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TASMANIAN INDUSTRIAL COMMISSION

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

**Australian Liquor, Hospitality and Miscellaneous Workers Union
- Tasmanian Branch**

(T8152 of 1998)
(T8153 of 1998)
(T8155 of 1998)
(T8156 of 1998)
(T8159 of 1998)

**BAKING INDUSTRY AWARD
CHILD CARE AND CHILDRENS SERVICES AWARD
LAUNDRY AND DRY CLEANING AWARD
MISCELLANEOUS WORKERS AWARD
WHOLESALE PLANT BAKERIES AWARD**

Award variation - insertion of Carer's Leave clause - consequential amendments - annual leave - hours - overtime - consent matters - applications approved - operative date ffpp 22 February 1999

LAUNDRY AND DRY CLEANING AWARD

ORDER BY CONSENT

No. 1 of 1999

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AMEND THE **LAUNDRY AND DRY CLEANING AWARD** IN THE FOLLOWING MANNER:

1. Insert new Clause 10A - Carer's Leave as follows:

"10A. CARER'S LEAVE

(a) Paid Carer's Leave

- (i) In accordance with this subclause, an employee is entitled to use up to a maximum of five days per annum of any current or accrued sick leave entitlement provided for at Clause 29 - 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.

For the purposes of this clause part-time employees shall be entitled to use up to a maximum of one week of any current or accrued sick leave entitlement.

Where a part-time employee's hours of work are not constant the employee's entitlement to carer's leave shall be based on the average number of weekly hours worked by the employee during the 12 month period immediately preceding the commencement of the relevant period of carer's leave or the employee's actual period of service if less than 12 months.

- (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 person.
- (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:

- (A) 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
- (B) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent,

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step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee.

- (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.

(c) Grievance Process

Clause 27 - Settlement of Disputes also applies to a dispute about the operation or effect of this clause."

2. Delete Clause 9 - Annual Leave and insert 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

- (i) Subject to this subclause, the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 17 - Holidays with Pay of this award, 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 the period of annual leave, time equivalent to the ordinary time which the employee would have worked if such day had not been a holiday.
- (ii) Where an employee without reasonable excuse, proof whereof shall lie upon him, is absent from his employment on the working day or part of the working day prior to the commencement of his annual leave, or fails to resume work at his ordinary starting time on the working day immediately following the last day of the period of his annual leave, the employee shall not be entitled to payment for the public holidays which fall within his period of

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annual leave. In the event of a dispute as to a 'reasonable excuse' the matter shall be determined by the Tasmanian Industrial Commission.

(c) Broken Leave

Annual leave shall be given and taken in a continuous period, or if the employee and employer so agree, in any combination of periods, provided one period shall be not less than 14 consecutive days, ie. ten working days.

(d) Calculation of Continuous Service

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

- (i) any interruption or termination of the employment by the employer if such interruption or termination 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 or on account of leave granted by the employer; or
- (iii) any absence with reasonable cause, proof whereof shall be upon the employee.

In cases of personal sickness or accident or absence with reasonable cause, the employee to become entitled to the benefit of this subclause shall inform the employer, in writing if practicable, within 48 hours of the commencement of such absence of his inability to attend for duty and as far as practicable state the nature of the illness, injury, or cause, and the estimated duration of his absence.

Any absence from work by reason of any cause not being a cause specified in this subclause shall not be deemed to break the continuity of service for the purposes of this clause unless the employer, during the absence or within 14 days of the termination of the absence, notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

In cases of individual absenteeism, such notice shall be given in writing to the employee concerned but in cases of concerted or collective absenteeism, notice may be given to employees by the posting up of a notification in the factory in the manner in which general notifications to employees are usually made in that factory and by posting to each union whose members have participated in such concerted or collective absenteeism a copy thereof not later than the day it is posted up in the factory.

A notice to an individual employee may be given by delivering it to him personally or by posting it by registered or certified mail to his last recorded address, in which case it will be deemed to have reached him in due course of post.

In calculating the period of 12 months' continuous service, any such absence as aforesaid shall not, except to the extent of not more than 91 days in a 12 monthly

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period in the case of sickness or accident, be taken into account in calculating the period of 12 months' continuous service.

(e) Payment in Lieu Prohibited

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

(f) Time of Taking Leave

(i) Annual leave shall be taken at a time mutually agreed on by the employer and the employee. In the absence of such agreement, it shall be taken within 6 months of the date it became due, at a time fixed by the employer, and after at least one month's notice to the employee.

(ii) No entitlement shall be permitted to accrue beyond 12 months after becoming due.

(g) Leave Allowed Before Due Date

(i) 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.

(ii) 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 deduct from whatever remuneration is payable upon the termination of the employment any excess amount already paid to the employee on account of continuous service not given to the employer.

(h) Payment for Period of Leave

Each employee before going on leave shall be paid the amount of wage he would have received in respect of the ordinary time which he would have worked had he not been on leave during the relevant period, plus a loading equal to 17.5 per cent on all annual leave, provided that such annual leave loading shall not be paid on termination of employment.

