	Level 2.3
LT 4	Level 2.4
	Promotion
LT 5	Level 3.1
LT 6	Level 3.2
LT 7	Level 3.3
	Appraisal point
LT 8	Level 3.4
LT 9	Level 3.5
LT 10	Level 3.6

Schedule 2 – Allowances

Per Clause 2.5, allowance rates are as follows:

Allowance	Rate on commencement
First aid	\$18.82 a week
On-call	\$50 a day (on those days rostered)
Testing and tagging	\$774 a year
Camping allowance	\$69.65 for each overnight stay

Schedule 3 – Classification Descriptors

Summary of differences between Levels

Difference between Level 1 and Level 2: Level 2 tasks are complex and involve intricate and unrelated techniques that may require qualified and specialised skills. The exercise of independent judgement is integral to the work and non-standard requirements require considerable creativity and initiative. Assistance is provided by a supervisor.

Difference between Level 2 and Level 3: Level 3 work is directed at coordinating and integrating the operational functions to be undertaken, or towards understanding and interpreting the decision-making framework within which the work activity occurs, or aspects of both, depending upon the range of the activities of the work area.

Difference between Level 3 and Level 4: Level 4 work is directed at coordinating and integrating the operational procedures to be undertaken, that is, the systems and processes for program and service delivery within which a multitude of tasks are performed. High-level specialised skill and expertise in a particular discipline or field of activity.

Difference between Level 4 and Level 5: Level 5 work applies the decision-making framework (policies, rules and regulations) in support of program or service delivery of a defined field of activity, which may involve more than one discipline. Considerable autonomy of approach in delivering outcomes and the advice and recommendations provided are regarded as definitive for that activity.

Difference between Level 5 and Level 6: Level 6 work leads a complex activity or program unit requiring the development and/or determination of the operational methodology according to the decision-making framework and service delivery requirements.

Difference between Level 6 and Level 7: Level 7 work leads a complex functional or program unit and develops program strategies, policies and operational approach. The outcomes of the functional or program activities have a direct and significant effect on the achievement of organisational objectives.

Classification descriptors

Level 1

Focus

Work requiring the application of conventional non-trade or administrative practices methods and standards according to existing operational guidelines, systems and processes. The work consists of multiple, diverse tasks to be performed to achieve specified outcomes. The work provides routine advice, support and assistance to a work team.

Context and framework

Initially detailed instructions are provided on established techniques, methods, priorities and timeframes. Consistent with increasing experience detailed instructions are limited to unusual requirements which do not have clear guidelines or precedents. Some

interpretation, modification or adjustment of accepted practices, methods or standards may be required to achieve specified outcomes. Performance is assessed by task completion in meeting specified outcomes.

Expertise

Knowledge and expertise consistent with qualifications recognised at Certificate III or equivalent level. Some conventional practices, methods and standards are known. As knowledge and experience is gained in understanding relevant systems and procedures independent management of workload increases.

Interpersonal skills

Receives instructions and guidance on work practices and processes and in meeting unusual requirements. Actively participates in reviewing and explaining operational procedures and in providing information and liaising with clients, stakeholders and members of the public. Displays good communication and interpersonal skills in gaining the cooperation of others and deals effectively with challenging behaviour.

Judgement

Increasingly required to exercise judgement in the choice of work methods, in prioritising tasks and in the application of skill in selecting the appropriate course of action. Independent decision-making and initiative regarding the planning and completion of tasks and achievement of outcomes is expected to increase with experience. Proposes alternative approaches in the work area.

Influence of outcomes

The work contributes to the effective operation of the work unit including on client, stakeholder and public perception. Maintains established standards, systems and procedures and proposes improvements to practices, methods and processes.

Responsibility for outcomes

Responsible for the satisfactory completion of tasks that are significant for the operational effectiveness of the work unit. Responsible for ensuring work methods and processes meet required standards with some independence to modify or adapt existing approaches for more effective service delivery for clients and stakeholders.

