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**TASMANIAN INDUSTRIAL COMMISSION**

**Industrial Relations Act 1984**

s.23 application for award or variation of award

**The Australian Workers' Union, Tasmania Branch**  
(T11621 of 2004)

DEPUTY PRESIDENT SHELLEY

**Award variation – Superannuation - consent matter - application granted -  
award varied - operative date ffpp 6 September 2004**

**FISH, AQUACULTURE AND MARINE PRODUCTS AWARD**

**ORDER BY CONSENT**

**No. 2 of 2004**

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AMEND THE **FISH, AQUACULTURE AND MARINE PRODUCTS AWARD** IN THE FOLLOWING MANNER:

**By deleting from Part III – Wages and Related Matters – Clause 6 Superannuation, and inserting in lieu thereof the following:**

**6. SUPERANNUATION**

- (a) For Employees in Division A - Process Attendants Finfish and/or Shellfish of Part III - Wages and Related Matters, Clause 2 - Wage Rates and Clause 3 - Classification Descriptors the following shall apply:
- (i) Contributions
- (1) The employer shall make an occupational superannuation contribution equivalent to 9% of ordinary time earnings (as defined) into the funds known as Australian Primary Superannuation Fund, TASPLAN or F.I.S.T. or any other approved fund (as defined) where an exemption has been granted under subclause (a)(iii) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 15 November 1991 provided that contributions shall not be made to eligible casual employees entitled to contributions under the provisions of subclause (a)(i)(3) of this clause.
  - (2) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.
  - (3) Provided that in the case of eligible casual employees not entitled to a contribution under subclause (a)(i)(1) of this clause, a contribution of \$1.60 shall be made per week by the employer in respect of each casual employee engaged by the employer during that week in any instance whereby 9% represents less than such amount.
  - (4) For new employees contributions shall commence from the date the employee commenced employment.
  - (5) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i)(1) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
  - (6) Where an eligible employee (as defined) has completed 16 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

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(ii) Definitions

**'Approved Fund'** shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

**'Australian Primary Superannuation Fund'** shall mean the fund established by Trust Deed Consolidated on 28<sup>th</sup> February 2004 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

**'Food Industry Superannuation Trust'** shall mean the superannuation fund established by Trust Deed dated 12 January 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation funds.

**'Ordinary Time Earnings'** shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

**'TASPLAN'** shall be an approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(iii) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into Australian Primary Superannuation Fund, TASPLAN or F.I.S.T. in the following circumstances:

- (1) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to the first full pay period on or after 15 November 1991 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 15 November 1991 and have continued to be paid since that date; or
- (2) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than into Australian Primary Superannuation Fund, TASPLAN or F.I.S.T.

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(iv) Procedure for Seeking Exemption

- (1) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 March 1992 for hearing and determination.

Such application shall contain the following information:

- (A) Name of Fund into which the funds are to be paid.
  - (B) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (C) Summary of Structure and Benefits.
  - (D) Level of Administration Charge.
  - (E) Any other relevant information.
- (2) Any application shall in the first instance be considered by the union(s) party to the award, which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
  - (3) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
  - (4) An employer who commences a new business after 15 November 1991 may make application for exemption in accordance with subclause (a)(iii) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 15 November 1991.

- (b) For Employees in Division B - Seabased Finfish Farm Employees of Part III - Wages and Related Matters, Clause 2 - Wage Rates and Clause 3 Classification Descriptors the following shall apply:

(i) Contributions

- (1) The employer shall make an occupational superannuation contribution equivalent to 9% of ordinary time earnings (as defined) into the fund known as Australian Primary Superannuation Fund, TASPLAN or any other approved fund (as defined) where an exemption has been granted under subclause (b)(iii) of this clause in respect of all eligible employees (as defined) as from the first full pay period on or after 15 November 1991 provided that contributions shall not be made to eligible casual

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employees entitled to contributions under the provisions of subclause (b)(i)(3) of this clause.

- (2) Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.
- (3) Provided that in the case of eligible casual employees not entitled to a contribution under subclause (b)(i)(1), a contribution of \$1.60 shall be made per week by the employer in respect of each casual employee engaged by the employer during that week in any instance whereby 9% represents less than such amount.
- (4) For new employees contributions shall commence from the date the employee commenced employment.
- (5) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (b)(i)(1) of this clause paid into the fund known as C.I.S. Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.
- (6) Where an eligible employee (as defined) has completed 16 hours service with the employer, the superannuation contributions shall be made from the date the employee commenced employment.

(ii) Definitions

**'Approved Fund'** shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

**'Australian Primary Superannuation Fund'** shall mean the fund established by Trust Deed Consolidated on 28<sup>th</sup> February 2004 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

**'Eligible Employee'** means an employee for whom a classification appears in this award whether employed on a full-time or casual basis but excludes the spouse of the employer and children of the employer.

**'Ordinary Time Earnings'** shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

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'TASPLAN' shall be an approved fund established by Trust Deed made on 24 March 1987 and approved in accordance with the Commonwealth Occupational Standards for Occupational Superannuation Funds.

(iii) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into Australian Primary Superannuation Fund, TASPLAN in the following circumstances:

- (1) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 15 November 1991 and occupational superannuation contributions equivalent to 3% of ordinary time earnings (as defined) were being paid on behalf of employees in the establishment covered by this award prior to the first full pay period on or after 15 November 1991 and have continued to be paid since that date; or
- (2) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than Australian Primary Superannuation Fund or TASPLAN.

(iv) Procedure for Seeking Exemption

- (1) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 March 1992 for hearing and determination.

Such application shall contain the following information:

- (A) Name of Fund into which the funds are to be paid.
  - (B) Evidence of the funds compliance with Commonwealth Operational Standards.
  - (C) Summary of Structure and Benefits.
  - (D) Level of Administration Charge.
  - (E) Any other relevant information.
- (2) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
  - (3) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.

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- (4) An employer who commences a new business after 15 November 1991 may make application for exemption in accordance with subclause (b)(iii) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 15 November 1991."

#### **OPERATIVE DATE**

This variation shall come into operation from the first full pay period to commence on or after 6 September 2004.

P C Shelley  
**Deputy President**

9 September 2004