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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s.23 application to vary an award

Health Services Union of Australia
Tasmania No. 1 Branch
(T.2707 of 1990 and T.3231 of 1991)

Tasmanian Confederation of Industries
(T.2809 of 1991)

DENTISTS AWARD

COMMISSIONER R J WATLING

11 November 1991

Wages Rates - State Wage November 1989 - Structural Efficiency Principle - Report Back
- State Wage August 1991 - Wage rates and work related allowances - increase by 2.5%
- Application granted - Operative from F.F.P.P. 20 November 1991

ORDER -

No. 4 of 1991
(Consolidated)

AMEND THE **DENTISTS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERT IN LIEU THEREOF THE FOLLOWING:

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1. TITLE

This award shall be known as the 'Dentists Award'.

2. SCOPE

This award is established in respect of

- (a) Dentists
- (b) Dental Mechanics

registered under Part III of the Dentists Act 1919.

3. ARRANGEMENT

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period on or after 20 November 1991.

PROVIDED that it is a term of this award (arising from the decision of the Tasmanian Industrial Commission in the State Wage Case of 13 August 1991) that the union(s) undertake(s), until 30 November 1991 not to pursue any extra claims, award or overaward, except when consistent with those principles.

5. SUPERSESION & SAVINGS

This award incorporates and supersedes No. 1 of 1991 (Consolidated), Nos. 2 and 3 of 1991.

Provided that no right, obligation or liability incurred or accrued under any of the abovementioned provisions shall be affected by the replacement or supersession.

6. PARTIES AND PERSONS BOUND

Unless otherwise specified, this award shall have application to and be binding upon:

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisations of employees in respect of whom award interest has been determined:
 - (i) the Health Services Union of Australia Tasmania No. 1 Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisations of employers in respect of whom award interest has been determined:-
 - (i) the Tasmanian Confederation of Industries.

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7. DEFINITIONS

- (a) **Adult** - an employee of 20 years of age or over.
- (b) **Apprentice** - Any person who is being trained as a Dental Technician or a Registered Dental Mechanic by a qualified Journeyman or Dentist under articles of apprenticeship.
- (c) The **Association** - means The Dental Assistants' Association of Australia (Tasmanian Branch).
- (d) **Casual employee** - means any person who is employed on a casual basis and except as to probationary employees mentioned in subclause (a), Clause 25 - Terms of Employment hereof, includes any person who is employed for a period not exceeding 5 days at any one time.
- (e) **Dental Mechanic** - Any person registered under Section 48 of the Dentists' Act who makes any article to be fitted to the human mouth.
- (f) **Dental Technician** - Any person other than a Registered Dental Mechanic who makes any article to be fitted to the human mouth and who has served an apprenticeship under the provisions of subclause (c) hereof.
- (g) **Experience** - means experience in a dental surgery whether in the employ of one employer or of several. For the purposes of this subclause an employee who is dismissed or leaves his or her employment shall be entitled to a reference stating the period of his or her experience.
- (h) A **Part-Time Employee** is one who regularly works for less than 38 hours per week.
- (i) **Show Day** means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

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8. WAGE RATES

1. WAGES

The minimum rates of wages that may be paid by employers to adult employees per week of 38 hours shall be as follows:

DIVISION A - REGISTERED DENTAL MECHANICS AND DENTAL TECHNICIANS

	Amount Per Week \$
(a) Registered Dental Mechanic -	
1st year of experience	492.90
2nd year of experience	499.40
3rd year of experience	505.90
4th year of experience	512.40
5th year of experience and thereafter	518.90
(b) Dental Technician -	
1st year of experience	438.00
2nd year of experience	444.50
3rd year of experience	451.00
4th year of experience	457.50
5th year of experience and thereafter	464.00
(c) Apprentices	

The minimum rates of wages that may be paid to apprentices shall be the undermentioned percentages of the wage rate of a dental technician as prescribed in classification (b) of this Division:

	%
First year	45
Second year	55
Third year	65
Fourth year	85

Adjustments are to be made to the nearest ten cents.

PROVIDED that an apprentice dental technician who completes his apprenticeship over a 4-year term shall then be paid at the rate prescribed in classification (b) of Division A.

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(d) Extra Rates

A dental mechanic who is responsible for the supervision of 3 or more employees shall be paid \$9.90 per week in addition to his weekly wage.