Level 2

Focus

Work requiring qualified trade/technical or specialised administrative and clerical skills for the application and adjustment of conventional practices, methods and standards according to established guidelines, systems and processes. The work consists of a trade/technical practitioner or specialised administrative and clerical focus on complex, multiple, diverse tasks to be performed to achieve specified outcomes. Tasks involve precise, intricate and unrelated methods and processes. May assist a team leader to supervise less experienced staff engaged in performing similar, less demanding tasks.

Context and framework

General instructions are provided, other than for more complex and unusual requirements which do not have clear guidelines or precedents. Interpretation, modification or adjustment of accepted practices, methods or standards is routinely required to achieve specified outcomes. Uses initiative to resolve issues and satisfy client and stakeholder requirements.

Expertise

Knowledge and expertise consistent with qualifications recognised at Certificate III and IV or equivalent level. Trade/technical practitioner or specialist administrative and clerical subject matter knowledge and experience in the application of practices, methods and standards to meet the requirements of the operational area. Recognised trade/technical practitioner and specialised administrative and clerical skills in applying precise, intricate and unrelated practices and methods to resolve operational issues and to meet specified outcomes.

Interpersonal Skills

Well-developed interpersonal and communication skills. A leadership role in reviewing and explaining operational procedures and in providing information to and liaison with clients, stakeholders and members of the public. Assistance may be provided to a supervisor in reviewing and evaluating practices and standards and providing recommendations. Effective instruction, guidance and feedback is provided to less qualified or experienced staff.

Judgement

Exercises independent judgment in the practices, methods and standards to be applied, and the planning and timing required to complete complex, diverse tasks. Creativity and initiative required to provide options, recommendations and solutions to satisfy non-standard requirements.

Influence of outcomes

The work has a significant influence on the effective operation of the work unit including client, stakeholder and public perception regarding program or service delivery. A trade/technical employee or specialist administrative or clerical employee proposes and develops options to modify practices, methods and approach to meet specified needs while maintaining quality standards. Assists a supervisor regarding the development of less qualified or experienced staff.

Responsibility for outcomes

Responsible for maintaining practices, methods and standards and their modification as appropriate to provide satisfactory solutions for complex operational issues. Responsible for maintaining quality control of outcomes. Responsible for assisting a supervisor to ensure less qualified or experienced staff receive appropriate instruction, guidance, and performance feedback.

Level 3

Focus

Work within a defined field requiring the evaluation/coordination and/or integration of complex tasks within a defined field. The work includes one or more components of planning, organising, directing, controlling or coordinating resources and related activities. The work includes one or more components of research, analysis, investigation, evaluation and providing options and recommendations. Interprets and modifies guidelines, systems and processes to ensure conformity with specified outcomes and/or to provide alternative approaches to resolve operational problems. Makes decisions on the proposals and recommendations of lower-level employees.

Context and framework

General direction is provided to achieve the required outcomes as operational guidelines, systems and processes are well understood. Policies, rules and regulations provide a framework for decision-making in undertaking and integrating the relevant activities of the work area. Flexibility, innovation and initiative is expected in providing alternative solutions to complex operational issues within the field of work.

Expertise

Knowledge and expertise consistent with qualifications recognised at Diploma or Advanced Diploma or equivalent level. Well-developed knowledge and expertise in the application of policies, rules and regulations to guidelines, systems and processes. Trade work requires specialised knowledge and expertise which may require solutions to complicated, difficult, intricate and unrelated problems with existing infrastructure, equipment, systems and processes. Well-developed expertise in managing and applying information and specialised knowledge to the range of related activities of the work area. Develops expertise in controlling and managing allocated resources.

Interpersonal skills

Work at this level may involve a supervisory role. Highly regarded communication and interpersonal skills. This involves instructing, guiding and mentoring less experienced staff and making decisions on operational performance and activities. Informs and guides to gain the acceptance of others regarding the practices, systems and processes required to achieve program and service delivery outcomes. Interprets and explains complex operational procedures and provides advice and detailed information to clients, stakeholders and members of the public.

Judgement

Exercises judgement in applying policies, rules and regulations to practices, methods, systems and processes. Applies specialised expertise to resolve complex operational issues with existing systems, procedures, infrastructure and equipment. Compiles, analyses and evaluates complex and unrelated information to maintain and modify operational performance and service delivery.

