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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for award or variation of award

Tasmanian Chamber of Commerce and Industry Limited
(T8963 of 2000)

Australian Cement Holdings Enterprise Award
Broadcasting and Television Award
Butter and Cheesemakers Award
Civil Construction and Maintenance Award
Clerical and Administrative Employees (Private Sector) Award
Dairy Processing Award
Estate Agents Award
Farming and Fruit Growing Award
Fibreglass and Plastics Award
Fish Aquaculture and Marine Products Award
Fuel Merchants Award
Furnishing Trades Award
Horticulturists Award
Hotels, Resorts, Hospitality and Motels Award
Independent Schools (Non-Teaching Staff) Award
Insurance Award
Licensed Clubs Award
Marine Boards Award
Meat Processing Industry Award
Medical Diagnostic Services (Private Sector) Award
Medical Practitioners (Private Sector) Award
Miscellaneous Workers Award
Nursing Homes Award
Optical Industries Award
Photographic Industry Award
Plant Nurseries Award
Printers Award
Produce Award
Public Accountants Award
Public Vehicles Award
Restaurant Keepers Award
Retail Trades Award
Rubber Trades Award
Shellfish Industry Award
Textile Award
Timber Merchants Award
Totalizator Agency Award
Wholesale Pharmaceutical Award
Wholesale Trades Award

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FULL BENCH:
DEPUTY PRESIDENT R J WATLING
COMMISSIONER T J ABEY
COMMISSIONER A W PEARCE

Award variation - nominated private sector awards - application amended - deletion of obsolete training provisions - application granted - operative ffpp 7 September 2000

LICENSED CLUBS AWARD

ORDER BY CONSENT:

No. 3 of 2000

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THE **LICENSED CLUBS AWARD** IS VARIED IN THE FOLLOWING MANNER:

1. By deleting Clause 3 - Arrangement and inserting in lieu thereof the following:

"3. ARRANGEMENT

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Amenities Dressing Room, Toilet Accommodation and First Aid Equipment	9	
Annual Leave	10	
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Breakages	13	
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2. By deleting from Clause 7 - Definitions, subclause (e) Definitions - General and inserting in lieu thereof the following:

"(e) Definitions - General

'Appropriate level of training' shall mean:

- (a) completion of a training course deemed suitable according to guidelines issued through Tasmanian Training Authority for that particular classification. After 1 June 1991 such course to be accredited by the Tasmanian Training Authority;
- (b) that the employee's skills have been assessed to be at least the equivalent of those attained through the suitable course described in (a) above, such assessment to be undertaken by a qualified skills assessor; or
- (c) that for a transitional period until 1 January 1993, the employees can be deemed to have the appropriate level of training.

'Casual employee' means any person specially engaged to work on an irregular basis, as and when required by mutual consent between employer and employee, but does not include any person employed on a part-time or full-time basis.

'Progression/promotion' will be on the basis of the duties carried out by the employee and having acquired the skill and competency outlined in the appropriate level of training (subject to phasing-in period) and on being selected on merit when a position becomes available.

'Union' for the purposes of this award shall mean the Australian Liquor, Hospitality and Miscellaneous Workers Union - Tasmanian Branch thereof."

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3. By deleting Clause 8 - Wage Rates and inserting in lieu thereof the following:

"8. WAGE RATES

1. CAREER STRUCTURE/GRADES

An adult employee of a grade specified in the table hereunder shall be paid the weekly wage rate assigned opposite the grade wage/salary.

	Base Rate \$	Base Rate Relativity	Safety Net Adjustment \$	Weekly Wage Rate \$
(i) Introductory/Entry Level	325.40	78	75.00	400.40
(ii) Hospitality (Food and Beverage Service/Kitchen)				
Hospitality Service Grade 1	342.10	82	75.00	417.10
Hospitality Service Grade 2	367.20	88	75.00	442.20
Hospitality Service Grade 3	385.50	92.4	75.00	460.50
Hospitality Service Grade 4	417.20	100	75.00	492.20
Hospitality Service Grade 5	458.90	110	75.00	533.90
Hospitality Service Grade 6	479.80	115	73.00	552.80
(iii) General Service (Including Guest and Leisure)				
Guest Service Grade 1	342.10	82	75.00	417.10
Guest Service Grade 2	367.20	88	75.00	442.20
Guest Service Grade 3	385.50	92.4	75.00	460.50
Greenkeeper Grade 1	367.20	88	75.00	442.20
Greenkeeper Grade 2	385.50	92.4	75.00	460.50
Greenkeeper Grade 3	417.20	100	75.00	492.20
Greenkeeper Supervisor				
Head Greenkeeper	458.90	110	75.00	533.90
(iv) Administration (Including Front Office)				
Clerical Grade 1	375.50	90	75.00	450.50
Clerical Grade 2	396.30	95	75.00	471.30
Clerical Grade 3	417.20	100	75.00	492.20
Clerical Supervisor	500.60	120	73.00	573.60
(v) General Provisions				

Notwithstanding the recognition of their career path streams, such streaming does not prevent employees undertaking duties across different streams.

PROVIDED that where work is undertaken at a higher grade and/or at a higher rate than Clause 25 - Mixed Function - Higher and Lower Grade Work applies.

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PROVIDED ALWAYS that a person who is responsible for an apprentice shall be paid the trade rate.

TRANSITIONAL PROVISION: Any grade of work identified in Clause 7 - Definitions, for which there is not listed an appropriate classification and weekly wage rate in Clause 8 - Wage Rates, shall be paid the lowest wage rate listed at the appropriate grade.

This provision shall also apply to juniors and apprentices.