DIVISION B - DENTAL MECHANIC'S ASSISTANTS AND ATTENDANTS

The minimum rates of wages that may be paid by employers to adult Dental Mechanic's Assistants and Attendants (i.e. employees over 20 years of age) shall be the undermentioned rates per week:

	Amount Per Week \$
1st year of adult experience	331.50
2nd year of adult experience	338.00
3rd year of adult experience	344.50
4th year of adult experience	351.00
5th year of adult experience	357.50

(b) Juniors

The minimum rates of wages that may be paid to junior assistants shall be as follows:

	Percentage of appropriate Adult Wage prescribed in Division B %
Under 17 years of age	50
17 to 18 years of age	62.5
18 to 19 years of age	75
19 to 20 years of age	87.5

DIVISION C - DENTAL ASSISTANTS

The minimum rates of wages that may be paid by employers to adult Dental Assistants (i.e. employees over 20 years of age) shall be the undermentioned rates per week:

	Amount Per Week \$
(a) 1st year of adult experience	348.90
2nd year of adult experience	355.40
3rd year of adult experience	361.90
4th year of adult experience	368.40
5th year of adult experience	374.90

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PROVIDED that employees who prior to 20 November 1991 were classified as Dental Assistants in Clause 8 - Wage Rates, Division C - Dental Assistants, subclause (b) 4th and 5th years adult experience shall receive an actual wage increase of \$9.50 and \$9.80 respectively.

(b) Juniors

The minimum rates of wages that may be paid by employers to junior Dental Assistants shall be the undermentioned percentages of the 1st year adult experience contained in paragraph (a) of this Division.

	%	Amount Per Week \$
Under 17 years of age	50	174.50
17 to 18 years of age	62.5	218.10
18 to 19 years of age	75	261.70
19 to 20 years of age	87.5	305.30

Provided that at 20 years of age an employee shall be classified under paragraph (a) of this Division.

(c) Certificate Allowance

In addition to the wage rates contained in subclauses (a) and (b) of this Division an employee who holds a certificate of proficiency accredited by the Dental Assistants' Education Council of Australia shall be paid a certificate allowance of \$17.00 per week.

2. MINIMUM WAGE

- (a) Notwithstanding the provisions of subclause 1 hereof, no adult employee shall be paid less than the rate of \$257.40 per week.
- (b) Provided that payments for overtime, holiday and weekend penalties prescribed in this award shall not be taken into account in the calculation of such minimum weekly rate of wage.

Where a minimum rate of pay as aforesaid is applicable to an employee for work in ordinary hours the same rate shall be applicable to the calculation of overtime and all other penalty rates, payments during sick leave and annual leave, and for all other purposes of this award.

3. TOOL ALLOWANCE

All employees engaged in classifications that are proclaimed as trades under the Industrial and Commercial Training Act 1985 shall either be supplied with all tools by the employer or be paid a tool allowance of not less than \$8.50 per week.

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Provided that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

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

If any of the holidays prescribed by Clause 15 - Holidays with Pay fall 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 that leave one day for each such holiday so occurring.

(c) Payment in lieu prohibited

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

(d) Time of taking leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding 6 months from the date when the right to annual leave accrued and after not less than 2 weeks' notice to the employee.

(e) Payment for period of leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees, shall be paid an amount equivalent to the minimum wage as prescribed in subclause 2 (Minimum Wage), Clause 8 (Wage Rates).

(f) Leave allowed before due date

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.

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'

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continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 15 - Holidays with Pay hereof.

(g) Proportionate leave on termination of service

If after one completed month of service in any qualifying 12- monthly period an employee lawfully leaves his employment, or his employment is terminated by the employer through no fault of the employee the employee shall be paid at his ordinary rate of wage as follows:

thirteen and one third hours for each completed month of continuous service. The service being in respect of leave which has not been granted.

10. CASUAL EMPLOYEES (AS DEFINED)

- (a) The minimum rates of wages which shall be paid to casual employees shall be calculated on a daily or hourly basis according to the rates prescribed in subclauses 1 (Wages) and 3 (Juniors), Clause 8 with the addition of 20%.
- (b) A casual employee shall be paid as for a minimum of 4 hours' work.

11. COMPASSIONATE LEAVE

An employee shall on the death of a wife, husband, father, mother, child, stepchild, brother, sister, mother-in-law, father-in-law, stepmother, stepfather, grandfather, grandmother, be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in 3 ordinary days, provided that no payment shall be made in respect of an employees rostered day off.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer, provided furthermore that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

For the purpose of this clause the words "wife" and "husband" shall not include a wife or husband from whom the employee is separated, but shall include a person who lives with the employee as a de facto wife or husband.