Influence of outcomes

The work has a significant influence on service delivery performance and outcomes for the work unit. Uses specialised expertise to advise, develop and recommend alternative approaches to achieve the work unit's objectives. Instruction, guidance and mentoring have a significant influence on the development of less qualified or experienced employees.

Responsibility for outcomes

Responsible for ensuring guidelines, systems and processes are applied appropriately to integrate related activities to meet specified objectives. Responsible for providing options and recommendations to resolve complex operational issues and/or improve operational effectiveness. Where supervision is involved, responsible for ensuring advice, recommendations and decisions support specified service delivery and program outcomes.

Level 4

Focus

Work within a defined field requiring the evaluation/coordination and/or integration of diverse and varied operational procedures and practices. The work requires detailed planning, organising, directing, controlling and coordinating of resources and related activities. The work requires in-depth research, analysis, investigation and evaluation to develop and implement complex practices, systems and processes to meet difficult operational and service delivery requirements. Specialised work in a particular discipline to provide authoritative advice and expertise to support a range of complex activities.

Context and framework

Applies specialised technical knowledge of a particular discipline to provide effective practical solutions in a complex operational environment. Work is undertaken within established guidelines, systems and processes with limited guidance required in applying specialised expertise to complex and challenging activities. Considerable independence in interpreting and evaluating the requirements and effectiveness of operational program and service delivery according to the decision-making framework and in providing solutions to meet service delivery requirements. Establishes new operational guidelines and/or precedents within the area of expertise consistent with operational policy.

Expertise

Highly proficient in the area of expertise with extensive skill in a specific discipline or in a particular field. In-depth knowledge and experience of the decision-making and operational framework, specific guidelines, systems and processes and their effects on stakeholders, clients, other employees and members of the public. Supervisory and specialised roles provide leadership, instruction and guidance in the specific discipline or area of expertise in implementing and modifying existing methods, systems, processes, infrastructure and equipment to resolve operational problems.

Interpersonal skills

Informs and guides to gain the acceptance of others regarding the maintenance and modification of intricate and unrelated methods, systems and processes for effective

service and program delivery outcomes. Provides clear and authoritative advice and recommendations for complex activities that are understood and accepted by others as resolving program and service delivery challenges. May represent the organisation with the authority to negotiate outcomes that meet the specified requirements and objectives of the program or service delivery unit. A supervisor mentors and evaluates the performance of less qualified or experienced staff.

Judgement

Exercises initiative, flexibility and creativity in applying specialised expertise to meet complex operational challenges. Makes informed decisions, recommendations and/or implements alternative methods of approach to provide operational solutions for program and service delivery requirements. Identifies, assesses and responds to changes to guidelines, systems, methods and processes in applying appropriate solutions.

Influence of outcomes

The work provides significant specialised support in meeting the work area's objectives. Influences the skill development and performance of less experienced employees. Influences the effective use of infrastructure, systems and processes and their modification in response to changes to operational procedures and the decision-making framework.

Responsibility for outcomes

Responsible for ensuring specialised expertise is effectively applied to provide program and service delivery outcomes consistent with the operational framework. Responsible for providing leadership, instruction and guidance to less qualified or experienced employees in the specific discipline or area of expertise.

Level 5

Focus

Roles support the operational activities of a defined field of activity by managing or providing specialised advice. These are complex activities of significance for the delivery of outcomes for the functional or program unit. A management role interprets policies, regulations and guidelines and designs and implements plans, systems and procedures to deliver services consistent with program objectives. Specialists identify and define issues according to the established decision-making and operational framework to develop operational solutions, guidelines and recommendations for improved service delivery outcomes. This involves a highly detailed focus on the activities of the field and may involve more than one discipline. This includes investigation, review, research, analysis and integration of varied and diverse policies, rules, systems and processes for effective operational outcomes.

