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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s23 application for an award or variation of an award

Minister Administering the Tasmanian State Service Act 1984
(T9049 of 2000)

General Conditions of Employment Award
Community and Health Services (Public Sector) Award
Electrical/Electronic Trades (Public Sector) Award
Medical Practitioners (Public Sector) Award
Metal Trades (State Employees) Award
Miscellaneous Workers (Public Sector) Award
Tasmanian Ambulance Service Award
Tourism Tasmania Award

FULL BENCH:

DEPUTY PRESIDENT R J WATLING
COMMISSIONER T J ABEY
COMMISSIONER P C SHELLEY

Award variation - nominated public sector awards - State Service Accumulated Leave Scheme - application granted - 1 January 2001

MISCELLANEOUS WORKERS (PUBLIC SECTOR) AWARD

ORDER BY CONSENT -

No.2 of 2000

THE **MISCELLANEOUS WORKERS (PUBLIC SECTOR) AWARD** IS AMENDED AS FOLLOWS:

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1. By deleting Clause 3 - ARRANGEMENT, and inserting in lieu thereof the following:

"3. ARRANGEMENT

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
Title	1
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Arrangement	3
Date of operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Allowances	9
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Contract of Employment	13
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General Conditions	15
Holidays With Pay	16
Hours of Work	17
Maternity Leave	18
Meal and Meal Allowance	19
Minimum Start for Part-time and Casual Employees	20
Overtime	21
Part-time and Casual Employees	22
Payment of Wages	23
Reference of Disputes	24
Rest Period	25
Right of Entry of Union Officials	26
Shop Steward	27
Sick Leave	28
State Service Accumulated Leave Scheme	29
Sunday and Holiday Work	30
Technological Change	31
Travelling Time and Expenses	32
Special Provisions Relating to Student Hostel Employees	33
Special Provisions Relating to the Department of Education and the Arts	34
APPENDIX A - Department of Education and the Arts	
APPENDIX B - State Service Accumulated Leave scheme"	

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2. By deleting Clause 29 - SUNDAY AND HOLIDAY WORK, and inserting in lieu thereof the following:

"29. STATE SERVICE ACCUMULATED LEAVE SCHEME

An employee shall be entitled to participate in the State Service Accumulated Leave Scheme under the terms and conditions specified in Appendix B."

3. By deleting Clause 30 - TECHNOLOGICAL CHANGE, and inserting in lieu thereof the following:

"30. SUNDAY AND HOLIDAY WORK

- (a) Payment shall be at the rate of double time for work performed on a Sunday.
- (b) Payment shall be at the rate of double time and a half for work performed on a holiday as prescribed in Clause 16 - Holidays with Pay of this award.

Full-time employees required to work on a Sunday or a holiday as prescribed in Clause 16 - Holidays with Pay of this award, shall receive a minimum of 4 hours pay at the appropriate rate."

4. By deleting Clause 31 - TRAVELLING TIME AND EXPENSES, and inserting in lieu thereof the following:

"31. TECHNOLOGICAL CHANGE

Notwithstanding the provisions of Clause 13 - Contract of Employment, where on account of the introduction or proposed introduction by an employer of mechanisation or technological changes, the employer terminates the employment of an employee who has been employed by the employer for the preceding twelve months, the employer shall give the employee three months' notice of the termination of the employment: provided that, if the employer fails to give such notice in full:

- (a) the employer shall pay the employee at the rate specified for the employee's classification in Clause 8 - Wage Rates, of this award, for a period equal to the difference between three months and the period of the notice given; and
- (b) the period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of long service leave and annual leave, provided that the right of the employer to dismiss an employee for the reasons specified in subclause (e) of Clause 13 - Contract of Employment, shall not be prejudiced by the fact that the employee has been given notice pursuant to this subclause of the termination of the employment.