2. APPRENTICES

The minimum weekly wage rate to be paid by employers to apprentices shall be the undermentioned percentages of the weekly wage rate as follows:

Food and Beverage Trade Percentage of Hospitality Grade 4 - Trade Waiter	Greenkeeping Trade Percentage of Green- keeper Grade 3	Kitchen/All Other Trades Percentage of Hospitality Grade 4
%	%	%
1st 6 months 62	First year 42	First year 50
2nd 6 months 76	Second year 55	Second year 65
3rd 6 months 76	Third year 75	Third year 80
4th & 5th 6 90 months	Fourth year 90	Fourth year 90

An apprentice, on completion of his/her apprenticeship, who is under the age of 20 shall be paid adult rates.

3. JUNIOR WORKERS

The minimum weekly wage rate to be paid to a junior employee shall be the undermentioned percentage of the appropriate adult weekly wage rate prescribed in subclause 1 hereof:

	Administration based on Grade 2	All Others based on appropriate grade
	%	%
Under 16 years of age	40	60
16 to 17 years of age	45	60
17 to 18 years of age	55	60
18 to 19 years of age	70	75
19 to 20 years of age	80	90
20 to 21 years of age	90	100
21 years of age	100	

(a) Liquor Service

Junior male and female employees, on reaching the age of 18 years, may be employed in the bar or other places where liquor is sold, provided that, subject to a

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satisfactory training period not exceeding four weeks during which he or she receives the appropriate junior rate, such junior on the completion of this training period, is paid the adult rate for the work being performed.

However, such a junior, if required to work alone, or without supervision shall be paid the adult rate for the work being performed.

PROVIDED that when determining the weekly wage rate payable to an employee attaining the age of 21 years who has been employed as a junior clerk in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established applicable to private industry employees, experience obtained after reaching the age of 18 years shall be counted as adult experience.

(b) Estimating Service

In estimating the number of years service of an employee, the total clerical experience in the service of every employer in the trades or groups of trades in respect of which awards of the Tasmanian Industrial Commission are established applicable to private industry employees, shall be taken into account.

4. MINIMUM WAGE

Notwithstanding the provisions of subclause 1 thereof, no adult employee shall be paid less than the rate of \$298.10 per week.

PROVIDED that payments for overtime, holiday and weekend penalties prescribed in this award shall not be taken into account in the calculation of such minimum weekly wage rate.

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

5. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

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

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

PROVIDED FURTHER that this subclause does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding

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under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

(b) For the purposes of this subclause:

'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

'Assessment instrument' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

'Disability Support Pension' means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

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

(c) Supported Wage Rates

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

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

PROVIDED that the minimum amount payable shall be not less than \$51 per week.

(d) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to a supported wage employee under this award, the productive capacity of the

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employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

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

(e) Lodgment of Assessment Instrument

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

(f) Review of Assessment

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

(g) Other Terms and Conditions of Employment

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

(h) Workplace Adjustment

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

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a

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trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$51 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof."

4. By deleting Clause 10 - Annual Leave and inserting in lieu thereof the following:

"10. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

By agreement between the employee and the employer annual leave may be taken in more than one period.

(b) Annual Leave Exclusive of Public Holidays

Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 21 - Holidays with Pay hereof, and if any such holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee, would have been an ordinary working day, there shall be added to that period one day for each such holiday falling as aforesaid.

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

(c) Calculation of Continuous Service

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

- (i) Any interruption or determination of the employment by the employer if such interruption or determination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence.
- (ii) Any absence from work on account of personal sickness or accident, and in calculating the period of 12 months continuous service, absence on account of personal sickness or accident to the extent of 91 days in any 12 months shall be deemed to be part of the period of continuous service.
- (iii) Any absence with reasonable cause, proof whereof shall be upon the employee, or leave lawfully granted by the employer, but such absence shall not be taken into account in calculating the period of 12 months continuous service.

(d) Proportionate Leave on Termination of Service

If after 3 months continuous service in respect of which leave has not been granted an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee he shall be paid at his ordinary rate of wage as follows:-

- thirteen and one third hours for each completed month of continuous service.

(e) Leave to be Taken

The annual leave provided for by this clause shall be allowed and taken.

(f) Payment in Lieu Prohibited

Except as provided in subclause (d) hereof, payment shall not be made or accepted in lieu of annual leave.

(g) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 12 months from the date when the right to annual leave accrued. Where practicable, and unless otherwise mutually arranged between the employer and the employee, at least 2 weeks notice shall be given to the employee that his annual leave is to be taken.

(h) Payment for Period of Leave

All employees, before going on annual leave, shall be paid 28 days at the ordinary rate of pay, ie. Monday to Friday wage rate prescribed in subclause 1 of Clause 8 - Wage Rates. Part-time employees shall receive pro rata payment of this amount including the 7½ percent loading.

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In addition thereto all employees other than casual employees, shall be paid an amount equivalent to the minimum wage as prescribed in subclause 4 of Clause 8 - Wage Rates.

Part-time employees shall receive pro rata payment.

For the purposes of calculation a part-time employee's payment shall be determined by:

$$\frac{\text{average number of ordinary hours worked each week} \times 28 \text{ days}}{38}$$

The average number of ordinary hours worked each week exclusive of overtime shall be those worked since annual leave was last taken, or, if a new employee, since commencing employment."

- 5. By deleting Clause 43 - Traineeships.**
- 6. By renumbering Clause 44 - Travelling Time to Clause 43 - Travelling Time.**
- 7. By renumbering Clause 45 - Uniforms to Clause 44 - Uniforms.**

OPERATIVE DATE

These variations shall come into operation from the first full pay period to commence on or after 7 September 2000.

A W Pearce
COMMISSIONER

21 September 2000