



Western Australian
Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 2

WEDNESDAY, 28TH FEBRUARY, 1996

Vol. 76—Part 1

THE mode of citation of this volume of the *Western Australian Industrial Gazette* will be as follows:—
75 W.A.I.G.

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

THIRTY SECOND ANNUAL REPORT

OF
THE CHIEF COMMISSIONER
OF THE

**WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION**

FOR
PERIOD 1 JULY, 1994 TO 30 JUNE, 1995

Pursuant to Section 16, Subsection (2)(b) of the Industrial Relations Act, 1979

**Report of the Chief Commissioner
of the Western Australian Industrial Relations Commission
on the operation
of the Industrial Relations Act, 1979
1 July, 1994 to 30 June, 1995**

**Minister Responsible For
The Administration of the Act**

**The Hon. G.D. Kierath, M.L.A.
Minister for Health; Labour Relations.**

in his capacity as Minister for Labour Relations

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MEMBERSHIP OF TRIBUNALS AND PRINCIPAL OFFICERS

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

During the year to 30th June 1995, the Commission had the following members:

President	The Hon. P.J. Sharkey
Acting President	The Hon. G.L. Fielding
Chief Commissioner	W.S. Coleman
Senior Commissioner	G.G. Halliwell
Commissioners	G.L. Fielding
	J.F. Gregor
	S.A. Cawley
	R.N. George
	A.R. Beech
	C.B. Parks
	P.E. Scott
	R.H. Gifford

The Hon. G.L. Fielding was Acting President from 16th May, 1994 to 25th November, 1994.

Commissioner A.R. Beech is the Chairperson of the Government School Teachers' Tribunal. Commissioner S.A. Cawley has also been the Chairperson and Commissioner R.N. George the Deputy Chairperson of the Government School Teachers' Tribunal during the year. The Government School Teachers' Tribunal was abolished on 9th May 1995.

Commissioner R.N. George is the Public Service Arbitrator and Commissioner C.B. Parks is the additional Public Service Arbitrator. Commissioner G.L. Fielding and Commissioner S.A. Cawley have also been additional Public Service Arbitrators during the year.

Commissioner C.B. Parks and Commissioner P.E. Scott have been the Chairperson of the Railways Classification Board during the year.

THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

As at 30th June, 1995, the Court had the following members:

Presiding Judge	The Hon. Mr Justice Kennedy
Deputy Presiding Judge	The Hon. Mr Justice Rowland
Ordinary Member	The Hon. Mr Justice Franklyn
	The Hon. Mr Justice Anderson
A/Ordinary Member	The Hon. Mr Justice Murray
	The Hon. Mr Justice Scott

INDUSTRIAL MAGISTRATES

The following Stipendiary Magistrates have exercised jurisdiction as Industrial Magistrates at Perth during the period under review:

Mr I.G. Brown	Mr M.J. McGuire
Mr P.M. Buck	Mr S.R. Malley
Mr G.N. Calder	Mr P.G. Malone
Mr G. Cicchini	Mr P.S. Michelides
Mr P.G. Cockram	Mr K. Moore
Ms V.J. French	Mr J.R. Packington
Mr R.J. Gething	Mr D.J. Reynolds
Mr P.M. Heaney	Mrs A.R. Robins
Mr S.A. Heath	Mr W.G. Tarr
Ms B.A. Lane	Mr M. Whitely

REGISTRY

During the period in review the Principal Officers of the Commission were:

Registrar	Mr J. Carrigg
Deputy Registrars	Mr T. Pope
	Mr R.C. Lovegrove
	Mr K. McCann
	Mr B.D. Wakefield (Acting)
	Mr P. Winter (Acting)

and other staff of the Commission totalled 57.

MATTERS BEFORE THE COMMISSION

FULL BENCH

The Full Bench has been constituted on each occasion by the President, The Honourable P.J. Sharkey, or the Acting President Honourable G.L. Fielding (from 16th May 1994 to 25 November 1994) and two Commissioners. The extent to which each Commissioner has been a member of the Full Bench is:

Chief Commissioner Coleman	26
Senior Commissioner Halliwell	19
Commissioner Gregor	4
Commissioner Cawley	11
Commissioner George	22
Commissioner Beech	21
Commissioner Parks	18
Commissioner Scott	7
Commissioner Gifford	6

The following summarises Full Bench Matters:

Appeals - Heard and determined

Appeals from decisions of the:

Commission	40
Industrial Magistrate	13
School Teachers Tribunal	4

(NOTE - The following interlocutory applications were dealt with by the Full Bench: -

For extension of time for filing notice of appeal and/or lodging appeal books)	5
Applications to expedite hearing of appeals	4
Application to join party to appeal	1

Organisations

Applications for alteration of rules of an organisation	5
Applications for registration of a new organisation	1
Applications for Order pursuant to Section 72A	1

Other

Questions of law referred under section 27(1)(u)	1
Proceedings for enforcement pursuant to section 84A	1
Extension of Time	1

PRESIDENT

Matters (other than Full Bench matters) dealt with by the President or Acting President were as follows:

Applications for an Order, Declaration Or Direction pursuant to section 66 of the Act dealt with by the President.	7
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The following summarises section 66 applications:

Applications finalised	7
Directions hearings	6

Applications for an Order that the operation of a decision appealed against be stayed pursuant to section 49(11) dealt with by the:

President	6
Acting President	16

Orders

Orders issued by the President or Acting President in matters heard from 1 July 1994 to 30 June 1995 inclusive:

	President	A/President
Section 66	14	-
Section 49(11)	8	16

Consultations

Consultations with the Deputy Registrar under section 62 of the Act:-
President

2

COMMISSION IN COURT SESSION

During the period under review the Commission in Court Session has been constituted by three Commissioners on all but two occasions when it was constituted by five Commissioners to deal with the State Wage Case and an interpretation of an award. The extent to which each Commissioner has been a member of the Commission in Court Session is indicated by the following figures:

Chief Commissioner Coleman	29
Senior Commissioner Halliwell	10
Commissioner Gregor	8
Commissioner Cawley	3
Commissioner George	21
Commissioner Beech	2
Commissioner Parks	4
Commissioner Scott	19

Matters dealt with by the Commission in Court Session were:

Review of State Wage Principles	1
State Wage Case	1
Review of Minimum Weekly Rate of Pay	1
Variation of a General Order	1
Interpretation of award/Order	2
Variation of Awards	23
Appeal from Board of Reference	1

COMMISSION CONSTITUTED BY COMMISSIONER SITTING OR ACTING ALONE

Matters dealt with and finalised during the period under review:

Applications for -	
New Agreements	206
Variation of Agreement	1

New Awards	(by consent)	3
	(by arbitration)	1
Variation of Awards	(by consent)	134
	(by arbitration)	109
Interpretation of Awards/Orders		2
Cancellation of Awards/Agreements/Orders		5
Replacement of Order		3
Joinder of parties to award		1
Leave to appeal		1
Shortened time for answers		14
Extension of time		1
Order under section 29(b)		307
Order under section 23		4
Order under section 27		1
Order for production of documents		11
Order for further and better particulars		9
Application pursuant to Section 33(2)		2
Conferences under section 44 -		
	Concluded without arbitration	390
	Referred for Hearing but not arbitrated	32
Conferences Referred		
	Matters arbitrated by Commissioner holding conference	24
	Matters arbitrated by another Commissioner	10
CONSTITUENT AUTHORITIES		
Government School Teachers Tribunal:		
	Application pursuant to S78(1)(a)	2
	Variation of award (by consent)	3
	(by arbitration)	4
Conferences under section 44		
	Concluded without arbitration	14
	Referred for Hearing	8
Conferences Referred		
		4
Promotions Appeal Board:		
	Appeals Heard	9
	Withdrawn	15
Public Service Arbitrator:		
	Production of documents	1
	Shortened time for answers	6
	New agreements	4
	Reclassification appeals (dismissed)	3
	(reclassified)	30

Variation of Agreement		1
Variation of award	(by arbitration)	8
	(by consent)	18
Conferences under section 44		
Concluded without arbitration		61
Referred		2
Public Service Appeal Board		4
Railways Classification Board:		
Variation of award (by consent)		1

THE WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT

Matters dealt with:		
Heard and Determined		12

INDUSTRIAL MAGISTRATES

*Complaints:

Total for period under review -		
Lodged		5104
Proved		1147
Dismissed		759
Withdrawn by leave		1761
Pending		1437

(*includes a number of matters under Federal awards, Workplace Agreements Act, Complaints & Summons - Small Claims)

Complaints which resulted in the application of penalties were:

Number of complaints	101
Fines	\$7029.00

Complaints that resulted in the application of costs were

	1311
Costs to complainants (1072)	\$2294.10
Costs to Defendants (239)	\$4321.50

BOARDS OF REFERENCE

The Boards of Reference detailed hereunder were chaired by the Registrar or a Deputy Registrar.

Disputed claims under the provisions of awards	2
Disputed claims under the Long Service Leave Act, 1958	9

Construction Industry Portable Paid Long Service Leave Act Disputes	2
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AWARDS/AGREEMENTS

Number in force at 30th June, 1995	887
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INDUSTRIAL ORGANISATIONS REGISTERED AT 30TH JUNE, 1995

Number of organisations of employees	61
Aggregate membership	187 208
Number of organisations of employers	17
Aggregate membership	3 122

FEDERAL MATTERS REFERRED TO THE COMMISSION	7
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MATTERS REFERRED UNDER THE OCCUPATIONAL HEALTH SAFETY AND WELFARE ACT	1
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SUMMARY OF MAIN STATISTICS

	1991-92	1992-93	1993-94	1994-95
FULL BENCH				
Appeals	54**	61**	51**	57
Other Matters	16	19	23	20
PRESIDENT SITTING ALONE				
S.66 Matters	27**	24**	23	7
S.49(11) Matters	22	19	19	22
Other Matters	23**	6**	8	6
COMMISSION IN COURT SESSION				
General Orders	4	3	1	1
Other Matters	20	26	17	29
COMMISSIONERS SITTING ALONE				
New Agreements	7	48	106	206
New Awards	13	5	55	4
Variations of Awards	460	234	261	243
Variation of Agreements				1
Conferences	712	678	670	456
Other Matters	1037	1018	802	361
CONSTITUENT AUTHORITIES:				
Government School Teachers Tribunal:				
Appeals (including protective appeals)	2	194	2	0
Conferences	12	7	8	22
New Awards	-	2	-	-
Variation of Awards	5	5	5	7
Other Matters	-	2	-	2
Promotion Appeal Board:				
Appeals	65	62	58	24
Public Service Arbitrator:				
Reclassification Appeals.	44	68	126	33
Conferences	72	51	116	63
New Agreements	-	-	-	4
Award/Agreement Variations	-	-	-	27
Other	-	-	-	7

	1991-92	1992-93	1993-94	1994-95
Railway Classification Board:				
Reclassification Appeals	1	2	-	-
Variation of Awards	6	2	2	1
Conferences.....	33	7	5	-
Other Matters	2	-	-	-
AWARDS/AGREEMENTS				
In Force*	510*	558*	652*	887*
BOARDS OF REFERENCE				
Matters dealt with	9	7	8	13
INDUSTRIAL ORGANISATIONS OF EMPLOYEES				
Membership	224,791	216,524	206,217	187,208
INDUSTRIAL ORGANISATIONS OF EMPLOYERS				
Membership	18	17	17	17
Membership	3,768	3,065	3,100	3122

*Includes Public Service awards and agreements and awards applying to State School Teachers and Railway Officers.