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When an employer gives an employee notice of the termination of the employment on account of the introduction or proposed introduction of mechanisation or technological changes, within fourteen days thereafter the employer shall give notification in writing to the Tasmanian Industrial Commission and the Secretary of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Tasmanian Branch of that fact, stating the employee's name, address and usual occupation and the date when the employment terminated or will terminate in accordance with the notice given."

5. By deleting Clause 32 - SPECIAL PROVISIONS RELATING TO STUDENT HOSTEL EMPLOYEES, and inserting in lieu thereof the following:

"32. TRAVELLING TIME AND EXPENSES

- (a) Where an employee is sent to work from an employer's recognised place of business the employer shall pay all travelling time from such place of business to the job and if the employee is required to return the same day to the employer's place of business the employer shall pay travelling time to the place of business. An employee sent for duty to a place other than the regular place of duty or required by the employer to attend a court of any inquiry in connection with the employment shall be paid travelling time.
- (b) Where an employee is required to cease or to commence duty at a time when the usual means of conveyance are not available the employee shall, at the employer's expense, be conveyed to a point nearest his/her home or place of duty to which he/she ordinarily would proceed during ordinary hours by public conveyance.
- (c) An employee shall be reimbursed by the employer for all expenses incurred by the employee in using his/her private vehicle for the employer's purpose.
- (d) Where an employee is required to work a shift in 2 periods as prescribed in Clause 17 - Hours of Work, subclause (e) of this award, he shall be paid an excess fares allowance of \$1.40 per day."

6. By deleting Clause 33 - SPECIAL PROVISIONS RELATING TO THE DEPARTMENT OF EDUCATION AND THE ARTS, and inserting in lieu thereof the following:

"33. SPECIAL PROVISIONS RELATING TO STUDENT HOSTEL EMPLOYEES

The conditions of employment of employees engaged at student hostels shall to the extent that there is a conflict between the provisions of this clause and other clauses of this (award/agreement) be regulated by the provisions of this clause in lieu of conditions otherwise provided in this (award/agreement).

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(a) Board and Lodging

- (i) The amount that may be deducted from the wages herein prescribed for board and/or lodging shall be \$25.00 per week and the amount that may be deducted where meals are provided shall be \$3.00 per week.
- (ii) Employees classified as matron, assistant matron or housekeeper shall be provided with free board and lodging if required by the employer to live on the premises during each weekly rostered period.

(b) Breakages

An employer shall not charge a sum of money against or deduct from the wage of an employee in respect of breakages of crockery or other utensils except in the case of misconduct.

(c) Exemptions

The provisions of the award, relating to Hours of Work, Overtime and Saturday, Sunday and Holiday Work shall not apply to matrons, assistant matrons or housekeepers who receive their full rate of pay during term vacation.

(d) Mixed Functions

An employee engaged for more than 3 hours in any one day on duties carrying a higher rate than the employees' ordinary classification shall be paid the higher rate for the whole of such day.

(e) Rostered Days Off

Each employee shall have at least 2 consecutive days off in each week other than rostered days off arising out of Clause 17 - Hours of Work. The days off shall operate from the finishing time of work on the day immediately preceding the days off and until starting time on the day when work is to be resumed.

The days off shall be rostered and shall not be altered except by mutual agreement between the employer and the employee.

(f) Saturday Work

Employees working ordinary hours on Saturday shall be paid at the rate of time and one half.

(g) Stand-down During School Holidays

The provisions of Clause 10 - Annual Leave shall not apply to the employer who elects to allow employees school or term holidays each year, provided that the employer:

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- (i) provides such employees with not less than 10 full weeks annual leave per calendar year;
- (ii) pays them for such leave at a rate not less than 2/3 their normal rate of pay;
- (iii) pays them an additional amount at the appropriate rate for any day during such leave period on which they come in and work;
- (iv) where an employee is dismissed prior to receiving the full annual leave provided under this subclause, he/she shall not receive less than an amount of pro rata annual leave payments equal to the proportion of the school year during which he/she has worked."