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12. CONSULTATIVE PROCEDURES

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries and establishments covered by Clause 2 - Scope and to enhance the career opportunities and job security of employees in these industries and establishments.
- (b) At each enterprise or establishment, the employer, the employees and the relevant union or unions, may establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union of unions for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

13. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.
- (b) An agreement shall be subject to the following requirements:-
 - (i) The majority of employees affected by the change must genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iii) The relevant union or unions shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union or unions must be a party to the agreement.
 - (v) The relevant union or unions shall not unreasonably oppose any agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contains the following:-
 - (i) The term of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of employees covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

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14. GENERAL CONDITIONS

- (a) Clean towels shall be provided daily and the employer shall furnish and supply all destructible tools used by the employees; Provided that by mutual consent the employee shall provide his own tools in which case the employer shall pay the employee a tool allowance to be agreed upon or the employer shall replace the tools used by an employee.
- (b) Suitable accommodation or lockers for employees' clothing and personal effects shall be provided by the employer.
- (c) An employer shall provide appropriate protective appliances where the work is of a dusty or hazardous nature.
- (d) Sufficient and serviceable uniforms shall be provided free of cost to all employees required to wear uniforms, or if employees provide their own uniforms they shall be paid an allowance of \$4.00 per week. Uniforms shall be laundered as and when necessary at the expense of the employer, or if employees launder their own uniforms they shall be paid an allowance of \$3.00 per week paid to the employee.
- (e) The employer shall make provision for adequate light for employees to perform their work.
- (f) An employee who, at the date of this award, is in receipt of a higher rate of pay or of better conditions than those respectively provided herein shall not have his rate of pay reduced or the conditions of employment altered to his prejudice merely as a consequence of this award.
- (g) Any dispute arising from the provisions of this clause shall be referred to the Tasmanian Industrial Commission for determination.

15. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day (as defined), Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, he had been at work.

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- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) By agreement between an employer and employee an alternative day may be substituted for a prescribed holiday.

16. HOURS OF WORK

- (a) The ordinary hours of work shall be an average of 38 hours per week to be worked on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding fourteen consecutive days; or
 - (iii) 114 hours within a work cycle not exceeding twenty-one consecutive days; or
 - (iv) 152 hours within a work cycle not exceeding twenty-eight consecutive days.
- (b) The ordinary hours of work prescribed herein may be worked Monday to Friday between the hours of 7.30 a.m. and 9.00 p.m. and Saturday between the hours of 8.30 a.m. to 12 noon.
- (c) Ordinary working hours may be extended beyond 8 hours but not so as to exceed 10 hours on any day, Monday to Friday.
- (d) In any arrangement of ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between an employer and the majority of employees affected.
- (e) For all work performed as part of ordinary hours between 6.30 p.m. and 9.00 p.m. Monday to Friday, payment shall be made at the rate of time and one quarter.

17. MATERNITY LEAVE

- (a) Eligibility for Maternity Leave

An employee who becomes pregnant, shall upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (i) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.

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(ii) Maternity leave shall mean unpaid maternity leave.

(b) Period of leave and commencement of leave

(i) Subject to subclauses (c) and (f) hereof, the period of maternity leave shall be for an unbroken period of from 6 to 52 weeks and shall include a period of 6 weeks compulsory leave to be taken immediately following confinement.

(ii) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.

(iii) An employee shall give not less than 4 weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.

(iv) An employer by not less than 14 days' notice in writing to the employee may require her to commence maternity leave at any time within 6 weeks immediately prior to her presumed date of confinement.

(v) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (iii) hereof, if such failure is occasioned by the confinement occurring earlier than the presumed date.

(c) Transfer to a safe job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (g), (h), (i) and (j) hereof.

(d) Variation of period of maternity leave

(i) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

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- (ii) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (e) Cancellation of maternity leave
 - (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
 - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed 4 weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (f) Special maternity leave and sick leave
 - (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then
 - (a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (b) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
 - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
 - (iii) For the purposes of subclauses (g), (h) and (i) hereof, maternity leave shall include special maternity leave.
 - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c), to the position she held immediately before such transfer.

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Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(g) Maternity leave and other entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (c) and (f) hereof does not exceed 52 weeks:

- (i) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or any part thereof to which she is then entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave), shall not be available to an employee during her absence on maternity leave.

(h) Effect of maternity leave on employment

Notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of an award.

(i) Termination of employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(j) Return to work after maternity leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than 4 weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

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(k) Replacement employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

18. OCCUPATIONAL SUPERANNUATION

(a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to 3% of ordinary time earnings (as defined) into the funds known as TASPLAN or HESTA or any other approved fund (as defined) where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees (as defined) as from 1 June 1990 provided that in the case of all eligible casual and part-time employees contributions shall only be made where the employee works at least 38 hours during a fund billing statement month.

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.

- (ii) 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) 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.

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(b) Definitions

'Eligible Employee' means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least three months continuous service with the employer, but excludes the spouse of the employer and children of the employer. Where an eligible employee has completed at least 3 months continuous service with the employer then the superannuation contributions shall be made from the date the employee commenced employment.

'Approved Fund' shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational 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.

'HESTA' means the Health Employees Superannuation Trust Australia established by Trust Deed on 30 July 1987.

