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**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984  
s.23 application for award or variation of award

**Health Services Union of Australia, Tasmania No. 1 Branch**  
(T9852 of 2001)

**DENTISTS AWARD**

Award variation - insertion of provision for Carer's Leave - application approved - operative date ffpp 7 November 2001

**ORDER BY CONSENT -**

**No 3 of 2001**

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AMEND THE **DENTISTS AWARD** IN THE FOLLOWING MANNER:

**1. By inserting into Clause 3 - Arrangement, the following new clause:**

"Carer's Leave 9A"

**2. By deleting Clause 9 - Annual Leave, and inserting in lieu thereof the following:**

**"9. 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).

(b) Annual Leave Exclusive of Public Holidays

If any of the holidays prescribed by Clause 15 - Holidays with Pay fall 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 leave one day for each such holiday so occurring.

(c) Payment in Lieu Prohibited

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

(d) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than two weeks' notice to the employee.

(e) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees, shall be paid an amount equivalent to the minimum wage as prescribed in Clause 8 - Wage Rates, subclause 2 - Minimum Wage.

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(f) Leave Allowed Before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 15 - Holidays with Pay hereof.

(g) Proportionate Leave on Termination of Service

If after one completed month of service in any qualifying 12-monthly period an employee lawfully leaves his/her employment, or his/her employment is terminated by the employer through no fault of the employee the employee shall be paid at his/her ordinary rate of wage as follows:

13<sup>1</sup>/<sub>3</sub> hours for each completed month of continuous service. The service being in respect of leave which has not been granted.

(h) Single Day Annual Leave

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.

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- (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these short term annual leave arrangements in the time and wages book."

**3. By inserting a new Clause 9A - Carer's Leave, after Clause 9 - Annual Leave, as follows:**

**"9A. CARER'S LEAVE**

(a) Paid Carer's Leave

- (i) An employee, other than a casual employee, is entitled to use, in accordance with this subclause, up to a maximum of five days per annum of any current or accrued sick leave entitlement, provided for at Clause 23 - Sick Leave, of the award, for absences to provide care and support for either members of their immediate family or household who need their care and support when they are ill.

Leave may be taken for part of a single day.

- (ii) If required the employee must establish, either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to the person being either:
  - (1) a member of the employee's immediate family, or
  - (2) a member of the employee's household.

The term '**immediate family**' includes:

- (1) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (2) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

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- (iv) Where practicable the employee must give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and the person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
  - (v) In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.
- (b) Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill."

**4. By deleting Clause 16 - Hours of Work, and inserting in lieu thereof the following:**

**"16. HOURS OF WORK**

- (a) The ordinary hours of work shall be an average of 38 hours per week to be worked on one of the following bases:
  - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
  - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
  - (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
  - (iv) 152 hours within a work cycle not exceeding 28 consecutive days.
- (b) The ordinary hours of work prescribed herein may be worked Monday to Friday between the hours of 7.30am and 9.00pm and Saturday between the hours of 8.30am to 12 noon.
- (c) Ordinary working hours may be extended beyond eight hours but not so as to exceed 10 hours on any day, Monday to Friday.
- (d) In any arrangement of ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between an employer and the majority of employees affected.
- (e) For all work performed as part of ordinary hours between 6.30pm and 9.00pm Monday to Friday, payment shall be made at the rate of time and one quarter.

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(f) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off during ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record make up time arrangements in the time and wages book at each time this provision is used.

(g) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off (RDOs) to provide that:

- (i) An employee may elect, with the consent of the employer, to take a RDO at any time.
- (ii) An employee may elect, with the consent of the employer, to take RDOs in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all RDOs for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee to the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.

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- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record RDO arrangements in the time and wages book at each time this provision is used."

**5. By deleting Clause 18 - Overtime, and inserting in lieu thereof the following:**

**"18. OVERTIME**

- (a) All time of duty before the usual time of commencing work or after the usual time of ceasing work or outside the ordinary hours shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- (b) Where an employee is called upon to work more than three hours after the usual finishing time \$5.70 for a meal shall be paid in addition to the overtime rates.
- (c) An employee who is recalled to work overtime (that is, outside the hours the employee usually works) after a period of one hour from the time fixed for ceasing work, whether or not he/she has been notified before ceasing work, shall receive a minimum payment as for two hours worked.
- (d) In computing overtime, each day's work shall stand alone.
- (e) Time Off In Lieu of Payment

Notwithstanding provisions elsewhere in this award the employer and the majority of employees at an enterprise may agree to establish a system of time off in lieu of overtime provided that:

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off shall be taken at the penalty equivalent.
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.

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- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record time off in lieu arrangements in the time and wages book at each time this provision is used."

#### **OPERATIVE DATE**

These variations shall come into operation from the first full pay period to commence on or after 7 November 2001.

Tim Abey  
**COMMISSIONER**

12 November 2001