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(i) Proportionate Leave on Termination of Service

Should an employee not complete 12 months' service in any qualifying 12 monthly period, he or she shall on termination of employment, provided he or she has been employed continuously for one month or more, be entitled to be paid at his or her ordinary rate of wages on a pro rata basis for each completed month of continuous service, as follows:

12 2/3 hours for each completed month of continuous service.

(j) 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.

(v) Once a decision has been taken to introduce an enterprise system of single day annual leave, 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.

(vi) An employer shall record these short term annual leave arrangements in the time and wages book, as prescribed in Clause 32 - Time and Wages Book of this award."

3. Delete Clause 18 - Hours and insert in lieu thereof the following:

"18. HOURS

(a) The ordinary hours of work shall be a maximum of 38 per week to be worked in not more than 8 hours in any one day Monday to Friday inclusive. Subject to Clause 28 - Shift Workers, the spread of such ordinary hours shall extend from 6.30 am to 6.00 pm.

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- (b) A meal interval of not less than 30 minutes or more than one hour shall be allowed within five hours of the commencement of the shift.
- (c) Except as provided in subclause (f), (g) and (h) of this clause the method of implementation of the 38 hour week may be agreed to be any of the following:
 - (i) by employees working less than 8 ordinary hours each day; or
 - (ii) by employees working less than 8 ordinary hours on one or more days each week; or
 - (iii) by fixing one week day on which all employees will be off during a particular work cycle; or
 - (iv) by rostering employees off on various days of the week during a particular work cycle so that each employee has one week day off during that cycle.
- (d) On each site, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.
- (e) The employer and the majority of employees in the plant, business, section or sections concerned, may agree that the ordinary working hours are to exceed 8 hours on any day within the spread of ordinary hours as prescribed by this clause, thus enabling a week day off to be taken more frequently than would otherwise apply.
- (f) Circumstances may arise where different methods of implementation of a 38-hour week apply to various groups or sections of employees in the plant or establishment concerned.
- (g) Agreements reached on the method of implementation of the 38-hour working week shall be recorded in writing and shall be signed by the employer and the employees concerned. The agreement document shall be kept as part of the employment records and available for inspection in accordance with the provisions of the Industrial Relations Act 1984.
- (h) In the absence of agreement on the implementation of the 38-hour week the procedure in Clause 27 - Settlement of Disputes shall apply.
- (i) Substitute Days
 - (i) An employer, with the agreement of the majority of employees concerned, may substitute a day an employee is to take off in accordance with subclause (c)(iii) and (iv) of this clause, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

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(ii) Any individual employee, with the agreement of his employer, may substitute the day the employee is to take off for another day.

(j) Accumulation of Rostered Days Off

Where an employer and employees agree rostered days off may accumulate to a maximum of seven days which shall be taken at a mutually agreed time.

(k) Sickness on Day Off

Where an employee is sick or injured on the week day he is to take off in accordance with subclause (c)(iii) or (iv) of this clause, the employee shall not be entitled to sick pay nor will the sick pay entitlement be reduced as a result of the employee's sickness or injury that day.

(l) Averaging of Payment

Where the method of implementation adopted is in accordance with subclause (c)(iii) or (iv) of this clause, the wages paid each week for ordinary hours shall be paid so that in each week when 40 hours is worked 2 hours pay shall be kept in hand and paid to the employee in the pay week that the rostered day off occurs to enable an averaging of payments for ordinary time to occur.

(m) Work on RDO

Where an employee works on a day off arising under subclause (c) (iii) or (iv) of this clause not being a day the subject of agreement pursuant to subclause (l) of this clause, that day shall be deemed to be overtime and paid in accordance with Clause 20 - Overtime.

(n) 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 working 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 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.

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- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
 - (v) An employer shall record these make up time arrangements in the time and wages records kept as prescribed in clause 32 - Time and Wages Book of this award.
- (o) 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 provided that:

- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off 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 or 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.
- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, 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.
- (vi) An employer shall record these RDO arrangements in the time and wages book, as prescribed in Clause 32 - Time and Wages Book of this award."

4. Delete Clause 20 - Overtime and insert in lieu thereof the following:

"20. OVERTIME

- (a) For all time worked in excess of the hours prescribed in Clause 18 - Hours of this award, payment shall be made at the rate of time and a half for the first 2 hours and double time thereafter.
- (b) Where overtime exceeds two hours on any day, employees shall be paid a meal allowance of \$4.90 in addition to the overtime rate prescribed.

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- (c) The method by which the hourly rate shall be calculated for the purpose of this clause shall be by division of the weekly rate of pay for the employee concerned by 38.
- (d) (i) Subject to agreement being reached between the employee and the employer, time off may be allowed in lieu of payment for overtime worked. The amount of time off shall be calculated on the basis of the appropriate overtime rate.
 - (ii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual."

OPERATIVE DATE

This Order shall come into operation from the first full pay period to commence on or after 22 February 1999.

R J Watling
COMMISSIONER

22 February 1999