**Includes matters heard or part heard, finalised or yet to be finally determined.

COMMENTARY

LEGISLATIVE CHANGES

During the year there were a number of legislative changes which affected the structure and the jurisdiction of the Commission. The most significant of these changes resulted from amendments under the Industrial Legislation Amendment Act 1995. That Act, amongst other things, abolished the Government School Teachers Tribunal with effect from the 9th May, 1995 so that the authority to deal with industrial matters concerning teachers came within the general jurisdiction of the Commission. In addition, the jurisdiction of the Railways Classification Board to deal with industrial matters arising out of and under the Westrail Enterprise Bargaining Agreement 1992 was transferred to the Commission as ordinarily constituted rather than have separate divisions of the Commission administering the Agreement depending on the nature of the matter.

Furthermore, the Act altered the Commission's powers with respect to unfair dismissals by empowering the Commission to award compensation without first having to award reinstatement. The Act also enables the Commission to grant an extension of the 28 day time limit for instituting unfair dismissal claims in those cases where an employee initially instituted similar proceedings before the Australian Commission. In addition, the Act reversed the existing onus of proof by requiring that the employer show that there is a ground or grounds upon which the Commission would find that the dismissal was justified. These changes were designed to overcome a decision of the Industrial Relations Court of Australia that the provisions of the Industrial Relations Act, 1979 did not provide employees with an adequate alternative remedy to that provided under the federal legislation.

Another significant change introduced by the Act was to empower the Commission to deal with claims for denied contractual benefits made after the employment relationship come to an end. This amendment effectively reversed the decision of the Industrial Appeal Court in *Coles Myer Limited trading as Coles Supermarkets -v- Coppin and Others* (1993) 73 WAIG 1754 which confined the Commission's authority to matters relating to claims made at a time when the employment contract was still in force.

The Act also simplified the process for resignation from membership of an organisation registered under the Industrial Relations Act, 1979. Provision was made deeming membership to have ended once membership dues were in arrears for three months. Previously the Industrial Act, 1979 required the register of members maintained by an organisation to be purged of members in arrears at least at 12 monthly intervals.

The amending Act will also affect the Commission's jurisdiction with respect to the public sector employment. A part of the Act which is yet to come into force abolishes the Promotions Appeal Board and the Commission's authority to deal with reclassification appeals. Those matters will be dealt with under the provisions of the Public Sector Management Act 1994, which came into force late last year by the newly created Commissioner of Public Sector Standards. If and when these provisions of the Industrial Legislation Amendment Act 1995 come into force the Commission will no longer have jurisdiction to enquire into and deal with any matter in respect of which a process is established under the Public Sector Management Act 1994 for dealing with breaches of public sector standards other than in respect of matters of discipline and sub-standard performance. In the meantime, Public Sector Management Act 1994, has resulted in some changes to the jurisdiction of the Commission. Most notably the Commission's authority to deal with redundancy claims by the public section employees has been somewhat circumscribed. In particular, the Commission's General Order governing redundancies of government employees has effectively been rendered redundant by virtue of the Public Sector Management (Redeployment and Redundancy) Regulations 1994 which came into force from the beginning of October last. Also, Chief Executive Officers no longer have access to the Commission regarding their employment, whether or not their salaries are regulated by the Salaries and Allowances Tribunal. Although the Public Sector Management Act 1994, purports to regulate the employment in the public sector at large, and not just in the Public Service, as was the case under the Public Service Act 1978, the Public Service Arbitrator retains exclusive jurisdiction in respect of industrial matters concerning public service officers in much the same way as was the case for government officers under the Public Service Act 1978.

During the year regulations were promulgated for the purpose of governing procedure to be adopted before the Commission when dealing with referrals under Workplace Agreements. In 1993 the Industrial Relations Act, 1979 was amended to give the Commission limited jurisdiction to hear and determine any question or dispute relating to the meaning and effect of such an Agreement and the regulations which came into force in June, 1995 set out procedures to be followed in respect of such matters. Those procedures largely mirror the procedures already in place for other matters dealt with by the Commission.

WAGE FIXING PRINCIPLES

The difficulty of translating the terms of a National Wage Decision into State Wage Principles was heightened when, in December, 1994, this Commission considered the "Review of the Wage Fixing Principles" and the subsequent "Safety Net Adjustment and Review" of the Australian Commission (See Print L4700 and L5300). Much of the federal wage fixing system is now entrenched in statute under the March 1994 amendments to the Industrial Relations Act, 1988 (Commonwealth).

The Statement of Principles established in this State under Section 51 of the Industrial Relations Act, 1979 by the Commission in Court Session in the December, 1994 State Wage Case gave effect to the substance of the federal decision without defacto implementation of the federal industrial relations system.

The objectives of the wage fixing system in this State which implements the National Wage Decision gives priority to enterprise bargaining. Parties at an enterprise are encouraged to take responsibility for their industrial relations affairs. The terms of the Principle are directed at:

- “• the maintenance of awards through periodic \$8.00 increase to wage rates that are available to employees unable to obtain wage increases at the enterprise level.
- the promotion of enterprise bargaining by making award adjustments under the programme of periodic payments compatible with an incentive for bargaining and by requiring award changes directed to enterprise flexibility; and

- through the application of the Statement of Principles promoting consistency in determining award applications, the review of awards and the basis of subsequent \$8.00 award adjustments.”

([1995] 75 WAIG 23 at 26)

Fundamental to the wage fixing system is the notion of the “Award Safety Net”. This underpins the enterprise bargaining process and maintains the development of Structural Efficiency at the award level.

In the period under review two issues have emerged in the operation of the wage fixing system. First is the question of the absorption or “off setting” of overaward payments under the second and third “Arbitrated Safety Net Adjustments” of \$8.00 per week. Next is the extent to which “award modernisation clauses” introduced into awards under the June, 1991 State Wage Decision ([1991] 71 WAIG 1723) satisfy the requirements of the current Principles with respect to the requirement for awards to include enterprise flexibility provisions ([1995] 75 WAIG 40 at 43).

Both issues placed pressure on the wage fixing system. They demonstrate the need for parties to clearly identify the terms of their arrangements at an enterprise level so that there is no ambiguity as to the basis upon which payments have been negotiated and agreed and for there to be an understanding of arrangements which exist for on-going flexibility even where parties have failed to finalise an enterprise bargain.

With an emphasis on enterprise bargaining under the current wage fixing principles the relevance of the Minimum Rates Adjustment process for award restructuring and the identification of awards as having either “paid rates” or “minimum rates” status has declined in importance. A positive outcome of this refocussing of the wage fixing system at the enterprise level is that parties are now able to concentrate on practical outcomes which translate into wage increases and improvements in efficiency and productivity rather than arguing about more technical aspects of the wage fixing system. However, that is not to say that the award reform process under the Structural Efficiency Principle can be forgotten. The on-going success of the system which promotes enterprise bargaining is built from the efficacy of awards that maintain a relevant and reliable “safety net”.

At 30th June, 1995 there were 887 awards and industrial agreements in force. With 196 Enterprise Bargaining Agreements registered during the year the number of industrial agreements stands at 322. The number of industrial agreements which regulate terms and conditions of employment at the enterprise level takes into account those which expired during the year and those which were replaced with new agreements. From information collected by the Registrar it is estimated that 39 230 employees are covered by enterprise agreements. This does not include employees whose terms and conditions of employment are regulated by enterprise specific awards. When those awards and agreements which regulate particular industrial matters, for example, traineeship agreements and superannuation awards are excluded (129), approximately 64 per cent of the remaining awards and agreements (which includes registered enterprise agreements under Section 41 of the Act) are enterprise specific.

The following table identifies industry sectors in which enterprise agreements now operate:

INDUSTRY	ENTERPRISE AGREEMENTS AS PUBLISHED IN 1993/4 ANNUAL REPORT	ENTERPRISE AGREEMENTS REGISTERED IN 1994/5. (INCLUDES 17 WHICH REPLACE ANOTHER AGREEMENT)
AGRICULTURE	2	0
BUILDING & CONSTRUCTION	24	74
CHILDCARE	—	0
EDUCATION	—	23
HEALTHCARE	1	2
MEAT	—	1
METAL INDUSTRY	41	10
MINING	19	7
MISCELLANEOUS MANUFACTURING	25	19
MISCELLANEOUS SERVICES	9	25
PRINTING	2	1
PUBLIC SECTOR	4	10
TIMBER	2	2
TRANSPORT	8	6
WHOLESALE & RETAIL	6	16
TOTALS	143	196

It is noted that the Enterprise Bargaining Principle provides:

“Consistent with the provisions of the Act, the Commission will promote and facilitate enterprise bargaining by conciliation and where necessary by issuing orders pursuant to Section 32 and Section 44 of the Act.

The Commission will generally not arbitrate in favour of claims above and below the safety net of award wages and conditions. The Commission will arbitrate at the invitation of the parties engaged in enterprise bargaining, in which case the Commission's decision should be incorporated into an agreement. That position will be established before the arbitration is commenced.

Where parties to enterprise bargaining remain in disagreement and there is no prospect of agreement being reached then, where appropriate and consistent with the Act, the Commission will arbitrate. However, the Commission will have recourse to arbitration only as a last resort.

([1995] 75 WAIG 40)

With the exception of site agreements associated with building and construction projects there has been a marked reluctance by parties to have recourse to this option when enterprise bargaining fails. The most notorious case is that in the public education system where a “stand-off” exists between the parties at this time. It is in the circumstances of such disputes that differences between the operation of the wage fixing principles under this Commission and those in the federal system which are tied to the provisions of the Industrial Relations Act (Commonwealth) are brought into stark relief. Parties whose industrial interests continue to be regulated in this State and who have consistently espoused adherence to the wage fixing system should appreciate the scope of the a commitment to the Principles set down by this Commission.