Context and framework

The work area unit or program activities have a direct and significant effect on outcomes for the functional unit or program activity. The role operates with considerable independence in determining priorities, procedures and approach in implementing policies, plans, systems and procedures in a complex specialised environment. Guidance and instruction may on occasion be received on the implementation of modifications consistent with policy, regulatory and/or technological requirements and developments. Work of a highly technically complex nature or with a varied range of activities may receive instruction and /or provide innovative solutions to meet program or service delivery outcomes.

Expertise

Significant expertise in the relevant discipline(s) and associated field of activity gained through in-depth experience. Highly developed and detailed understanding of the operational framework including regulations, policies, systems and processes for effective program and service delivery. Management roles require significant management skills and expertise to lead a complex activity or program unit to support the operations of functional area. Roles providing specialised advice require highly developed detailed subject-matter knowledge. Incorporates knowledge of relevant associated activities within the functional area to improve operational effectiveness and service delivery.

Interpersonal skills

Informs and negotiates to gain the acceptance of others regarding the application of policies, plans and processes in providing defined service and program delivery outcomes. Provides authoritative advice, recommendations and solutions in implementing complex rules, regulations, guidelines, systems, and processes within the field of activity. May represent the organisation with the authority to negotiate and conclude outcomes that meet the specified requirements and objectives of the program or service delivery unit.

Judgement

Clarifies and interprets the decision-making framework and operational systems and procedures to provide outcomes consistent with program objectives. Initiative, flexibility and creativity in developing options and recommendations to resolve problems and improve service delivery outcomes. Highly developed conceptual and reasoning skills to research, investigate, analyse, evaluate and integrate relevant solutions from diverse disciplines or fields into the area of activity.

Influence of outcomes

Advice and recommendations are provided directly to the manager of the function or program area in relation to implementation of policies, plans and processes. Service delivery or program outcomes may be altered as a result. There is a clear and direct effect on effective and efficient operation of the function or program activities. Advice provided is regarded as authoritative, specialised, consultative and/or management advice. There may be a strong influence on associated program activities in the functional area.

Responsibility for outcomes

Responsible for the implementation of policies, regulations and plans to provide efficient and effective program or service delivery outcomes. This includes developing guidelines and performance options, planning future activities, negotiating for appropriate resources and determining measures for accountability. Management and/or quality control of outcomes, processes, systems, resources, assets and infrastructure. This includes managing the performance of sub-ordinate staff. Provides advice on the application of policy to systems and processes in meeting specified program objectives.

Level 6

Focus

Work within a specialised program or engaged in complex activities within a functional area. The work usually integrates varied and diverse organisational policies and rules with support systems and processes for effective operational outcomes. Roles with a management focus, or specialists involved with a specialised program, lead an activity or program unit within a functional area. A management role interprets policies, regulations and guidelines to determine milestones, objectives, methods and priorities to support complex activities within a specified program. Specialists develop operational rules, guidelines and systems to achieve program objectives. This may modify the approach to established processes within a defined policy, regulatory and operational framework.

Context and framework

The work area unit or program activities have a direct and significant effect on organisational outcomes and the achievement of corporate objectives. Established decision-making and operational frameworks may require considerable interpretation and initiative to provide effective program and service delivery outcomes. A complex specialised environment implementing conventional plans, systems and procedures. These evolve and are modified according to policy, regulatory and/or technological requirements and developments. Guidance and instruction may on occasion be received on the implementation of highly technically complex modifications that provide solutions consistent with policy, regulatory and/or technological requirements and developments. Operates with considerable autonomy and is required to provide leadership regarding the design, development and operation of function and/or program activities. Defines core program and service delivery issues to develop options and recommendations for operational change and/or for new research projects.

Expertise

High-level specialised expertise in the relevant discipline and associated field of activity gained through extensive experience. High-level knowledge of the operational and service delivery processes of government, the relevant technical, administrative and/or clerical discipline, field and program area, the relevant industry sector and the employing organisation and of the interaction between them. Management roles require highly developed management skills and expertise to lead a defined complex activity or program within a functional area. Roles providing technical or policy advice require highly developed expertise based on specialised subject matter knowledge.