(c) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN or HESTA in the following circumstances:

- (i) where the fund subject to the exemption application is an approved fund (as defined) which was established prior to 1 December 1989 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 1 December 1989 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN or HESTA.

(d) Procedure for Seeking Exemption

- (i) 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 June 1990 for hearing and determination.

Such application shall contain the following information:

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- (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.
- (ii) 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.
 - (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
 - (iv) An employer who commences a new business after 1 June 1990 may make application for exemption in accordance with subclause (c) 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.
 - (v) For the purposes of this clause, the following companies are exempt from contributing to either TASPLAN or HESTA for those employees for whom contributions (equivalent to the amount nominated in subclause (a)) have been made into the funds set out below on or prior to 1 December 1989.

In the case of those employees, contributions shall continue to be made in accordance with subclause (a) into the approved funds set out below:

Hanid Pty. Ltd.

- 1. Mercantile Mutual Life Master Fund

W.T. Edmondson Pty. Ltd.,

- 1. AMP Superleader Plan

R.L. West Pty. Ltd.

- 1. Legal & General Superannuation Fund

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19. OVERTIME

- (a) All time of duty before the usual time of commencing work or after the usual time of ceasing work or outside the ordinary hours shall be paid for at the rate of time and a half for the first 2 hours and double time thereafter.
- (b) Where an employee is called upon to work more than 3 hours after the usual finishing time \$5.70 for a meal shall be paid in addition to the overtime rates.
- (c) An employee who is recalled to work overtime (that is, outside the hours the employee usually works) after a period of one hour from the time fixed for ceasing work, whether or not he has been notified before ceasing work, shall receive a minimum payment as for 2 hours worked.
- (d) In computing overtime, each day's work shall stand alone.
- (e) By agreement between an employer and employee, an employee may take time off in lieu of overtime at the penalty equivalent.

Prior to committing to an agreement, an employee may consult with the union.

20. PART-TIME EMPLOYEES

All part-time employees shall be entitled to the same wages, allowances and conditions provided for full-time employees under this award, but, at the appropriate proportional rate of pay.

The hourly rate for part-time employees shall be calculated by dividing the appropriate weekly rate by 38.

A part-time employee shall be paid a minimum of 4 hours for work performed on any given day.

21. PAYMENT OF WAGES

Wages shall be paid during working hours and not later than Thursday in each week; Provided that by mutual consent wages may be paid fortnightly.

22. SATURDAY WORK

For all work during ordinary hours on Saturday, payment shall be made at the rate of time and one-quarter.

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23. SICK LEAVE

- (a) An employee, other than one engaged as a casual, who is absent from work on account of personal illness or on account of injury by accident shall be entitled to leave of absence without deduction of pay, subject to the following conditions and limitations -
- (i) he shall not be entitled to such leave of absence for any period in respect of which he is entitled to workers' compensation;
 - (ii) the employee shall as soon as possible and where practicable within one hour of the commencement of the employees' normal working day, inform the employer of his inability to attend for work, and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence;
 - (iii) he shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he was unable on account of such illness or injury to attend for work on the day or days for which the sick leave is claimed;
 - (iv) the employee shall not be entitled in any year to sick leave in excess of seventy six hours of ordinary working time. Provided that during the first three months of employment, sick leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer;
- (b) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (a) (iv) of this Clause which has in any year not been allowed to an employee by an employer as paid sick leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the sick leave prescribed in respect of that year;
- (c) An employer shall not be required to make any payment in respect of accumulated sick leave credits to an employee who is discharged or leaves his employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

24. SUNDAY AND HOLIDAY WORK

An employee required to work on any of the holidays mentioned in Clause 15 - Holidays with Pay hereof shall be paid at the rate of double time and one half.

An employee required to work on a Sunday shall be paid at the rate of double time.

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25. TERMS OF EMPLOYMENT

- (a) All employees except casual employees (as defined) shall be engaged by the week, provided that the first week of employment with any employer may be regarded as a probationary period and shall be paid for at the weekly rate computed on a daily basis. After having served one probationary period an employee shall not be required to serve another probationary period with the same employer.
- (b) Excepting as to casual employees (as defined) and employees serving one probationary period mentioned in subclause (a) hereof, employment shall be terminated by one week's notice in writing on either side or by payment or forfeiture of one week's wages as the case may be; Provided that this shall not affect the right of an employer to dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only.
- (c) In the case of casual employees (as defined) employment shall be terminated by one hour's notice in writing on either side or by the payment or forfeiture of one hour's wages as the case may be; Provided that this shall not affect the right of the employer to dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only.
- (d) An employer may direct an employee to carry out such duties as one within the limits of an employee's skill, competence and training consistent with the classification structure of the award.

This provision should not deny such employee any award entitlement which might be applicable for performing work at a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

R J Watling
COMMISSIONER

11 November 1991