Another issue which has emerged in the course of enterprise bargaining has been the failure on several major constructions projects for parties to adequately address a grievance resolution procedure and to accommodate changes to the project brought about by unforeseen circumstances including weather, design modifications and extensions to completion times. The parties concerned have subsequently undertaken to include these factors in future negotiations. The tight labour market in engineering construction trades places pressure on parties to secure agreements that remain relevant for the duration of the project.

The following table summaries the extent to which wage adjustments have been implemented under requirements of the Structural Efficiency Principle set out in various State Wage Decisions.

State Wage Case Variation	30/6/90	30/6/93	30/6/94	% of 394 30/6/94*	30/6/95	% of 436 30/6/95**
No. of Awards varied for 3% & \$10 Structural Efficiency Principle Wage Adjustments, Sept 1988 State Wage Case (68 WAIG 2412)	N/A	300 (53.76%)	297 (45.55%)	75.38	290	66.51
No. of Awards varied for 1st \$10, \$12.50, \$15 or 3% Structural Efficiency Wage increase Sept 1989 State Wage Case (69WAIG2913)	257 (41.92%)	301 (53.94%)	299 (45.86%)	75.89	304	69.72
No. of Awards varied for 2nd \$10, \$12.50, \$15 or 3% Structural Efficiency Wage increase Sept 1989 State Wage Case (69WAIG2913)	53 (8.65%)	280 (50.18%)	281 (43.10%)	71.32	279	63.99
No. of Awards varied for the 2.5% Structural Efficiency Principle Wage Adjustment, June 1991 State Wage Case (71WAIG1723)	N/A	243 (43.55%)	250 (38.34%)	63.45	251	57.57
No. of Awards and Agreements varied for the \$8 Arbitrated Safety Net Adjustment, State Wage Case Dec 1993	N/A	N/A	103 (15.80%)	26.14	94	21.56
No. of Awards and Agreements varied for the \$8 Arbitrated Safety Net Adjustment, State Wage Case 1994	N/A	N/A	N/A	N/A	115	26.38
No. of Awards and Agreements varied for the 2nd \$8 Arbitrated Safety Net Adjustment, State Wage Case 1994	N/A	N/A	N/A	N/A	108	24.77
Total Number of Awards	613	558	652		892	436
Percentage of Common Rule Awards varied to include 3% & \$10 Structural Efficiency Principle Wage Adjustments, Sept 1988 State Wage Case (68 WAIG 2412)		87.25%	86.08% (136)	34.52	81.65% (129)	29.59

Percentage of Common Rule Awards varied for 1st \$10, \$12.50, \$15 or 3% Structural Efficiency Wage increase Sept 1989 State Wage Case (69WAIG2913)	66%	84.56%	82.78% (130)	32.99	79.75% (126)	28.90
Percentage of Common Rule Awards varied for 2nd \$10, \$12.50, \$15 or 3% Structural Efficiency Wage Increase Sept 1989 State Wage Case (69WAIG2913)	12%	78.52%	77.22% (122)	30.96	72.78% (115)	26.38
Percentage of Common Rule Awards varied to include the 2.5% Structural Efficiency Principle Wage Adjustment, June 1991 State Wage Case (71WAIG1723)		74.5%	74.05% (117)	29.70	70.25% (111)	25.46
Percentage of Common Rule Awards varied to include the \$8 Arbitrated Safety Net Adjustment, Dec 1993 State Wage Case			48.10% (76)	19.29	35.44% (56)	12.84
Percentage of Common Rule Awards varied to include the 1st \$8 Arbitrated Safety Net Adjustment, Dec 1994 State Wage Case					26.58% (42)	9.63
Percentage of Common Rule Awards varied to include the 2nd \$8 Arbitrated Safety Net Adjustment, Dec 1994 State Wage Case					39.87% (63)	14.45
No. of Common Rule Awards of the Commission	176 (28.71%)	149 (26.7%)	158 (24.23%)	40.10	158	36.23

* This column represents a percentage of the 394 Awards and Agreements relevant to the State Wage Case adjustments: i.e. 537 relevant awards less 143 Enterprise Agreements = 394 relevant Awards and Agreements (1994 Report).

**This column represents a percentage of the 436 relevant Awards and Agreements calculated in the same manner as above for 1995.

PUBLIC SECTOR WAGE CLAIM

In my 1993 report it was noted that in the Public Sector the process of enterprise bargaining did not sit easily alongside the concept of a career public service and that at that time the Arbitrator was unaware of any real progress towards enterprise agreements in public sector agencies. In October 1994 the Civil Service Association filed a number of applications for

an “across the board” salary increase of 8.5 per cent plus a further \$20 per week for all state awards to which it is a party covering in excess of 120 public sector agencies. In a statement lodged with the Commission by the Civil Service Association seeking to justify its claim being dealt with as a special case pursuant to the Special Cases Principle enunciated by the Commission in Court Session in its December 1994 State Wage Decision, it was alleged by the Civil Service Association that it had engaged in or attempted to engage in enterprise bargaining with employers across the public sector over a period of three years and in that time only three enterprise bargaining agreements had been registered with the Western Australian Industrial Relations Commission. The extent of the failure by public sector as compared to other sectors to embrace the concept of enterprise bargaining can be gauged by reference to my 1994 Report which records that to 30 June 1994 a total of 143 enterprise bargaining agreements had been registered with the Commission. It was further alleged by the Civil Service Association that a substantial number of public sector agencies were undecided about or unwilling to enter into enterprise bargaining negotiations. This was denied in the statement in reply lodged on behalf of public sector agencies which refuted any contention that the Civil Service Association had attempted to engage in meaningful negotiations on enterprise bargaining and alleged that the Civil Service Association had advised some of its members not to enter into enterprise agreements pending the outcome of its 8.5 per cent plus \$20 per week wage claims. These aspects of the statements lodged by the parties reflect views which were consistently expressed in conferences before the Arbitrator involving a variety of public sector agencies over a significant period of time.

There is little doubt that the inability of public sector agencies to change to an enterprise focus in this period arose from conflicting priorities and vested interests in pursuing that objective through one of two alternative vehicles to the exclusion of the other. In the case of the Civil Service Association the preferred alternative was enterprise bargaining under the Industrial Relations Act, 1979 and in the case of public sector agencies the preferred alternative was workplace agreements under the Workplace Agreements Act, 1993. The consequence of this was the failure of the parties to develop strategies to accommodate both options which are intended to provide employees with a genuine choice and highlights the inability of the existing system to achieve an enterprise focus when there is an

unwillingness by one or both parties to genuinely commit to that concept other than through a preferred option based on principle and to ignore the element of choice.

On 13th June 1995, following a series of conferences and directions proceedings before the Commission, the hearing of the 8.5 per cent plus \$20 wage claims commenced before the Commission in Court Session. On the indications of the parties, the hearing of the wage claims was expected to extend well into 1996. In the course of proceedings on 13th June 1995 it became apparent for the first time that there had been a shift in the attitudes of both parties which provided scope for a genuine attempt to pursue wage increases through change at the enterprise level without the process being obstructed by "in principle" positions related to the preference for one of the alternative vehicles provided by the Industrial Relations Act, 1979 and the Workplace Agreements Act, 1993, to the exclusion of the other. In light of this the Commission in Court Session adjourned the hearing and initiated a programme of negotiations. At the close of the period under review in this report negotiations were continuing with positive signs that agreement might be reached on minimum pre-determined wage outcomes to be achieved through a process to be reflected in an enterprise bargaining "framework" agreement which recognises the aspirations of all parties and the alternative vehicles by which those aspirations might be achieved. With the expectation that this agreement will be finalised it is to be hoped that the public sector will gather the momentum to match achievements recorded in areas of private industry.

EDUCATION

In relation to the education industry there is a marked contrast between the conduct of industrial relations in the government and private sectors. Industrial relations in the government education area have been at a low ebb for some time. This has resulted in a protracted industrial campaign by the State School Teachers Union of W.A. in support of a wide-ranging log of claims. The Commission has endeavoured to be of assistance to the parties on the Commission's own motion. Although a number of industrial matters have continued to be referred to the Commission it is the case that neither party actively sought the intervention of the Commission in this dispute. The Commission, through directions to the Registrar of the Commission, has kept itself informed and has, where appropriate,

caused the parties to appear before it in order to assist them in the conduct of their negotiations. Industrial relations between the parties deteriorated to such an extent that an Order issued prescribing an interim wage increase and requiring the resumption of normal work, including what may be termed after hours work. This Order did not break the deadlock between the parties and, at their joint request, the Order was subsequently cancelled. As previously stated in this Report the parties are at a "stand-off". Further deterioration in industrial relations appears imminent. It is timely to observe that this dispute serves to illustrate one of the implications of devolving responsibility for their industrial relations to the parties rather than one of involving the Industrial Relations Commission. The amendment to s.41 of the Industrial Relations Act which removed the requirement on the Commission not to approve the registration of an enterprise bargaining agreement which offended the State Wage Principles has meant that parties are able to register in the Commission enterprise bargaining agreements containing any industrial matter whether or not the Commission approves or would approve of the terms of that agreement. That has meant that industrial disputes have arisen, as in this case, which may involve the pursuit of claims which would be beyond the State Wage Principles but which, if agreed to and registered as an industrial agreement pursuant to s.41 of the Act, the Commission would be obliged to register. This has the effect that upon the involvement of the Commission in a dispute relating to such matters there may be an issue as to the power of the Commission to assist the parties to resolve their dispute by means of arbitration. The inability of the Commission to deal with all matters in dispute by arbitration necessarily affects the equity of the Commission becoming involved by, for example, either ensuring the cessation of industrial action or requiring certain conditions to be met pending that arbitration.

In contrast industrial relations within the education industry in the private sector has been a model for others to emulate. The Independent Schools Salaried Officers Association, the Catholic Education Office and the Anglican Schools Commission have all co-operated and assisted the private schools in Western Australia to conclude and register enterprise bargaining agreements which have been of great assistance to the teachers and the schools concerned. This has resulted in the registration of a significant number of industrial agreements pursuant to s.41 of the Act. The Commission commends the manner in which all parties have quietly and yet with great effect brought their efforts in this regard to a successful conclusion.

BUILDING INDUSTRY

There has been a steady flow of agreements pursuant to section 41 for registration and these agreements have varied in their detail from simply providing for an increase in rates of pay through to those containing detailed arrangements for the establishment of consultative committees, dispute settlement procedures and measures to avoid lost time, a commitment to training and skills development within the industry etc. Some of these agreements are as a result of bargaining at the industry level but reflected in enterprise agreements, eg. the demolition industry.