7. By inserting after Clause 33 the following:

"34. SPECIAL PROVISIONS RELATING TO THE DEPARTMENT OF EDUCATION AND THE ARTS

Special provisions relating to the Department of Education and the Arts are contained in Appendix A to this Award and shall apply to employees employed in the Division of Education within the Department of Education and the Arts only during the period 1 October 1991 to 30 September 1997."

8. By adding APPENDIX B, at the end of the award (after APPENDIX A) as follows:

"APPENDIX B

STATE SERVICE ACCUMULATED LEAVE SCHEME

1. TITLE

The scheme is to be known as the State Service Accumulated Leave Scheme (SSALS).

2. SUMMARY OF SCHEME

The SSALS allows Heads of Agency to approve Plans under which participating employees will, by taking a reduction in normal salary for a given period, become entitled at the end of that period to a pre-determined amount of special ("accumulated") leave during which they will be paid salary at the same reduced rate.

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3. INTERPRETATION

The conditions and administrative arrangements in the SSALS are to be administered in conjunction with the Tasmanian State Service Act 1984, the Tasmanian State Service Regulations 1985, relevant Awards, Industrial Agreements, Administrative Instructions and Employment Instructions.

'accumulated leave' means the period of time that is accumulated under the Plan as leave during a work period.

'leave period' means the period specified in a Plan when a participating employee is absent from work on accumulated leave.

'normal salary' means the salary that would be paid to a participating employee if that person was not participating in a Plan and includes salary expressed as an annual rate, fortnightly rate, weekly rate, daily rate or hourly rate. It includes all allowances that are paid as an annual rate, fortnightly rate, weekly rate, daily rate or hourly rate but not overtime payments and shift work penalty rates unless they are paid as a component of an annualised rate.

'operational requirements' means the need to ensure that the Agency is to be operated as effectively, efficiently and economically as possible.

'participating employee' means an employee whose election to participate in a Plan has been approved by their Head of Agency.

'Plan' means an arrangement in the SSALS consisting of a specified work period followed by a specified leave period.

'work period' means the period specified in a Plan when an employee is at work.

4. PLANS

The SSALS consists of arrangements known as Plans. For example:

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Work Period	Percentage of Normal Salary payable during the period of the Plan	Leave Period
Four Years	80% "The Four over Five Year Plan"	One Year
Three Years	75% "The Three over Four Year Plan"	One Year
Twenty Months	83.3% "The 20 over 24 Month Plan"	Four Months
Eighteen Months	75% "The 18 over 24 Month Plan"	Six Months
Forty Eight Weeks	92.3% "The 48 over 52 Week Plan"	Four Weeks
Forty Weeks	76.9% "The 40 over 52 Week Plan"	Twelve Weeks
(Other Plan) "A"	$\frac{A}{A+B} \times 100 = \dots\%$ (to one decimal place)	(Other Plan) "B"
..... <i>Years</i> <i>Year</i> The.... over..... <i>Month Plan</i> <i>Week</i> <i>Year</i> <i>Months</i> <i>Weeks</i>

5. APPLICATION OF SSALS

- 5.1 The Head of an Agency, after considering the operational requirements of the Agency, determines whether any Plan or Plans are to be available to employees in the Agency.
- 5.2 A Head of an Agency may make any Plan or Plans available to employees in that Agency or an employee or employees can request the Head of Agency that a Plan be made available to them.
- 5.3 A Plan may be made available to any permanent employee (full or part-time) including an employee who works shifts. A Plan may be made available to any temporary employee the term of whose contract of employment is sufficient to cover the period of the Plan.

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5.4 The Head of Agency determines:

- whether one or more Plans will be made available to all or only some of the employees;
- whether particular Plans will be made available to particular categories of employees;
- whether quotas will apply to the number of employees who may participate in a Plan, and whether quotas will apply to any category of employees;
- the selection arrangements where quotas are imposed; and
- the commencement date of any Plan.