Interpersonal skills

Leads and motivates to gain the cooperation of others in the achievement of difficult and sometimes conflicting objectives, which may include incompatible processes, in developing or implementing improvements to established plans, systems and procedures. Manages staff and stakeholders and promote cooperation, teamwork and understanding in undertaking specialised processes. Develops productive relationships with specialists and stakeholders with similar levels of skill and experience in related field or program area to share ideas and to resolve problems. Clearly articulates complex and difficult issues to staff and stakeholders in terms which are understandable by the audience. Represents the organisation with the authority to conduct and commit to a negotiated outcome regarding operational processes for the area of responsibility and which may have operational implications beyond the functional area or program activity. Models a high standard of ethical behaviour and promotes values and a workplace culture to support this standard.

Judgement

Identifies, defines and develops options and recommendations to implement and improve the delivery of complex specialised programs and/or services within a functional area which may include responding to new and emerging developments. Solutions are constrained by the existing policy and regulatory framework, budget and resource considerations and established program delivery methodologies. Highly developed conceptual and reasoning skills to research, investigate, analyse, evaluate and integrate relevant solutions from related disciplines or fields into the area of activity. Flexibility, creativity and innovation associated with research, investigative, analytical and appraisal skills. Options provided and solutions recommended may require the development of new operational systems and methods for improved service delivery outcomes. Alternative sources of advice may be limited within the organisation.

Influence of outcomes

Advice and recommendations are provided directly to the manager of the function or program area and/or indirectly to the head of organisation in relation to the management of the activity or program unit and the development and/or implementation of new plans, systems or procedures. Service delivery or program outcomes are altered. There is a clear and direct effect on the effective and efficient operation of the function or program and on the implementation of government policy through program and service delivery outcomes. Advice provided is authoritative, specialised, consultative and/or management advice to a particular program or range of activities.

Responsibility for outcomes

Responsible for efficient and effective program or service delivery including budget management, optimal use of resources and maintaining and/or modifying policy, administrative processes and research projects. This includes planning future activities, negotiating for appropriate resources and determining measures for accountability. Managers are accountable for managing the performance and development of staff. Technical, administrative and/or clerical specialists are accountable for mentoring and role-modelling less qualified or experienced staff. Considerable independence in

determining priorities and approach to managing the activities of the program or unit. Specialists are required to remain abreast of contemporary developments in the discipline or field and related subject matter. Responsibility may be shared with relevant specialists and executive management for the development of strategy, policy or program implementation especially with regard to new developments.

Level 7

Focus

Roles with a management focus lead a function or program unit to deliver outcomes that are of significant strategic importance for the organisation. Technical, administrative and/or clerical specialists responsible or involved with a highly specialised program contribute to the strategic planning and decision-making process. This involves developing and/or modifying operational program strategies, policies and rules and supporting systems and procedures to achieve specified outcomes. Determines appropriate milestones, priorities and approach to program delivery.

Context and framework

The function or program activities have a direct and significant effect on organisational outcomes and the achievement of corporate objectives. Considerable operational autonomy with operational direction according to government policy and broad corporate objectives. A complex specialised environment which requires the development, implementation and modification of program-specific strategy, policy, principles, systems and processes that reflect corporate strategy, policy, regulatory or technological developments. Established precedents and policies may require interpretation for operational effectiveness. Emerging issues can be due to significant operational concerns and can anticipate regulatory change. Shares the determination of program-specific policy and processes to meet core organisational objectives and strategies. This can include broadly based operational policies, professional programs, organisation-wide policies and specialised projects.

Expertise

High-level and/or specialist knowledge and expertise through extensive experience. High level understanding of the structures and processes of government, the relevant technical, administrative and/or clerical discipline, field and program area, the relevant industry sector and the employing organisation and of the interaction between them. Management roles require highly developed management skills and expertise to manage and lead a functional unit or program.

