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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
(T11314 of 2004)

COMMISSIONER P C SHELLEY

**Award variation - variation of award - application granted - award varied -
operative date ffpp 1 April 2004 and 1 January 2005**

HOTELS, RESORTS, HOSPITALITY AND MOTELS AWARD

ORDER BY CONSENT

No. 1 of 2004

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

(1) by deleting Clause 14 – Casual Work and inserting in lieu thereof the following

"14. CASUAL WORK

- (a) **'Casual employee'** in this industry shall mean and be deemed to be any employee engaged as such to work for a lesser period than a working week of 38 hours on the class of employment for which the casual is employed.
- (b) A casual employee shall be engaged for a minimum period of two hours; each engagement shall stand alone and shall be paid at the rate of 1/38 of the appropriate weekly wage prescribed in Clause 8 - Wage Rates, plus:
 - (i) 25 percent for work Monday to Friday inclusive;

PROVIDED that for work performed between the hours of 7.00 pm and midnight an additional \$1.21 (provided that this amount will increase to \$1.38 from the first pay period on or after 1 January 2005) per hour or any part of an hour shall be paid with a minimum daily payment of \$1.83 (provided that this amount will increase to \$2.09 from the first pay period on or after 1 January 2005) and a maximum daily payment of three hours.

PROVIDED FURTHER that for work performed between midnight and 7.00 am an additional \$1.80 (provided that this amount shall increase to \$2.09 from the first pay period on or after 1 January 2005) per hour or any part of an hour shall be paid with a minimum daily payment of \$1.83 (provided that this amount will increase to \$2.09 from the first pay period on or after 1 January 2005) and a maximum daily payment of three hours. For the purposes of this paragraph midnight shall include midnight Sunday.

- (ii) 50 percent for all work performed on Saturday;
 - (iii) 75 percent for all work performed on Sundays;
 - (iv) 150 percent for all work performed on public holidays.
- (c) Casual work may, by mutual consent, be paid for weekly or fortnightly by agreement between the employers and employees or at the termination of each engagement.
- (d) **'Engagement'** for the purposes of this clause shall be deemed to mean the period or periods for which the employer notifies the employee that he or she is so required to attend on any one day.

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PROVIDED that each period of engagement shall stand alone and shall be treated as an engagement of not less than two hours and paid for as such.

- (e) Casual employees who have been regularly employed as such in an establishment shall not be re-employed as weekly employees in that same establishment for a lesser period than one month."

(2) 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 \$1.21 (provided that this amount will increase to \$1.38 from the first pay period on or after 1 January 2005) per hour or any part of an hour for such time worked within the said hours with a minimum payment of \$1.83 (provided that this amount will increase to \$2.09 from the first pay period on or after 1 January 2005) 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 \$1.80 (provided that this amount shall increase to \$2.09 from the first pay period on or after 1 January 2005) per hour or part of an hour for such time worked within the said hours with a minimum payment of \$1.83 (provided that this amount will increase to \$2.09 from the first pay period on or after 1 January 2005) 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.

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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 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 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."

OPERATIVE DATE

These variations shall come into operation from the first full pay period to commence on or after 1 April 2004 and 1 January 2005.

P C Shelley
COMMISSIONER

1 April 2004