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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

**Australian Liquor, Hospitality and Miscellaneous Workers Union,
Tasmanian Branch
(T11032 of 2003)**

**AERATED WATERS AWARD
AUTOMOTIVE INDUSTRIES AWARD
INDEPENDENT SCHOOLS (NON TEACHING STAFF) AWARD
CLEANING AND PROPERTY SERVICES AWARD
FIBREGLASS AND PLASTICS AWARD
HOTELS, RESORTS, HOSPITALITY AND MOTELS AWARD
ICE CREAM MAKERS AWARD
LAUNDRY AND DRY CLEANING AWARD
LICENSED CLUBS AWARD
RESTAURANT KEEPERS AWARD
SECURITY INDUSTRY AWARD
SHIPPING AWARD
VETERINARY SERVICES AWARD
MISCELLANEOUS WORKERS AWARD
CHILD CARE AND CHILDREN'S SERVICES AWARD
LEATHER, CANVAS AND SHEET PLASTIC FABRICATION AWARD
HEALTH AND FITNESS CENTRES AWARD
WHOLESALE PLANT BAKERIES AWARD
NATIONAL TRAINING WAGE (TASMANIAN PRIVATE SECTOR) AWARD
BAKING INDUSTRY AWARD**

FULL BENCH:

PRESIDENT P L LEARY
DEPUTY PRESIDENT R J WATLING
COMMISSIONER T J ABEY

**Award variation – reasonable hours provision - application approved – operative
date 14 November 2003**

HOTELS, RESORTS, HOSPITALITY AND MOTELS AWARD

ORDER BY CONSENT

No. 3 of 2003

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THE **HOTELS, RESORTS, HOSPITALITY AND MOTELS AWARD** IS VARIED IN THE FOLLOWING MANNER:

IN DIVISION A

(1) By deleting Clause 27 – Overtime and Penalty Rates and inserting in lieu thereof the following:

"27. OVERTIME AND PENALTY RATES

- (a) (i) Requirement to Work Reasonable Overtime
 - (1) Subject to subparagraph (2) of this subclause and subclause (g) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
 - (2) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (A) any risk to employee health and safety;
 - (B) the employee's personal circumstances including any family responsibilities;
 - (C) the needs of the workplace or enterprise;
 - (D) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (E) any other relevant matter.
 - (ii) To ensure that permanent employees are not deprived of the opportunity to work reasonable overtime, an employer shall so far as is practicable offer such employee the opportunity to work any overtime that may be required to meet fluctuations in his or her trade or other special circumstances, in preference to engaging casuals to supplement his normal labour force.
- (b) All time worked in excess of the rostered hours of work or outside the spread of hours prescribed in Clause 23 - Hours of Work - Full-time Employees, shall be overtime and shall be paid for at the following rates:
 - (i) Monday to Friday inclusive time-and-a-half for the first two hours and double-time for all work thereafter.
 - (ii) Between midnight Friday and midnight Sunday double-time for all time worked.
 - (iii) All work performed on an employee's rostered day off shall be paid for at the rate of double time with a minimum payment of four hours at that rate.

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PROVIDED that such minimum does not apply to work which is part of the normal roster which began the day before the rostered day off.

The four hours minimum shall not apply when overtime is worked and is continuous from the previous days duty.

- (iv) Overtime on any day shall stand alone.
- (v) If an employee is so long on overtime duty following his or her normal finishing time that he or she has not had 10 hours interval before his or her next regular starting time, such employee shall be allowed at least 10 consecutive hours' interval without deduction of pay or shall be paid at overtime rates for all time of duty until he has had at least 10 hours' interval.
- (c) Notwithstanding the rate prescribed in subclause (b) at the instigation of the employee there may be an agreement in writing between the employee and the employer to take time off with pay equivalent to the amount for which payment would otherwise have been made. Such accumulated time must be taken within four weeks from the time of accrual.
- (d) Weekend Penalty Rates
 - (i) All permanent employees as at 1 December 1994 shall be entitled to the following weekend penalty rates:
 - (1) For all ordinary time worked between midnight Friday and midnight Saturday time and a half of the wages for the respective classification as at 1 December 1994 shall be paid until such amount is exceeded by time and a quarter as provided for in subparagraph (ii)(1) of this subclause when the provisions of subparagraph (ii)(1) shall apply.
 - (2) For all ordinary time worked between midnight Saturday and midnight Sunday time and three quarters shall be paid.
 - (3) For all ordinary time worked by liquor service employees on a Sunday double time of the wages for respective classifications as at 1 December 1994 shall be paid until such amount is exceeded by time and three quarters as provided for in subparagraph (ii)(2) of this subclause when the provisions of subparagraph (ii)(2) shall apply.
 - (ii) All permanent employees who commence to be employed after 1 December 1994 shall be entitled to the following weekend penalty rates:
 - (1) For all ordinary time worked between midnight Friday and midnight Saturday time and a quarter rate shall be paid.
 - (2) For all ordinary time worked between midnight Saturday and midnight Sunday time and three quarters shall be paid.