Interpersonal skills

Leads and motivates to gains the cooperation of others in the achievement of challenging, difficult and sometimes conflicting objectives, which may include incompatible processes, in developing or implementing improvements to established principles, precedents and procedures. Manages staff and stakeholders and promotes cooperation, teamwork and understanding in undertaking demanding and complex work. Develops productive relationships with specialists and stakeholders with similar levels of skill and experience in various fields to share ideas and to resolve problems. Clearly

articulates highly complex and difficult issues to staff and stakeholders in terms that are understandable by the audience. Represents the organisation with the authority to conduct and commit to a negotiated outcome regarding strategies, policies, programs and objectives for the area of responsibility and which have implications for the organisation. Models a high standard of ethical behaviour and promotes values and a workplace culture to support this standard.

Judgement

Identifies, defines and develops options for complex policy and program delivery within a functional area and recommends solutions to unusual or emerging problems. Solutions are constrained by the existing policy and regulatory framework, budget and resource considerations and established program delivery methodologies. Highly developed conceptual and reasoning skills. Flexibility, creativity and innovation regarding the implementation of government and organisational strategy and policy and the integration of relevant solutions from diverse disciplines or fields. Options provided and solutions recommended may require the development of new program strategies, policies, plans and procedures with significantly altered organisational outcomes. Alternative sources of advice may be limited within the organisation.

Influence of outcomes

Advice and recommendations are provided to the head of organisation in relation to the effectiveness of functional or program activity and service delivery. There is a strong influence on other functional areas within the organisation and occasionally on related functions in other agencies. The nature of the response required to address emerging trends may alter the way work is organised and /or performed within the function or program area. Developments may improve program functions and organisational efficiency and performance and result in a better alignment and integration of activities within the functional area. Community, client and stakeholder regard for the implementation of government policy through program or service delivery outcomes may be affected.

Responsibility for outcomes

Responsible for the efficient and effective operation of the function or program requiring budget management, optimal use of resources and maintaining and/or modifying strategy and policy, administrative processes and research projects. This includes planning future activities, negotiating for appropriate resources and determining measures for accountability. Managers are accountable for the performance and development of staff. Technical, administrative and/or clerical specialists are accountable for mentoring and role-modelling less qualified or experienced staff. Specialists are required to remain abreast of contemporary developments, to identify emerging trends and to maintain a network of peers and specialists in the subject area. Responsibility may be shared with relevant specialists and executive management for the development of program strategy, policy or implementation especially with regard to new developments.

Schedule 4 – Supported Wage System

This schedule defines the conditions that apply to you because of the effects of disability and you are eligible for a supported wage under this Agreement.

In this schedule:

“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 you to be employed under the supported wage system.

“disability support pension” means the Commonwealth pension scheme to provide income security for persons with disability as provided under the *Social Security Act 1991* (Cth).

“relevant minimum wage” means the minimum wage in this Agreement for the class of work you are employed to do.

“supported wage system (SWS)” means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of disability.

“SWS wage assessment agreement” means the document in the form required by the Department of Social Services that records your productive capacity and agreed wage rate.

Eligibility criteria

You are eligible if you are:

- a) unable to perform the duties to the competence level required in the class of work we have employed you for due to the effects of disability on your productive capacity; and
- b) you meet the impairment criteria for receipt of a disability support pension.

This schedule does not apply to you if you have a claim against TasTAFE that is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

Supported wage rates

You will be paid a percentage of the relevant minimum wage in the following schedule:

Assessed capacity %	Relevant minimum wage %
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

The minimum amount you will be paid will not be less than \$95 a week.

If your assessed capacity is 10%, you will receive a high degree of assistance and support.

Assessment of capacity

To establish the percentage of the relevant minimum wage, your productive capacity will be assessed in line with the SWS by an approved assessor, having consulted with you, TasTAFE and (if you choose) your union.

All assessments made will be documented in an SWS wage assessment agreement and retained by TasTAFE as a time and wages record in accordance with the Act.

Lodgement of SWS wage assessment agreement

All SWS wage assessment agreements will be lodged by TasTAFE with the FWC.

All SWS wage assessment agreements will be agreed and signed by you and TasTAFE. Where a union that has an interest in the Agreement is not a party to the assessment, the assessment will be referred by the FWC to the union by certified mail and the agreement will take effect unless an objection is notified to the FWC within 10 working days.