The Subiaco Grandstand Project Agreement which was established between the principal and the unions concerned and then adopted by many subcontractors was a substantive and detailed agreement which was reviewed by the parties with a view to developing similar agreements for the future. Such arrangements, if genuinely applied, will provide very positive precedents both in terms of the content of the agreement and the arrangements and improved relationships which they provide for the future.

Many of these types of agreements would not previously have been formalised, let alone put forward for scrutiny and registration, however, it seems that the desire of at least some of the parties to have their agreements registered is to some degree in response to the Code of Practice For the WA Building and Construction Industry.

Last year's annual report noted that "any upsurge perceived in the building industry has not been reflected in an increased volume of matters before the Commission". Very few site allowance matters have been referred to the Commission. This lack of activity no doubt relates at least in part to the lack of building industry activity generally.

STATE RAIL INDUSTRY

As noted in last years' Annual Report there has been a dramatic restructuring with consequent job losses. Since last year, however, the Right Track Programme has been

developed and has now received the approval of the State Government. This means significant changes being phased in over a lengthy period and as those changes are developed in detail and implemented further disputation is occurring as to interpretation and application of those plans.

The application of the Public Sector Management Act and its Redeployment and Redundancy regulations has impacted on industrial relations in Westrail.

There is frustration on the part of the Unions that during the period of consideration of the Right Track Programme Westrail has been unwilling to negotiate changes and further, because of the impending reductions in staff, has been reluctant to take on further staff where needs arise placing further strain on the system and on the industrial relationship. It seems, however, that with the announcement of the Right Track Programme, that Westrail is now in a position to commence negotiations on meaningful change for the future and that whilst the negotiating process itself may have some difficulties, the outlook seems a little more positive than a few months ago. The Commission has played a significant role in attempting to resolve these matters by conciliation.

PUBLIC HEALTH

Last year's Report noted significant changes occurring with the introduction of the "funder-owner-purchaser-provider" model and the system of "contestability" for the provision of services in the public health care system.

During the period now under review the pace of change has increased with policy initiatives being taken to commercialise some services, for example, Path Centre and to contract out "non-core" services, for example, maintenance, cleaning and orderlies services. These proposals have given rise to a number of issues not least of which is tension associated with changes to traditional union coverage within the industry.

Uncertainty has made the task of securing an environment for enterprise bargaining difficult. A number of service specific agreements in public hospitals have been registered

in the Commission. These reflect developments arising from facilitative provisions rather than enterprise bargaining agreements.

The note of optimism included in last year's Report that the opportunity to conclude enterprise bargains presented as health care units positioned themselves to compete for the provision of services must be tempered somewhat. It appears that more fundamental restructuring is going on in public health care services. The level of industrial disputation has increased.

RETAIL AND WHOLESALE DISTRIBUTION

The Shop, Distributive and Allied Employees' Association of Western Australia is party to five agreements registered during the period covered by this Report. These covered operations in distribution centres, cold stores and wool stores. No agreements covering the retail sector were registered in the Commission. However, the Shop, Distributive and Allied Employees' Association of Western Australia entered into certified agreements with major retail employers in the federal jurisdiction.

The agreements which were registered by this Commission provide for worthwhile flexibilities, in return for wage increases. An agreement which stands out is that applicable to P & O Cold Storage Limited. The agreement represented, for the first time, a form of industrial coverage which is tailored to the particular characteristics of the operation of cold stores. This applies particularly to the spread of ordinary hours. The agreement also provides for the important flexibility of banking of Rostered Days Off (RDO's) during busy periods and in addition the ability for these banked RDO's to be taken as time off or payment. As part of the agreement, the parties have undertaken to attempt, in the re-negotiation process set down for 1996, to create an agreement more closely tailored to the company's operations, especially in light of the new and expanded operations planned for that time.

CHILD CARE

In 1992 parties to private sector child care awards embarked upon the Minimum Rates Adjustment process ([1993] 73 WAIG 101). The finalisation of that and a restructuring of award classifications built around the key minimum classification of the Qualified Child Care Giver has been extended to include all private and most of the public sector awards in the Child Care Industry. There is a commitment from the Australian Liquor, Hospitality and Miscellaneous Workers Division, Western Australian Branch to pursue the alignment of the private and public sectors of the industry.

The significant restructuring that has taken place in the child care awards has not only established career paths for those employed in the industry, but it has facilitated the "Quality Improvement and Accreditation System". This system is intended to assist child care providers and parents with the advice, support and training needed to ensure that all children receive high quality care.

All parties in this industry are complemented on their efforts.

MINING

There has been little industrial disputation in the gold industry. A significant number of operations remain covered by the AWU Gold Mining and Processing Award. Some applications have been made for federal award coverage but these have not been pursued to finality. Several of the major producers are covered by enterprise agreements.

In January, 1995 the Commission determined new arrangements for underground nickel operations at Western Mining Corporation (Refer to 75 WAIG 2181; Gregor C.). This decision has had a significant impact in the industry.

Award discussions have been undertaken during the year on Argyle Diamond Mines operations. The Company has also offered workplace agreements.

Much of the iron ore industry is regulated by workplace agreements. BHP Iron Ore's operations continue to be covered by an industrial agreement.

POWER GENERATION AND DISTRIBUTION

On January, 1995 two separate corporate entities, Western Power and Alinta Gas were created from the State Energy Commission of Western Australia.

In the lead up to corporatisation, significant union rationalisation and award restructuring was undertaken in this Commission. Initiatives including enterprise bargaining negotiations and the broad-banding of the wage structure were undertaken. Work commenced on competency based classification systems. Rationalisation resulted in a reduction of representative Unions from thirteen to two and movement to the federal jurisdiction. Enterprise bargaining agreements which addressed issues associated with the use of contractors and employment arrangements were negotiated and finalised when Western Power commenced operating.

Through the simplification of industrial regulation under enterprise bargaining, there has been a substantial reduction in lost time through industrial action. Industrial relations initiatives have contributed to Western Power's ability to position itself for a competitive environment. More creative work arrangements are being developed to deliver rewards for achieving success on key business results rather than a perpetuation of historical trade-off arrangements.

SECTION 29(b) MATTERS DEALT WITH IN 1994/5

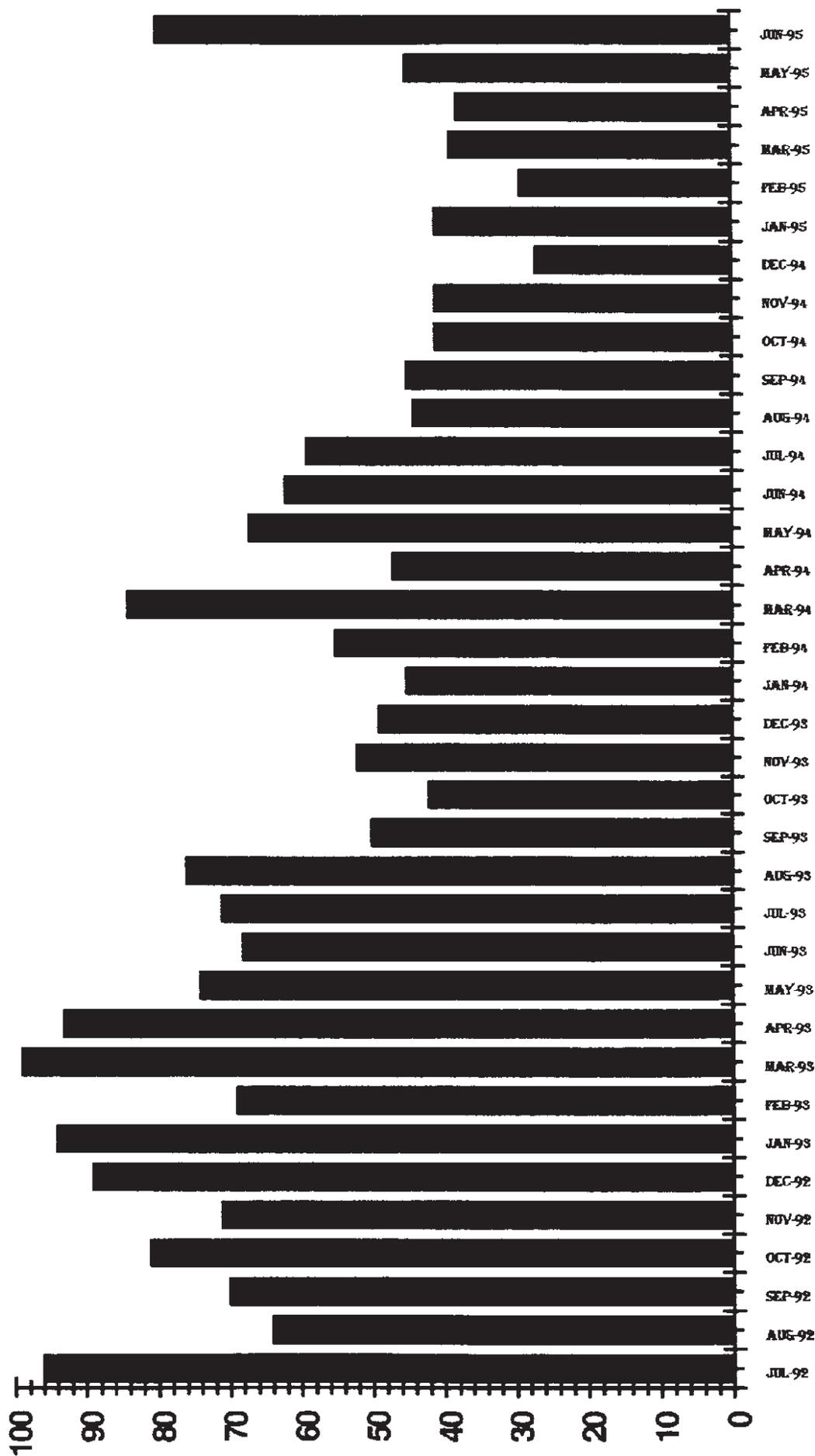
In the year under review 529 applications were filed in the Registry claiming unfair dismissal/ denied contractual entitlements or both. The break up of applications lodged under Section 29 (b) on a monthly basis is shown in the tables below. The changes to the legislation which now regulate these provisions of the Act have been noted in this Report.

During the year 307 section 29 (b) applications were dealt with and finalised by the Commission. In addition to this 61 section 29 (b) applications were withdrawn or discontinued in the Registry without being allocated. In all 368 Section 29 (b) applications were finalised. 227 section 29 (b) applications which had been lodged with the Commission, some several years ago, and which had not proceeded any further were struck out for want of prosecution.

