

This document is translated from the original order, issued on 13 January 2003, and is not in itself a legal document. No responsibility is taken for any discrepancy that may have arisen between this document and the order that is printed and published by, and available for purchase from, the Printing Authority of Tasmania.

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Australian Liquor, Hospitality and Miscellaneous Workers Union
(T10410 of 2002)

**AERATED WATERS AWARD
CHILD CARE AND CHILDREN'S SERVICES AWARD
CLEANING AND PROPERTY SERVICES AWARD
FIBREGLASS AND PLASTICS AWARD
HEALTH AND FITNESS CENTRES AWARD
ICE CREAM MAKERS AWARD
INDEPENDENT SCHOOLS (NON TEACHING STAFF) AWARD
LAUNDRY AND DRY CLEANING AWARD
LICENSED CLUBS AWARD
MISCELLANEOUS WORKERS AWARD
RESTAURANT KEEPERS AWARD
SECURITY INDUSTRY AWARD
SHIPPING AWARD**

FULL BENCH:

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

**Award variation - 9% superannuation - application approved - operative date
ffpp 25 November 2002**

RESTAURANT KEEPERS AWARD

ORDER BY CONSENT -

No. 1 of 2003

THE **RESTAURANT KEEPERS AWARD** IS VARIED IN THE FOLLOWING MANNER:

By deleting Clause 34 – Superannuation and inserting in lieu thereof the following:

“34. SUPERANNUATION

(a) Contribution

An employer shall make a contribution equivalent to nine percent of ordinary time earnings into an approved superannuation fund in respect to all eligible employees as from 25 November 2002.

(b) Eligible Employee means:

LICENSED ESTABLISHMENTS

(i) Full-time and part-time employees;

an employee who immediately before the date on commencement of superannuation as provided in subclause (a) of this clause, has completed four weeks continuous service with the employer; or

an employee who subsequent to the date of commencement of superannuation completes four weeks continuous service with the employer; or

an employee who commences employment after the date of commencement of superannuation and who is an existing member of the scheme.

(ii) Casual Employee means:

an employee who immediately before the date of commencement of superannuation as provided in subclause (a) of this clause, has completed continuous service over two successive calendar months in each of which the employee has had not less than two engagements and has aggregate ordinary time earnings, as defined, equivalent to not less than \$57 for each week in the month calculated by the number of Fridays falling within the calendar month; or

an employee who subsequent to the date of operation of superannuation completes continuous service over two successive calendar months in each of which the employee has had not less than two engagements and has aggregate ordinary time earnings, as defined, equivalent to not less than \$57 for each week in the month calculated by the number of Fridays falling within the calendar month; or

an employee who commences employment after the date of commencement of superannuation and who is an existing member of the

scheme and has ordinary time earnings upon commencement or at any time thereafter of not less than \$57 per week in any one week.

PROVIDED that in any monthly contribution period the aggregate ordinary time earnings for a casual employee does not exceed \$200 no contribution shall be made in respect of such employee. However, where an employee is employed by more than one employer and his aggregate earnings with those employers exceeds \$200 per month, then each employer will, on production of satisfactory evidence by the employee, be required to make contributions in respect of earnings with that employer.

ALL OTHER ESTABLISHMENTS

Shall mean an employee whether weekly, part-time or casual, who has had at least six months continuous service with an employer subject to this award.

PROVIDED that in the case of eligible casual and part-time employees, contributions shall be made where the employee works at least 12 hours per week averaged over a Fund billing statement month.

PROVIDED FURTHER that in the case of an employee who has so qualified with one employer, that employee shall not be required to serve the qualifying period with any subsequent employer subject to this Award.