Review of assessment

The assessment of the applicable percentage will be subject to an annual or more frequent review if a reasonable request for a review is made. The process of review will be in line with the procedures for assessing capacity under the SWS.

Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. If you are covered by the provisions of this schedule, you are entitled to the same terms and conditions of employment as other employees covered by this Agreement on a pro-rata basis.

Workplace adjustment

When TasTAFE wishes to employ a person under the provisions of this schedule, it will 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 employees.

Trial period

In order for an adequate assessment of your capacity to be made, TasTAFE may employ you under the provisions of this schedule for a trial period not exceeding 3 months (12 weeks), except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

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.

The minimum amount payable to you during the trial period is no less than \$95 a week.

Work trials will include induction or training as appropriate to the job being trialled.

A further contract of employment will be entered into based on the outcome of assessment under assessment of capacity.

Schedule 5 – Information and Communication Technology (ICT) Classification Structure

This Schedule details the classification structure and standards that apply to Information and Communication Technology (ICT) employees.

ICT 1

ICT 1 consists of employees ranging across Bands 1 to 3 inclusive.

There are four categories of employees with different salary progression ranges:

- a) ICT Level 1 (Trainee) - Level 1
- b) ICT Level 1 (Cadet) - Level 1 to Level 3;
- c) ICT Level 1 (Technician) – Level 1 to Level 3; and
- d) ICT Level 1 (Graduate) – Level 2 to Level 3.

The salary progression of ICT 1 employees are as specified in Schedule 1 – Pay Scale.

A Trainee is an employee who is employed to undertake IT Certificates II, III or IV.

A Cadet is an employee who is employed subject to undertaking a three-year undergraduate degree part-time at a university.

A Graduate is an employee who is employed according to a Graduate Development Program after graduating with a degree qualification following a minimum three-year course at a university.

A Technician is an employee who does not undertake formal undergraduate studies or participate in a formal graduate program but who gains skills and experience through in-house development and learning, including specific courses of study.

Classification descriptors

The classification descriptors of Levels 1 to 3 describe the work value requirements of an employee who progresses through the salary structure.

To fully meet the work requirements at the top of ICT 1 requires being able to undertake computer system tasks that require adherence to policy, procedures or established practices. It is expected that all qualifications required have been achieved and professional development has been undertaken relevant to the technical area of expertise.

The purpose of supplementary descriptors is to specify the work expected to be undertaken by ICT employees and augment the classification descriptors in this agreement. The supplementary descriptors for ICT 1 highlight the competency expected for ICT 1 employees paid at Level 3.

The Appraisal Point provides the framework for developing and assessing an employee's suitability to progress.

Supplementary descriptors

- a) able to operate across a number of computing platforms, systems, applications languages and serve installations;
- b) converses with senior technical specialists regarding area of responsibility; and
- c) contact with organisation staff/vendors will be limited with the occupant usually having had limited opportunities to establish business relationships – at this point they are more technician-to-technician and technician-client based.

Appraisal point

To progress through the appraisal point in Level 3 a minimum of three of the following criteria are required to be satisfied:

- a) recognised as providing high level customer service and demonstrates high level proficiency in function and work tasks;
- b) operates autonomously during after-hours upgrades to systems or remote monitoring;
- c) has demonstrated emerging leadership skills by taking responsibility to integrate related platforms, systems, applications languages and server installations and is capable at leading and conducting research, discussions, workshops and presenting findings;
- d) has a significant influence on the initiation and training of new officers in the operations of the section;
- e) demonstrated proficiency in work-related ICT disciplines including attainment of industry recognised qualifications or certification in specific work areas;
- f) has consistently demonstrated the ability to plan work schedules; lead small teams in implementing parts of applications, upgrades to servers, rollouts of standard operating environment patches and updates; has responsibility for gathering information regarding purchasing and assisting senior offices with the purchasing cycle; and
- g) is self-directed, reliable, espouses the values of the organisation in their work, provides input into the operational processes of their area of expertise and has highly regarded oral and written communication skills.