5.5 Where an employee participating in a Plan is promoted, transferred, seconded or otherwise moved either into another Agency or within their own Agency the Head of the Agency in which the employee is thereafter employed will, after consultation with the employee and taking into account the operational requirements of the Agency, determine whether or not the employee is able to continue on their Plan.

5.6 If the Head of Agency determines under clause 5.5 that the employee is not able to continue on their Plan, the Head of Agency may forthwith terminate the employee's Plan whereupon the employee becomes entitled to a period of accumulated leave which bears the same proportion to the total leave period of the Plan as the period worked under the Plan bears to the total work period, to be remunerated at the percentage of normal salary payable during the period of the Plan. The employee may apply to the Head of Agency at any time to take that leave, and it shall be granted as soon as can be, consistent with the operational requirements of the Agency.

6. HOW TO PARTICIPATE IN SSALS

6.1 Where the Head of an Agency offers a Plan to an employee the employee may elect to participate in the Plan by lodging an election in writing with the Head of Agency in any form which the Head of Agency may approve.

6.2 The Head of the Agency may accept or reject an election to participate made in accordance with clause 6.1.

6.3 The Head of Agency will notify the employee in writing if the employee's election has been disapproved.

6.4 Where the employee's election is approved, the Head of Agency will endorse approval on the form of election which was lodged by the employee, and will provide the employee with a copy of that endorsed form.

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6.5 An employee's election under cl.6.1 does not entitle the employee to participate in a Plan until it is approved by the Head of Agency in accordance with cl.6.4.

6.6 A participating employee wishing to withdraw from a Plan must apply in writing to their Head of Agency who may refuse the application if he or she considers such refusal to be reasonably required to meet the operational requirements of the Agency.

7. CONDITIONS AND ADMINISTRATIVE ARRANGEMENTS

7.1 Work Period to be completed prior to Period of Leave

The work period specified in a Plan must be completed before a participating employee can commence the leave period specified in that Plan.

7.2 Suspension of Plan

The Head of Agency on the application of the employee or otherwise can in writing suspend a Plan.

In deciding to suspend a Plan, either on application of the employee or otherwise, the Head of Agency will take into account the employee's circumstances and response to any proposal to suspend, and what is reasonably required to meet the operational requirements of the Agency. Suspension may occur either during the work period or the leave period of the Plan, and will be for such period as may be specified by the Head of Agency in the instrument by which the Plan is suspended.

Where the total period of the Plan comprises five years or more (for example a four over five Plan) the Plan may only be suspended with the agreement of the employee.

An employee is entitled to compensation for reasonable expenses incurred by the employee, but not otherwise recoverable, as a result of the Head of Agency's decision to suspend the Plan otherwise than on the application of the employee.

7.3 Accumulated Leave

Accumulated leave is to be managed in accordance with any legislative requirements and with any guidelines which may be issued by the relevant Head of Agency which are not inconsistent with the SSALS.

A record is to be kept to show at all times the exact amount of the accumulated leave for each participating employee.

On withdrawal from a Plan, the accumulated leave is to be taken immediately or either wholly or in part at a later time approved by the Head of Agency, at the percentage of normal salary payable during the period of the Plan. It is not to be paid out unless the participating employee's employment ends.

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Where a participating employee moves to another Agency the exact amount of the accumulated leave and salary for that employee is to be transferred to that Agency not later than twenty working days after the date of movement.

7.4 Payment during the Leave Period

During the leave period the participating employee will receive salary at the percentage of normal salary payable during the period of the Plan. Normal employment conditions will apply as if the employee was on annual leave. An employee may, on request, receive a lump sum payment in either one or two instalments.

7.5 Salary Increments

Salary increments will accrue throughout the period of a Plan.

7.6 Superannuation

Superannuation contributions are to be paid throughout the period of a Plan and in accordance with the rate of salary applicable under the Plan.

It is the responsibility of a participating employee to obtain any personal superannuation advice from the Retirement Benefits Fund Board or from the employee's own adviser(s).