Ordinary Time Earnings

- (i) In the case of a full-time employee the weekly wage rates for the ordinary hours of the week prescribed by Clause 8 - Wage Rates together with payments prescribed by Clauses 9 - Annual Leave, 10 - Annual Salary, 16 - Compassionate Leave, 21 - Hours of Work, 22 - Meal Allowance, 32 - Sick Leave, 35 - Terms of Engagement and 37 - Tool Allowance, and the penalty payments on ordinary hours prescribed by Clause 25 - Overtime and Other Penalty Rates. Overaward payments shall also be included.
- (ii) In the case of a part-time employee the weekly wage rates for the ordinary hours of the week prescribed by Clause 8 - Wage Rates together with payments prescribed by Clauses 9 - Annual Leave, 10 - Annual Salary, 16 - Compassionate Leave, 21 - Hours of Work, 22 - Meal Allowance, 27 - Part-time Employees, 32 - Sick Leave, 33 - Terms of Engagement and 37 - Tool Allowance, and the penalty payments on ordinary hours prescribed by Clause 25 - Overtime and Other Penalty Rates. Overaward payments shall also be included.
- (iii) In the case of a casual employee the weekly wage rates for the hours of the week prescribed by Clause 8 - Wage Rates, together with payments prescribed by Clauses 14 - Casual Employees, 22 - Meal Allowance and 28 - Payment of Wages, and the penalty payments on ordinary hours prescribed by Clause 25 - Overtime and Other Penalty Payments. Overaward payments shall also be included.

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

(c) Fund

Contributions determined in accordance with subclause (a) of this clause shall, subject to subclause (e) of this clause, be made into:

- (i) For licensed establishments - HOST, PLUS:
- (ii) For all other establishments - TASPLAN.

PROVIDED that restaurants in a retail store may also utilise the REST Scheme.

(d) Exemption

An employer may seek exemption from making contributions into either of the nominated approved funds in the following circumstances:

- (i) where employees subject to this award represent a minority of the total employees and contributions are already being made into an approved fund in respect of the majority of employees in any one establishment; or
- (ii) where the fund subject to the exemption application is an approved fund which was established prior to 1 January 1990 and Occupational Superannuation contributions equivalent to three percent of ordinary time earnings were being paid on behalf of all employees in the establishment covered by this award prior to 1 January 1990 and have continued to be paid since that date; or
- (iii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than either of the nominated approved funds.

(e) Procedure for Seeking Exemption

An employer seeking exemption shall, not later than 1 June 1990:

- (i) Pursuant to Section 29 of the *Industrial Relations Act 1984* make application to the Industrial Commission;
- (ii) Applications shall contain the following information:
 - (1) Name of Fund;
 - (2) Evidence of compliance with Commonwealth Operational Standards;

- (3) Summary of Structure and Benefits;
- (4) Level of Administration Charge;
- (5) Any other relevant information.

(iii) An employer who commences a new business after 1 June 1990 may make application for exemption in accordance with subclause (e) 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 1 June 1990.

- (f) Notwithstanding anything elsewhere contained in this clause, an employee who belongs to the religious fellowship known as Brethren and who holds a certificate issued under an Act may nominate an alternative complying fund into which the contributions shall be paid.
- (g) The following businesses are exempt from the requirement to necessarily use the nominated funds referred to in subclause (c) of this clause, but may in the alternative use either the nominated fund or the fund hereinafter specified:

Employers	Trading Name	Fund	
Allamanda Pty Ltd	Ball & Chain	Tasmanian Chamber of Commerce	
J Hill & J Splann	"Chats"		
A J & J M Shanny	Brandys Coffee Shoppe		
H & B Giizel	Delishus Cuisine		
J Y Bosworth	Renison Canteen		
P Bosch & R Garcia	Sisco's Restaurant		
T W & F C Owens & J & V Deegan	Red Grasshopper		
D M Mohr	Rainbows End Coffee Shop		Industry
Heathridge Pty Ltd	Buccahinos		Superannuation
P & T Tremlett	The Bistro		Fund
Holloway Enterprises	Mures Fish Centre	Goliath Supplementary Superannuation	
Mr Wooby's Pty Ltd	Mr Wooby's Coffee Lounge & Restaurant		
V Sanita	Mister Pizza		
C A Vautin	Pitstop Takeaways		
Western Holdings (Tas) Pty Ltd and CDC Nominees (GRC) Pty Ltd	Gordon River Cruises		
Goliath Portland Cement Pty Ltd			

		Fund
Salvation Army	Ashfield/Barrington Centre	Australian Retirement
John McMinn Catering Service	Botanical Gardens Restaurant	TASPLAN
Centacare Tasmania	Centacare Tasmania	Catholic Superannuation Fund”

This variation shall take effect from the first full pay period on or after 25 November, 2002.

P L Leary
PRESIDENT

13 January 2003