ANALYSIS OF SECTION 29(b) MATTERS IN 1994-5

MONTH	Section 29(b)(i) lodged	Section 29(b)(ii) lodged	Section 29(b)(i) &(ii) lodged	Total Lodged	Section 29(b)(i) finalised	Section 29(b)(ii) finalised	Section 29(b)(i) & (ii) finalised	Total finalised
Jul	45	4	10	59	38	4	0	42
Aug	36	5	3	44	34	5	4	43
Sept	34	10	1	45	29	3	7	39
Oct	36	2	3	41	26	1	3	30
Nov	29	9	3	41	27	4	2	33
Dec	21	3	3	27	15	0	3	18
Jan	33	4	4	41	15	1	0	16
Feb	21	5	3	29	16	1	0	17
Mar	32	4	3	39	19	3	3	25
Apr	34	4	0	38	13	1	0	14
May	33	10	2	45	12	1	2	15
Jun	62	14	4	80	11	3	1	15
TOTAL	416	74	39	529	255	27	25	307

Applications lodged in the Commission under Section 29 (b) (i) and (ii) from July 1992 to June 1995



The following table details the basis of claims and the manner in which they were finalised.

	Section 29 (b)(i) unfair dismissal	Section 29(b)(ii) Contractual Benefits	Section 29 (b) (i) & (ii) Combined applications	Totals
Arbitrated claims in which orders issued	36 (11.7%)	8 (2.6%)	2 (0.7%)	46 (15.0%)
Settled after proceedings before the commission(investigati on and conciliation)	179 (58.3%)	13 (4.2%)	22 (7.2%)	204 (69.7%)
Matters withdrawn before proceedings commenced(allocated)	40 (13.0%)	6 (2.0%)	1 (0.3%)	47 (15.3%)
Total and percentage of grand total	255 (83.0%)	27 (8.8%)	25 (8.2%)	307 (100.00%)

The resolution of 69.7 per cent of claims without recourse to arbitration maintains the level achieved previously. Officers of the Commission acting pursuant to directions of Commissioners continue to make an important contribution to the dispute resolution process through their participation in meeting with the parties prior to formal proceedings being instigated.

Although the number of applications being lodged declined during the year under review, 80 applications were received in the month of June. This compared with an average for the year under review of 44.08 per month. Changes to the legislation with respect to unfair dismissal would now appear to be having an impact on the number of applications being lodged. The trend developing in June 1995 has continued into 1995-96. This may indicate a shift in unfair dismissal claims back to this Commission.

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

After consultation with me, the President of the Australian Industrial Relations Commission has during the period of review referred 7 matters to this Commission to be dealt with either under section 36 or Section 174 of the Industrial Relation Act, 1988 (Commonwealth). On three occasions applications were dealt with in joint sittings with the

Australian Industrial Relations Commission. These matters involved disputes in local government, the state public sector and the building and construction industry. Three matters lodged within this jurisdiction were dealt with by a Federal Commissioner.

The President of the Australian Commission has convened conferences with participation from the representatives of other tribunals on three occasions during the review period. The co-operation that has taken place is appreciated.

CONCLUSION

Structural reform in the public sector has been the most critical aspect of matters before the Commission during the period of this Review. It appears that this will continue to be the case well into 1995-1996.

The deterioration in industrial relations in such areas as public education and health care services may be attributable in part to the failure of parties to secure meaningful progress under Structural Efficiency initiatives over a number of years. In some cases nothing of substance has been established on which further change could be promoted or implemented. The demise of the existing wage fixing system may ultimately come from pressure within the public sector. Unfortunately attention that is focussed on one or two areas of public sector employment where there is industrial action detracts from achievements being made elsewhere.

Commissioner Gregor took up the appointment as Chairperson, Commission on Government, on 11th November, 1994. This appointment is for two years. Commissioner Gregor remains a member of this Commission.

In December, 1994 and January, 1995 the Commission welcomed Commissioner Scott and Commissioner Gifford respectively pursuant to their appointments under Section 17 of the Industrial Relations Act, 1979.

At the end of the period under Review the Commission was preparing to relocate to new premises at 111 St. George's Terrace, Perth. The new facilities will assist in promoting efficiency and public access. The new accommodation is appreciated by the Commission.

I express my sincere appreciation to my colleagues, the Registrar and all of the staff of the Commission for the assistance I have received and for their efforts in relocating the Commission. I thank the Staff of the court reporting service for their patience and for the service they have rendered to the Commission.

27 September, 1995

W.S. COLEMAN
CHIEF COMMISSIONER

INDUSTRIAL APPEAL COURT— Appeals against decision of Full Bench—

JURISDICTION: WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT

Coram: KENNEDY J. (President)
ROWLAND J.
FRANKLYN J.

Delivered: 14 December 1995

File No/s: Appeal IAC 4 of 1995

Between: ELIZABETH DUCASSE
Appellant,
and

TRANSPORT WORKERS' UNION OF AUSTRALIA,
INDUSTRIAL UNION OF WORKERS, WESTERN
AUSTRALIAN BRANCH
Respondent,
and

File No/s: Appeal IAC 5 of 1995

Between: ELIZABETH DUCASSE
Appellant,
and

TRANSPORT WORKERS' UNION OF AUSTRALIA,
INDUSTRIAL UNION OF WORKERS, WESTERN
AUSTRALIAN BRANCH
Respondent,
and

File No/s: Appeal IAC 6 of 1995

Between: PETER AITKEN
Appellant,
and

ELIZABETH DUCASSE
Respondent,
and

File No/s: Appeal IAC 7 of 1995

Between: PETER AITKEN
Appellant,
and

ELIZABETH DUCASSE.
Respondent.

JUDGMENT—

KENNEDY J (President):

I would dismiss appeals numbered 6 and 7 of 1995. I would allow the appeals 4 and 5, set aside the orders of the Full Bench and remit the matters to the Full Bench for determination in accordance with the reasons of the Court. I publish my reasons.

FRANKLYN J:

I agree, and I publish my reasons.

KENNEDY J:

Rowland J is unable to be present this morning and I am authorised by him to publish a note in which he agrees with the reasons of Franklyn J and myself, and I publish that note.
Catchwords:

Industrial relations (WA)—Threat to interfere with free and lawful exercise of person's occupation by reason that the person is not a member of an organisation of employees—Finding that ingredients of offence established on evidence—Whether any error in law.

Industrial relations (WA)—Threat by organisation of employees to interfere with free and lawful exercise of person's occupation by reason of circumstance that the person not a member of an organisation of employees—Whether offence capable of being committed by an organisation through an agent.

Industrial Relations Act 1979, ss96E, 96G.

Representation:

IAC 4 & 5 of 1995

Counsel:

Appellant: Ms J H Smith

Respondent: Mr M D Cuomo

Solicitors:

Appellant: State Crown Solicitor

Respondent: Vasuki Ponnuthurai

IAC 6 & 7 of 1995

Counsel:

Appellant: Mr M D Cuomo

Respondent: Ms J H Smith

Solicitors:

Appellant: Vasuki Ponnuthurai

Respondent: State Crown Solicitor

Case(s) referred to in judgment(s):

Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321

The King v Australasian Films Ltd (1921) 29 CLR 195

Morgan v Babcock and Wilcox Ltd (1929) 43 CLR 163

Case(s) also cited:

Baker v Campbell (1983) 153 CLR 52

Beckwith v The Queen (1976) 51 ALJR 247

Director of Public Prosecutions Reference No 1 v M (1993) 9 WAR 281

Gabriel v Ah Mook (1924) 34 CLR 591

Given v C V Holland (Holdings) Pty Ltd (1977) 15 ALR 439

The King v Adams (1935) 53 CLR 563

Lamshed v Rigney (1987) 48 SASR 320

McGinty v Webb, unreported; FCt SCT of WA; Library No 8606; 27 November 1990

Peko-Wallsend Operations Ltd v Knee (1991) 5 WAR 232

Public Prosecutor v Vuvaraj [1970] AC 913

R v Glennan (1970) 91 WN (NSW) 609

R v Hunt [1987] AC 352

Scott v Cawsey (1907) 5 CLR 132

Sun Securities Ltd v National Companies & Securities Commission, unreported; FCt SCT of WA; Library No 8519; 28 September 1990

Tesco Supermarkets Ltd v Natrass [1972] AC 153

KENNEDY J:

I have had the benefit of reading in draft the reasons to be published by Franklyn J, with which I am generally in agreement.

In relation to Appeals 6 and 7 of 1995, those reasons demonstrate clearly that the decision appealed from is not erroneous in law—see the discussion by Mason CJ in Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321, at 355-360, in a judgment with which Brennan J agreed. In the present case, it cannot successfully be maintained, in my opinion, that there was no evidence to support the findings of fact made by the Commission. Nor can it, in my view, successfully be maintained that there was no probative evidence to support the findings of fact or that any inferences drawn were not reasonably open on the facts.

In relation to Appeals 4 and 5 of 1995, I agree with Franklyn J that the appeals should be allowed. Section 96E makes it an offence for an organisation of employees to make threats of the nature prohibited by the section. In my opinion, an organisation of employees may commit the offence either through its officers or employees acting in the course of their employment, or through an agent acting within the scope of his authority. I do not regard s96G or s96H as defining the limits of vicarious liability of employee organisations or as avoiding an organisation's liability if it sees fit to act through an agent rather than through an officer or an employee.

Section 96G(1) provides that officers or members of organisations of employees who are in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of an offence committed by the organisation of employees shall be guilty of that offence. It is an expansive, and not a limiting, provision. Similarly, in subs(2) of s96G, if an officer or member of an organisation of employees is guilty of an offence, the organisation is also guilty, unless it is proved that all reasonable steps were taken by the organisation to prevent the commission by it or its officers or members of offences against the section. It is not necessary to establish that the officer or member concerned was acting within the scope of his or her authority. Absent the necessary steps by the organisation, the organisation is guilty merely by virtue of the fact that the principal offender was one of its officers or members. It does not follow from this that an employee organisation is not liable if it has acted directly through an agent who was not an officer or member of the organisation. In my opinion, it is so liable.

Having identified what I regard as an error of law in Appeals 4 and 5 of 1995, I do not consider that it would be appropriate for this Court itself to proceed to find the facts. Although the Full Bench has already shortly indicated a view of the facts, it did so in the context of its conclusion that an employee organisation is not liable for acts of its agents, and in all the circumstances the appropriate course is, in my view, to set aside the orders of the Full Bench in dismissing the appeals against the decisions of the Commission and to remit the matters to the Full Bench for determination, having regard to the reasons of this Court.

ROWLAND J:

I have had the advantage of reading the reasons to be published by Kennedy J and Franklyn J. I agree with their reasons and with the orders proposed.