A participating employee's superannuation contributions (where the employee is a contributor to a superannuation scheme other than Retirement Benefits Fund) and entitlements depends upon the employment arrangements for that employee.

An Agency's superannuation responsibilities and financial obligations for participating employees depends upon the nature of the employment arrangements for each participating employee.

7.7 Other Compulsory Deductions from Pay

Compulsory deductions from pay will be made throughout the period of a Plan.

("Compulsory deductions" include garnishees, salary attachments, court orders, etc.)

7.8 Voluntary Deductions from Pay

Voluntary deductions from pay (including life insurance premiums, private health fund premiums, union membership fees etc) made by the Agency at the request of an employee will continue throughout the period of the Plan.

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7.9 Administrative Records

An Agency administering a Plan must maintain proper separate records of accruals based upon that Plan.

7.10 Recreation Leave

Recreation leave entitlements accrue throughout the period of the Plan and will be taken otherwise than during the leave period of a Plan at the percentage of normal salary payable during the period of the Plan. Whenever taken, entitlements will be deducted from credits in the normal manner.

7.11 Sick Leave

Sick leave entitlements taken during the period of a Plan will be taken at the rate of salary applicable under the Plan and will be deducted from credits in the normal manner.

Sick leave entitlements will accrue throughout the period of the Plan and access to those entitlements will be in accordance with the Tasmanian State Service Regulations and any relevant Award provisions.

7.12 Maternity Leave and Adoption Leave

Where a participating employee is absent on maternity leave or adoption leave, either within the work period of a Plan or during the leave period, the employee's participation in the Plan is not affected by that maternity or adoption leave. Salary arrangements established by the Plan apply during maternity or adoption leave.

7.13 Other Leave

Payment of all other leave entitlements (including leave on account of special circumstances, bereavement leave, leave of absence with or without pay, Defence Force leave, leave for jury service, leave in lieu of overtime, etc) taken during the currency of a Plan will be at the rate of salary applicable under the Plan. Such entitlements will when taken be deducted from credits in the normal manner, and are to be taken otherwise than during the leave period of a Plan.

7.14 Long Service Leave

Long service leave is provided for in the Long Service Leave (State Employees) Act 1994.

Long service leave entitlements accrue throughout the work period of a Plan. The leave period is not to be regarded as a period of employment in calculating length of employment for the purposes of the Act, but is not to be taken as interrupting the continuous employment of a participating employee. Long Service leave entitlements are to be taken otherwise than during the leave period of a Plan.

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Where a participating employee is absent on long service leave in the work period of a Plan the employee's participation in the Plan is not postponed for the duration of that long service leave, and salary is to be paid at the rate of salary applicable under the Plan.

7.15 State Service Holidays (Public Holidays)

The leave period of a Plan is to be extended by the number of State Service holidays (public holidays) falling within it.

7.16 Workers Compensation

A Plan is to be suspended during any period of incapacity for which the worker is entitled to compensation under the provisions of the Workers Rehabilitation and Compensation Act 1988, effective from the day before the commencement of the period of incapacity and terminating upon the last day of the incapacity. Upon suspension of a Plan in accordance with this provision, the employee reverts to normal salary entitlement.

7.17 Employment during Period of Leave

A participating employee shall not be employed elsewhere in the Tasmanian State Service during the leave period of a Plan.

Where a participating employee wishes to undertake employment outside the Tasmanian State Service during the leave period of a Plan, the employee is required to comply with the provisions of Section 79 of the Tasmanian State Service Act 1984.

7.18 Cessation of Employment

Where a participating employee ceases to be employed in the Tasmanian State Service, the Plan will thereupon terminate and the Head of the Agency will pay in one lump sum to that former employee, or to that person's estate, the exact amount of that former participating employee's accumulated leave entitlement less the prescribed income tax and any other compulsory deductions not later than twenty working days after termination."

OPERATIVE DATE

These variations shall come into operation on and from 1 January 2001.

R.J. Watling
COMMISSIONER

20 December 2000