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(e) Other Penalty

- (i) A permanent employee who is required to work any of his/her ordinary hours between the hours of 7.00 pm and midnight Monday to Friday inclusive shall be paid an additional \$1.03 per hour or any part of an hour for such time worked within the said hours with a minimum payment of \$1.57 for any one day.
- (ii) A permanent employee who is required to work any of his/her ordinary hours between midnight and 7.00 am Monday to Friday inclusive shall be paid an additional \$1.50 per hour or part of an hour for such time worked within the said hours with a minimum payment of \$1.57 for any one day. For the purposes of this paragraph midnight shall include midnight Sunday.

(f) Broken Periods of Work

Permanent employees who have a broken work day shall receive an additional allowance for a spread of hours as prescribed in Clause 23 - Hours of Work - Full-time Employees, of this award as follows:

- (i) Two hours over the hours worked in a day and up to three hours - \$1.33
- (ii) Three hours over the hours worked - \$2.05.

(g) Time Off in Lieu of Payment

Notwithstanding provisions elsewhere in the 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 during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked (unless otherwise provided elsewhere in the award).
- (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 negotiation referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the *Industrial Relations Regulations 1993*.

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- (vi) An employer shall record these time off in lieu arrangements in the time and wages book, as prescribed in Clause 44 - Time and Wages Book or Sheet of Division A of this award."

IN DIVISION B

(2) By deleting Clause 65 – Overtime and inserting in lieu thereof the following:

"65. OVERTIME

- (a) (i) Requirement to Work Reasonable Overtime
 - (1) Subject to subparagraph (2) of this subclause and subclause (c) of this clause, an employer may require an employee to work reasonable overtime at overtime rates.
 - (2) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (A) any risk to employee health and safety;
 - (B) the employee's personal circumstances including any family responsibilities;
 - (C) the needs of the workplace or enterprise;
 - (D) the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and
 - (E) any other relevant matter.
 - (ii) To ensure that permanent employees are not deprived of the opportunity to work reasonable overtime, an employer shall so far as is practicable offer such employee the opportunity to work any overtime that may be required to meet fluctuations in his or her trade or other special circumstances, in preference to engaging casuals to supplement his normal labour force.
- (b) All time worked by a weekly employee in excess of the ordinary hours and/or outside the spread of hours or outside the rostered hours prescribed in Clause 59 - Hours of Work, and/or Clause 70 - Posting of Roster, of this division shall be overtime and shall be paid for at the following rates:
 - (i) Monday to Friday inclusive time and a half for the first 2 hours and double time for all work thereafter.
 - (ii) Between midnight Friday and midnight Saturday time and three quarters for the first 3 hours and double time for all time worked thereafter.

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- (iii) Between midnight Saturday and midnight Sunday double time for all time worked.
 - (iv) Overtime on any day shall stand alone.
 - (v) If an employee is so long on overtime duty following his or her normal finishing time that he or she has not had 8 hours interval before his or her next regular starting time such employee shall be allowed at least 8 consecutive hours interval without deduction of pay or shall be paid at overtime rates for all time of duty until such employee has had at least 8 hours interval.
- (c) Notwithstanding the rate prescribed in subclause (b) at the instigation of the employee there may be an agreement in writing between the employee and employer to take time off with pay equivalent to the amount for which payment would otherwise have been made. Such accumulated time must be taken within four weeks from the time of accrual.
- (d) 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."

These variations shall come into operation from the first full pay period to commence on or after 14 November.

P C Shelley
COMMISSIONER

18 November 2003