FRANKLYN J:

These appeals relate to four complaints numbered 314, 316, 317, 319 of 1993, each laid by the appellant in appeals numbered 4 and 5 of 1995. Complaints numbered 314 and 316 of 1993 each alleged that Peter Aitken ("Aitken") threatened that the free and lawful exercise of a person (named in complaint number 314 of 1993 as Ronald James Crowe ("Crowe") and in complaint number 316 of 1993 as David Emmins ("Emmins")) would be interfered with by reason of the fact that the said [named person] was not a member of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch ("the State Union"). Those offences were said to have been committed on 9 and 10 December 1993. Complaints 317 and 319 of 1993 made the same allegations against the State Union in reliance upon the threats alleged in complaints 314 and 316 of 1993 respectively on the basis that the State Union was vicariously responsible for the threats made by Aitken to Crowe and Emmins respectively. The complainant in each case was the appellant in appeals numbered 4 and 5 of 1995 to this Court ("the complainant"). Each complaint relied upon s96E(1) of the Industrial Relations Act 1979 which relevantly provides:

"96E. (1) A person, including an organization of employees, must not threaten that—

- (a) discriminatory action will or may be taken against a second person; or
- (b) the free and lawful exercise of a second person's trade, profession or occupation will or may be interfered with,

by reason of the circumstance that the second person or a third person is not a member of an organization of employees.

...

(3) A person, including an organization of employees, must not take, or threaten to take, industrial action against an employer—

- (a) with intent to coerce the employer to take discriminatory action against a second person by reason of the circumstance that the second person or a third person is not a member of an organization of employees; or
- (b) with intent to coerce the employer to join an organization of employees.

Penalty applicable to subsections (1), (2) and (3):

- (a) in the case of an individual not less than \$400 nor more than \$5,000;
- (b) in any other case, not less than \$1,000 nor more than \$10,000; and a daily penalty of \$500."

The four complaints were heard by the learned Industrial Magistrate together and jointly with other complaints laid on the same date, one alleging similar conduct by Aitken against one Ronald Leonard Crowe ("Crowe senior"), the father of Crowe, and the others alleging the same offence committed by persons named Turner and Cooke respectively against Emmins, Crowe and Crowe senior. All such complaints, save those the subject of complaints 314 and 316 of 1993, were dismissed. The complainant appealed to the Full Bench of the Industrial Relations Commission against the dismissals and Aitken appealed against his conviction on complaints 314 and 316 of 1993. All such appeals to the Full Bench were dismissed. The reasons for decision were delivered by the President with whom relevantly the other members of the Full Bench agreed. Consequently, I hereafter refer to his reasons as those of the Full Bench.

The complainant now appeals to this Court in Appeals Nos 4 and 5 of 1995 respectively against the dismissal of her appeals to the Full Bench in respect of complaints 317 (Appeal No 4 of 1995) and 319 of 1993 (Appeal No 5 of 1995) on the grounds following:

"1. The Full Bench of the Western Australian Industrial Relations Commission erred in law in:

- (a) holding the provisions of Industrial Relation Act 1979 ('the Act') creates vicarious liability for employee organisations only in respect of acts of officers or members of the organisation;
- (b) failing to hold the common law doctrine of vicarious liability of corporations for criminal acts:
 - (i) is modified only in respect of acts of officers and members of an organisation by the provisions of section 96G of the Act; and
 - (ii) is not excluded under the Act in respect of acts of agents;
- (c) failing to hold section 96G(2) of the Act had no application to the facts of this matter;
- (d) failing to set aside the decision of the Learned Industrial Magistrate to acquit the Respondent (Defendant) of Charge No [317] [319] of 1993 and reverse the decision by entering a conviction against the Respondent (Defendant)."

Aitken appeals to this Court in Appeal Nos 6 and 7 respectively against the dismissal of his appeals against conviction in respect of complaints numbered 314 (Appeal No 6 of 1995) and 316 of 1993 (Appeal No 7 of 1995) on the grounds following:

"1. The Full Bench of the Western Australian Industrial Relations Commission erred in law in failing to set aside the decision of the learned Industrial Magistrate to convict the Appellant (Defendant) of the charge in complaint number 314 of 1993 ('the complaint') and in failing to order that the Appellant (Defendant) be acquitted when there was no, or no sufficient evidence:

- (a) that any threat the subject of the complaint and made by the Appellant (Defendant) to Ronald James Crowe ('Mr Crowe Jr') was made by reason that Mr Crowe Jr was not a member of the Transport Workers' Union, Industrial Union of Workers, Western Australian Branch ('the state union') as alleged in the charge,
- (b) that the Appellant (Defendant) was an agent of the state union, and
- (c) that the Appellant (Defendant) had arranged for Mr Crowe Jr to become a member of the state union."

In its reasons for decision the Full Bench identified the ground of appeal in respect of the dismissals of complaints 317 and 319 of 1993 as the learned Magistrate's failure to find that Aitken, at the material time, was in each case acting as the agent of the State Union and within the scope of his authority. It pointed out that the State Union itself conceded that s96E "would seem to prescribe for vicarious liability of an employee organisation". However, it gave no consideration to the question of vicarious liability of the Union for the acts of its servant or agent. After referring to the terms of s96G(2) of the Act and setting out the provisions of s96I(3), it found that, in so far as complaints against the State Union of an offence against s96E(1)(b) were concerned, the complainant had to prove that an officer or member of the State Union was guilty of the offence. It further held that, if that were shown, the offence was made out unless the defendant Union proved it had taken all reasonable steps to prevent its commission by its officers or members. It is clear that the Full Bench was there referring to the provisions of s96G(2) of the Act which provides:

"Section 96G

...

- (2) If an officer or member of an organization of employees is guilty of an offence against section 96C, 96D or 96E, the organization is also guilty of that offence unless it is proved that all reasonable steps were taken by the organization to prevent the commission by the organization or its officers or members of offences against section 96C, 96D or 96E."

It is convenient at this stage to also set out the provisions of s96I(3) which relevantly provides:

"Section 96I.

...

- (3) Where in any proceedings for an offence against section 96E all the relevant facts and circumstances, other than the reason or intent of the action alleged in the complaint, are proved, it lies on the defendant to prove that that action was not actuated by that reason or taken with that intent."

After referring generally to the complainant's submissions as to the evidence relied upon to establish that the threats made by Aitken were made on behalf of the State Union, the learned President specifically referred to the evidence of one Hastie as follows:

"... Mr Hastie, the Industrial Inspector who went to the offices of the State organisation, also the offices of the Federal organisation, and sought permission from the Secretary to inspect the State roll. There he found the names of Mr Crowe Snr and Mr Emmins. He did not find the name of Mr Crowe Jnr. However, in my opinion, that was unequivocal, uncontradicted and unchallenged evidence that the organisation which Mr Aitken required them to join, and which they did join and were registered as members of, was the defendant State organisation. On that evidence, too, the Industrial Magistrate was entitled to draw an inference that it was the same organisation in relation to which Mr Aitken was referring when he required Mr Crowe Jnr to join a union, otherwise he would not be loaded or unloaded. His Worship was entitled to so find beyond reasonable doubt.

I should observe that it was not argued before us that what Mr Aitken said, if he said it, was not evidence of an offence as alleged. Indeed, it could not have been so argued (see s96I(3) of the Act)."

The Full Bench went on to hold that there was direct evidence that Aitken purported to act as an agent of and that his acts were ratified by the State Union, it according membership to Crowe senior and Emmins as a result of his acts. It pointed out that Crowe's evidence was that he joined the same organisation. It then said:

"However, the Act does not prescribe liability for an act of another person, unless it is committed by an officer or member. There was no evidence that Mr Aitken was either. Accordingly, his Worship did not err in finding the TWU not guilty."

It is clear from those findings that the Full Bench concluded that, by reason of the provisions of s96G(2), an organisation of employees can only be found guilty of an offence against the provisions of s96E if the offence is committed by an officer or member of the organisation, and that it could not be held liable for an offence under that section committed by its agent. In my opinion it thereby erred in law.

Section 96E, by each of subs(1), (2) and (3) creates an offence if the circumstances there respectively provided for are established. The offence may be committed by any person and the section expressly provides that the word "person" includes an organisation of employees. It is probable that such express mention is made because the section is concerned with action taken because of non-membership of such an organisation and to make clear that the prohibited conduct cannot be engaged in by such an organisation seeking to induce membership. An "organisation" is defined by s7 to mean "an organisation that is registered under Division 4 of Part (II)" of the Act. That division provides for the registration of organisations of employees and of employers respectively. Upon and during registration such an organisation becomes and is, for the purposes of the Act, a body corporate by the registered name, with perpetual succession and a common seal which may sue and be sued, acquire and deal with real and personal property (s60). The State Union is such a corporate body. Another result of registration is that the organisation and its members become subject to the jurisdiction of this Court and of the Industrial Relations Commission and the Act, all its members being bound by the rules of the organisation during their membership (s61).

At common law a corporation is vicariously liable for an offence committed by its servant or agent in the course of his employment or agency in the same circumstances as an employer or principal who is a natural person. There is nothing in s96E or in any other section of the Act, in my opinion, which takes away the application of that common law to an offence committed by an organisation of employees against s96E. In *King v Australasian Films Ltd* (1921) 29 CLR 195 at 214-215 the High Court in dealing with the construction of s241 of the Customs Act 1901-1910 said:

"The substantial question of law involved is whether a company can be convicted of an offence against the Act with intent to defraud the revenue. In *Moussell Brothers Ltd v London and North-Western Railway Co* (1917) 2 KB at pp845, 846 Atkin J says 'I think that the authorities cited by my Lord make it plain that while prima facie a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parliament has that effect or not regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed.' And, after discussing the provisions of the state then under consideration, the learned Judge proceeded 'I see no difficulty in the fact that an intent to avoid payment is necessary to constitute the offence. That is an intent which the servant might well have, inasmuch as he is the person who has to deal with the particular matter. The penalty is imposed upon the owner for the act of the servant if the servant commits the default provided for in the statute in the state of mind provided for by the statute. Once it is decided that this is one of those cases where a principal may be held liable criminally for the act of his servant, there is no difficulty in holding that a corporation may be the principal. No mens rea being necessary to make the principal liable, a corporation is in exactly the same position as a principal who is not a corporation.'

We proceed to consider, by applying the tests suggested by Atkin J, whether sec. 241 of the Customs Act has the effect of making the principal, if a company, liable for the act of its servant or agent when the person doing the act or some servant or agent of the company from whom he takes his instructions has the intention of defrauding the revenue."

In my opinion the passage there quoted is equally applicable to the offence provided for by s96E, equating the "reasons" set out in that section to the "intent" referred to in the quoted passage. See also *Morgan v Babcock & Wilcox Ltd* (1929) 43 CLR 163 at 173-174.