ICT 2

Level 4 classification standards and salaries (per Schedule 3).

ICT 3

Level 5 classification standards and salaries (per Schedule 3), with supplementary descriptors.

Supplementary descriptors

This is a senior practitioner level with overall responsibility for systems, the application of policy, for mentoring less experienced staff members, for providing advice to senior IT managers and for liaising effectively with vendors, clients and management.

Work at this level is authoritative in terms of supporting a system, in undertaking application development or supporting key items of infrastructure such as networks, mail storage area networks, servers, security systems, disaster recovery installations.

Highly specialist knowledge of and overall responsibility for several computer systems.

Highly developed analytical skills:

- a) to capture the business needs of clients;
- b) to understand the technical context of options and solutions to meet business requirements; and
- c) to develop and implement plans and proposals for improved operational effectiveness and service delivery.

Provide leadership and supervision of staff responsible for the delivery of components of systems or programs, particularly regarding the quality of service delivery and in meeting performance specifications.

In areas of technical expertise and with responsibility for particular operational processes represents the organisation with authority and commits organisation to negotiated outcomes.

Appraisal point

At least three of the following criteria to be demonstrated:

- a) has established strong peer networks across government in an area of speciality and provides leadership in the coordination of forums, discussions and meetings;
- b) Has undertaken leading research, development or innovation within an agency that has potential whole of government application including the establishment of working groups, high levels of liaison with a central agency, conducts demonstrations to other interested parties and has a significant role with the central agency in any vendor negotiations that form part of the development of a new product/service;
- c) possesses oral and written communication skills reflected in: positive outcomes from negotiations with vendors regarding technical matters; development and carriage of ICT-based policies and procedures; preparations of higher level reports, papers and proposals for ICT management and senior executives; and provides leadership to peers and subordinates in regular and clear communication to clients;
- d) demonstrates a clear understanding of whole-of-government strategies and initiatives and works proactively with agency ICT management to develop systems

and solutions that may derive from the implementation of whole-of-government applications; and

- e) has achieved technical certification across a number of specialist disciplines.

ICT 4

Level 6 classification standards (per Schedule 3) and salaries.

Manager/Specialist

Level 7 classification standards (per Schedule 3) and salaries.

Schedule 2.2 Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing — at any time.

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2023/5039

Applicant: Application by Grant Dreher T/A TasTAFE

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Lyndene Bowen, Acting Chief Executive Officer, have the authority given to me by TasTAFE to give the following undertakings with respect to the TasTAFE General Employees Enterprise Agreement 2023 ("the Agreement"):

1. That clause 3.2.3 of the Agreement be replaced with:

"If you are a casual employee, you will be paid:

- a) the minimum hourly rate for each ordinary hour worked for the classification in which you are employed; plus*
- b) a loading of 25% of the minimum hourly rate.*

Casual loading for overtime hours worked will be paid per 3.5.2.

As a casual employee, you will be paid for at least 3 consecutive hours of work on each occasion you are required to attend work.

Offers and requests for conversion from casual employment to full-time employment or part-time employment will take place as in the NES."

2. Notwithstanding the terms of clause 8.3 of the Agreement, TasTAFE undertakes to provide notice or a payment in lieu in accordance with section 117 of *the Fair Work Act 2009* (Cth) where there is a dismissal at its initiative, other than in cases of serious misconduct.
3. Notwithstanding the terms of the second paragraph of clause 3.1 of the Agreement, TasTAFE undertakes that where the employment of an employee is terminated during the probationary period:
 - a. TasTAFE will provide two weeks' notice of termination or a payment in lieu of notice; and
 - b. the employee may terminate the employment on one week's notice.

4. That clause 6.1(c)(ii) be replaced with:

"If the dispute remains unresolved, the FWC may use any method of dispute resolution it is permitted by the Act to use and it considers appropriate for resolving

the dispute, including its power to arbitrate the dispute (regardless of whether both parties consent)."

These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

A handwritten signature in black ink, consisting of a large, stylized 'Z' followed by a horizontal line and a small flourish.

Signature

29.01.2024

Date