Sections 96E, 96G and 96I together with other sections were introduced into the Act by amending Act No 15 of 1993. The object of their introduction can be identified by reference to their own provisions, the context in which they appear and by reference to the Second Reading Speech of the Minister set out in Hansard of 8 July 1993 at pp1459-1463 in particular at p1462 where it was said:

"Further, any form of coercive behaviour by a union or any other person, on the basis of a person's membership or non-membership of a union, will be prohibited. Any attempt to intimidate or induce an employer to act prejudicially towards an employee or prospective employee on these grounds cannot be tolerated. The proposed penalties for offences against these provisions are properly severe. Proposed penalties for individuals who commit this kind of offence may range from a minimum of \$400 to a maximum of \$5,000. Proposed penalties for corporations or unions may range from a minimum of \$1,000 to a maximum of \$10,000, plus \$500 a day if the offence continues. If a corporation, employer or union is guilty of these offences, any officers of the corporation, or officers and members of the union, knowingly involved in the commission of the offence, will also be personally guilty. Similarly if an officer of a corporation or any officer or member of a union is guilty of an offence under these provisions, then the corporation or the union respectively will also be guilty of that offence, unless it can be proved that all reasonable steps were taken by the corporation or union respectively to prevent it."

The express provisions of s96E make clear that the State Union can commit an offence against its provisions. The prohibitions imposed by the section are absolute. The prohibited conduct is such as to encompass the conduct of servants or agents of an organisation of employees engaging in that conduct and indeed, in most cases, is unlikely to be engaged in otherwise than through the actions of servants and/or agents who may or may not be officers or members of the organisation. There is no difficulty in the concept of such a servant or agent engaging in the prohibited conduct for or on behalf of the organisation of employees and for the reasons specified in the section. In my opinion the offences created by s96E are each offences for which a principal may be held criminally liable for the acts of his servant and, by the express terms of the section, an organisation of employees and relevantly, the State Union, may be the principal. There is nothing in the Act to lead to any contrary conclusion.

Section 96G in my view has no relevance to the question whether, under s96E, an organisation of employees may be vicariously liable for the conduct of its servants or agents. Relevantly, s96G(1) only has effect if the organisation of employees is "guilty of an offence" against s96E. If the evidence establishes that guilt and whether or not the offence be committed by a servant or agent, then that subsection extends guilt for the offence to any officer or member of the organisation concerned in or party to the offence as specified in the subsection. Section 96G(2) recognises that the "person" who commits the offence against s96E might be an officer or member of the organisation. By its terms it assumes, in such case, guilty knowledge and support on the part of the organisation for the wrongful conduct of that officer or member and so, on proof of the guilt of the officer or member, provides that the organisation is also guilty of the offence unless "it is proved that all reasonable steps were taken by the organisation to prevent the commission of the offence by the organisation or its officers or members". This is consistent with the objects of the amendments as identified in the Second Reading Speech. It is in no way inconsistent with the common law provision providing for vicarious liability of a principal for the acts of its servants or agents. Consequently, in my opinion, the Full Bench erred in law in holding that the State Union can only be liable vicariously for the acts of a person who is one of its officers or members and in failing to come to a decision, in accordance with its findings, of vicarious liability for the acts of its servants or agents.

The Union has not appealed against nor filed any Notice of Contention in respect of the finding of the Full Bench that there was direct evidence that Aitken purported to act as an agent of the State Union which ratified his acts. Nor was it argued before us that the evidence did not establish agency in respect of the "TWU". What was submitted was that the evidence did not identify the State Union as the Union involved, and that the evidence was equally consistent or at least such as to lead to a reasonable doubt as to whether Aitken was acting for the State Union or for the Transport Workers' Union of Australia registered under the Commonwealth Statute (the Federal Union) which has a Western Australian Branch and which, the evidence revealed, used the same letterhead as the State Branch.

In my opinion, consistently with the conclusion of the Full Bench, the evidence was such as to establish to the necessary standard that Aitken was relevantly acting for and on behalf of the State Union and within the scope of his authority and so was acting as its agent. Because of the submission advanced by the State Union before us that the evidence is ambiguous as to whether Aitken was acting for the State Union or the Federal Union, it is necessary to examine the relevant evidence.

One Carrigg, Registrar of the Western Australian Industrial Commission, produced the Commission records of the State Union. His evidence was unchallenged. Those records establish the State Union to be a registered organisation of employees. They also establish that in February 1993, pursuant to the provisions of the Act, the State Union filed with the Commission a letter of advice detailing the number of its members together with a statutory declaration as to and annexing the names and addresses of the office holders of the State Union and its committee membership. The obligation of a registered organisation of employees to keep and file such records is found in s63 of the Act. Copies of the documents so filed were admitted into evidence. The letter of advice filed to comply with that obligation is signed by one J J O'Connor as Secretary and dated 5 February 1993. There is no dispute that at the time J J O'Connor was the Secretary of the State Union. The letterhead shows "Transport Workers' Union of Australia" in heavy print and underneath it, in lighter print, "Western Australian Branch" and underneath that, the address "82 Beaufort Street, Perth" which it is not in dispute, is the address of the State Union. Although filed with the Commission, the letter is addressed to the Federal Secretary of the TWU and notified, "as requested by the Australian Industrial Registry", the number of members and employees of "the Western Australian Branch". The statutory declaration filed with that letter is on a form headed "Commonwealth of Australia" followed by the words "Statutory Declaration" and dated 5 February 1993. It is made by John Joseph O'Connor described therein as "Secretary of the Transport Workers' Union of Australia, Western Australian Branch" and certifies "the accompanying document" to be "a true and correct list of office holders for the Branch Committee of Management of the TWU of Australia, Western Australian Branch". The accompanying document is headed "Transport Workers' Union of Australia, Western Australian Branch" and lists the office holders of the "Branch Committee of Management". Relevantly it lists John Joseph O'Connor as "Union Secretary" and James McGiveron, "Union Organiser", as a member of the Committee of Management. The significance of these documents is that, on the unchallenged evidence, they were filed with the Commission by the State Union purportedly pursuant to a statutory obligation of that Union to file information with that Commission and that the name used by the State Union was that shown on the letterhead. In my opinion it matters not that they are in terms suggesting they are also appropriate to a requirement of the Commonwealth Statute.

Carrigg also testified that the State Union was required by the regulations made under the Act to provide advice as to the people authorised to appear and to sign documents "in this jurisdiction" on its behalf. He produced the last such advice provided to the Commission by the State Union. It was by way of letter dated 2 December 1993 signed by J J O'Connor with a letterhead headed in heavy print "Transport Workers' Union of Australia", underneath which appeared in lighter print the words "Western Australian Branch" and underneath that the same address as that shown on the letter of advice

dated 5 February 1993 referred to above which, it is not in dispute, is the address of the State Union. The letter is addressed to the witness Carrigg as "Registrar, Western Australian Industrial Relation Commission" and is expressed to be in reply to correspondence from him. It provides a "list of those people who are authorised to appear and sign on behalf of the TWU". Amongst those listed as having authority to do both of those things are JJO'Connor and James McGiveron. Aitken is listed as being authorised "to appear". That letter clearly reveals that the letterhead used by the State Union did not state its full registered name of Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch, even though used to provide necessary information to the Commission. It also reveals that the State Union referred to itself as the "TWU" and that Aitken was a person who had, at least, the connection with the Union of being authorised to appear on its behalf.

Carrigg also produced a certified copy of the Rules for the State Union. They consistently refer to the State Union as "the Branch". They provide for the "Branch" to have a "Committee of Management" and generally prefix references to its officers with the word "Branch". By Rule 5 they provide for application for membership "of the Branch" to be by written application in the form there provided for headed "Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch". The State Union is similarly described in that way in the body of the form. Rule 6 expressly provides that application made on an application form which refers to the "Transport Workers' Union of Australia" instead of "Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch" but is otherwise in the terms provided for by Rule 5 "shall be deemed to comply with" the provisions of Rule 5 and that, on the signing of the application form, whether in terms of Rule 5 or as provided for by Rule 6, the applicant "shall become a member of the Branch". It is also of significance that under Rule 49 of those Rules the State Union is incorporated with and is a Branch of the Federal Union, that membership to the Federal Union is "synonymous with membership of the State Union" and that admission to membership of the Federal Union constitutes admission to membership of the State Union. That provision and the effect of the s71 Certificate hereafter referred to provides an explanation for what can be termed the "federal" references in the documentation dated 5 February 1993 filed with the Commission.

Carrigg also produced, and it was admitted into evidence, a certificate under s71 of the Act dated 22 January 1982 certifying inter alia as follows:

- "(2) that, from December 11, 1981, the persons holding office in the 'Transport Workers' Union of Australia, Western Australian Branch', an organisation registered under the provisions of the 'Conciliation and Arbitration Act, 1904', shall, for all purposes, be the officers of the 'Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch'."

That certificate speaks for itself. It does not however, provide any evidence that Aitken had any connection with the "Transport Workers' Union of Australia, Western Australian Branch", the organisation registered under the provisions of the Conciliation and Arbitration Act 1904. When considered with Rule 49 of the State Union's Constitution, it provides an understandable reason why the State Union would use documents appropriate to a Federal Union when complying with the obligation of the State Union to file documents and provide information to the Industrial Relations Commission and would use a letterhead which does not use the full name of the State Union, despite the confusion as to identity that such letterhead might, in some cases, produce.

One Hastie, an industrial inspector employed by the Department of Productivity and Labour Relations, testified that on 5 July 1994 he went to the office of the "Transport Workers' Union" at 82 Beaufort Street to check the membership roll. That address was the address of the State Union. He said that there he spoke to the Secretary, James McGiveron, and asked for access to "the State membership roll of the Transport Workers' Union". He testified that McGiveron instructed another person to "access the State roll" and to "input the names I gave him to check if the individuals were financial

members". The "individuals" specified by him were those the subject of the various complaints made by the complainant, ie Crowe, Crowe senior and Emmins, and, in a different capacity, Cooke and Turner. The requested information was obtained on computer in Hastie's presence. Relevantly it revealed Crowe senior and Emmins, Cooke and Taylor to be members. Crowe's name "did not come up". It revealed that Emmins resigned on 22 March 1994 having joined on 10 December 1993, the date of the alleged offence and that the membership of the other four was current. The computer also provided membership numbers for those persons, that of Crowe senior being 30030 and that of Emmins being 30035. In my opinion that evidence, which was not challenged, is evidence that those persons were registered as financial members of the State Union

It was Emmins' testimony in chief that in December 1993 and until the end of February 1994 he was employed by Crowe Transport, a business operated by Crowe senior and Mrs Crowe, driving a semi-trailer truck mainly carrying containers to be loaded and unloaded at container yards and the Fremantle Wharf. He gave evidence of the picketing of truck drivers at the wharf in November and of the events of 10 December 1993 when he drove a truck from the wharf with a container to be unloaded at the yard of a company called "Conaust". Emmins said that there Aitken asked him if he was a member of the Union and, on being told he was not, replied that his vehicle would not be unloaded. He testified that Aitken said he was from the "TWU" and "the Union". He said that there was a forklift driver in the yard at the time and that he subsequently told the forklift driver he would be joining the Union to save "all the messing around and hassles". He said "so I got my container off". He testified that he later told Aitken he was going to join the Union and wrote out a cheque for the annual fee which he gave to Aitken. That cheque was identified by him and was in evidence. It was drawn in favour of the "Transport Workers' Union" for the sum of \$203. In cross-examination Emmins' evidence was essentially the same as that given in chief and contained the additional information that when first asked if he was a member of the Union, Aitken told him he had spoken to the forklift driver and that he would not get unloaded. Further, that when he later sought out Aitken to join the Union, Aitken "signed him up" and said "you should get your membership card through the post in a few week's time". The application form signed by him was put to him in cross-examination and admitted into evidence. It is headed "Transport Workers' Union of Australia Application Form" and in its terms is an application "to become a member of the Transport Workers' Union of Australia". Emmins' evidence was accepted by the learned trial Magistrate. Having regard to its rules, he was, at the time, eligible for membership of the State Union.

No evidence was led for or on behalf of the defendants named in the complaint nor on behalf of either the State or Federal Unions. The Constitution and Rules of the Federal Union were not in evidence. Whilst by s71 of the Act the Rules of the Federal Union relating to qualification for membership are "deemed" to be the same as those as the State Union, the Act makes it clear that in fact they need only be "substantially" the same. In my view that leaves open some differences which might affect the eligibility for membership of some persons and it is not possible to assert unequivocally that Emmins was eligible for membership of the Federal Union in terms of its Constitution and Rules. That this is so is supported by the provisions of s71(3) of the Act. The evidence also reveals that Aitken described himself as a member of the "TWU", a term used also by the State Union to describe itself (see letter from State Union to Carrigg as Registrar of the Industrial Relations Commission dated 2 December 1993). There is no evidence which suggests that he is a member of the Federal Union. The application for membership signed by Emmins is, by virtue of Rule 6 of the State Union's rules, an application for membership of the State Union and conferred membership as from the time of signing the same. In my opinion, as Aitken was authorised by the State Union to appear for it, in the absence of evidence to the contrary he must be taken to be familiar with its Constitution and Rules and to be aware that a membership application in the form in which Emmins applied was an application for membership of the State Union. The reasonableness of that inference is supported by ss31 and 61 of the Act. Section 31 provides that a Union may "appear" be-

fore the Commission by an agent. Section 61 of the Act provides that a registered organisation of employers and its members are subject to the jurisdiction of "the Court, the Commission and to this Act" and that subject to the Act all of its members are bound by the rules. It is reasonable to assume that a person authorised to appear for the Union is familiar with its rules. The evidence of Hastie that Emmins was in fact registered as a member of the State Union on 10 December 1993 supports the conclusion that in accepting his application, Aitken was acting for and on behalf of the State Union and caused that application to be lodged with it for registration of that membership. That such registration was effected and that the computer showed Emmins to have been a financial member, leads only to the inference that the moneys paid by him to Aitken as membership fees were paid over by Aitken to the State Union.

Crowe testified that at the relevant time he too was employed by Crowe Transport as a truck driver, that business being owned by his father (Crowe senior) and his mother. He was consequently eligible for membership of the State Union. He too gave evidence of industrial action on the Fremantle Wharf in November 1993 and of the events of 10 December 1993. On that day, on his arrival at Conaust's container yard, Aitken asked him to produce a "union ticket" and, on being told that he did not have one, told Crowe he could not get loaded. In cross-examination Crowe said Aitken said to him "no ticket, no getting loaded". He testified that shortly afterwards Crowe senior arrived and spoke with Aitken. He did not hear what was said. The evidence of Crowe and Crowe senior as to what then happened is as follows. Crowe senior handed Aitken a cheque and Aitken gave each of Crowe and Crowe senior a card to fill in which they did. This card was an application to join the union in a form similar to that signed by Emmins. They each returned that card completed to Aitken. Aitken then gave them each a receipt for \$20 dated 10 December 1993 endorsed "New Member". Crowe and Crowe senior then loaded their vehicles and left.

Crowe senior gave evidence of his conversations with Aitken in November and on 10 December 1993. The learned Magistrate declined to accept his evidence as to the contents of those conversations and for that reason was not satisfied that a threat to him in terms of s96E had been established. The Magistrate did not, however, otherwise reject the evidence of Crowe senior. The Full Bench found that in the absence of corroboration as to that conversation, the learned Magistrate was entitled to decline to accept that evidence. I have considerable difficulty with that finding. The evidence of Crowe senior as to the conversation was totally unchallenged. The transcript does not indicate that in relation thereto he was in any way evasive or unsatisfactory. It was only when cross-examined as to his discussions and contact with departmental and government officials subsequent to the events that the learned Magistrate indicated dissatisfaction with the answers given. It is difficult to see the relevance of that cross-examination in any event. Be that as it may, the evidence of those conversations is not critical for present purposes. His Worship did not reject the evidence of Crowe senior that he gave Aitken a cheque for \$40 and that he and Crowe received in return a receipt dated 10 December 1993 for \$20 and that he signed the card produced to him by Aitken. Nor did the learned Magistrate reject his evidence that he subsequently received an account (put into evidence) for what he described as the "balance of dues for the TWU for the financial year ending December" and a subsequent document (also in evidence) relating to the same account. The first such document was undated and unsigned. It was on a letterhead identical to those to which I have earlier referred and in particular to that sent by the State Union to the Commission dated 5 February 1993. It was addressed to Ronald Crowe and had a sub-heading "First and Only Account". It stated that all fees must be finalised by 28 February 1994 and "your membership number is 30030". This is the membership number which Hastie's search of the State Union membership rolls revealed had been allocated to Crowe senior. The account also showed a debit for "contribution (to 31 December 1994) of \$183 plus a debit of \$20 joining fee". Against this it showed a credit of \$20 "already paid" leaving a balance of \$183 due. This document provides strong evidence that in obtaining the completion of the application forms by Crowe and Crowe senior, in accepting from them moneys and

in issuing them with the receipts endorsed "New Member", Aitken was acting as agent for the State Union and delivered to it the application forms and moneys so received. The second document was on the same letterhead, was signed by "Jim McGiveron" and complained that Crowe senior's union dues were in arrears. As already pointed out, the State Union had earlier advised the Industrial Relations Commission that McGiveron was a member of its Committee of Management. The document requested "payment of the attached payment (sic)" by return post. There is no suggestion that this document referred to any union dues other than those the subject of the account.

All of the above evidence requires to be considered in the light of the absence of any evidence by Aitken or the State or the Federal Union and in the context of the relevant union activity in this State, without any evidence to suggest that the Federal Union was involved in any way or that Aitken was a member of the Federal Union. The evidence of Hastie, in my opinion, can only be reasonably construed as referring to a search of the membership rolls of the State Union. There was no suggestion to the contrary put to him in cross-examination. The evidence reveals that the State Union referred to itself in its dealings with the Industrial Relations Commission as the "TWU" and that Aitken claimed to be from the TWU. The correspondence from the State Union reveals that in correspondence and for the purposes of its accounts it used a letterhead describing itself as Transport Workers' Union of Australia, Western Australian Branch, but which showed the address of the registered office of the State Union. The evidence further reveals that both Emmins and Crowe senior became members of the State Union with membership numbers allotted to them and that Emmins was a member from 10 December 1993, the date of the offence alleged. It was the evidence of Crowe senior that he too joined on that date and the account sent to him on a letterhead used by the State Union identified his liability by the membership number identified by Hastie as allotted to him by the State Union. There was no evidence as to what letterhead was generally used by the Western Australian Branch of the Federal Union, nor have I been able to locate direct evidence as to its address. It does not follow that the letter sent to the Federal Secretary of the Federal Union dated 5 February 1993 which shows the address of the State Union on the letterhead necessarily reveals that to be also the address of its Counterpart Federal Body (s71). In my opinion, the state of the evidence was such that, in the absence of evidence to the contrary by Aitken, the State Union or the Federal Union, the only inference reasonably open and that to the state of satisfaction of beyond reasonable doubt was that Aitken was acting for and on behalf of the State Union which ratified his actions by admitting to membership Crowe senior and Emmins. That the name of Crowe did not show up in

Hastie's search does not avoid the inference that in his dealings with Crowe he was also acting as such agent.

I would uphold Appeals numbered 4 and 5 of 1995 and set aside the decision of the Full Bench dismissing the appeals to it in respect of the Magistrate's dismissal of complaints number 317 and 319 of 1993. For the reasons given by Kennedy J I would remit the matters to the Full Bench for determination, having regard to the reasons of this Court.

As to Appeals numbered 6 and 7 of 1995 against the decision of the Full Bench dismissing the appeals against the conviction of Aitken on complaints 314 and 316 of 1993, for the reasons already given I am of the view that the evidence established beyond reasonable doubt that Aitken was the agent of the State Union in acting as alleged in those complaints. I am also of the view that by reason of the provisions of s96I(3) it was not incumbent on the complainant to adduce evidence as to the reason of the actions alleged in the complaint. As the defendant adduced no evidence to discharge the onus cast on him by that provision, the relevant reason is deemed to have been established to the necessary standard of proof. The ground of appeal lettered (c) need not be considered. It is immaterial to the conviction. I would dismiss the Appeals 6 and 7 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT

Industrial Relations Act 1979.

Appeal Nos. IAC 4 and 5 of 1995

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1032 of 1994 dated the 30th day of March 1995.

Between:

Elizabeth Ducasse

Appellant,

and

Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

Respondent.

Before:

JUSTICE KENNEDY (PRESIDENT)
JUSTICE ROWLAND
JUSTICE FRANKLYN.

14 December 1995.

Order.

HAVING heard Ms J H Smith (of Counsel) for the appellant, and Mr M D Cuomo (of Counsel) for the respondent, THE COURT HEREBY ORDERS that:

- 1 Appeals No IAC 4 and 5 of 1995 be allowed;
- 2 The decision of the Full Bench be set aside; and
- 3 The matter be remitted to the Full Bench for determination in accordance with the decision of this court.

J.G. CARRIGG,
Clerk of the Court.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT

Industrial Relations Act 1979.

Appeal Nos. IAC 6 and 7 of 1995

IN THE MATTER OF an appeal against the decisions of the Full Bench of the Western Australian Industrial Relations Commission in Matters Numbered 1039 and 1040 of 1994 dated the 30th day of March 1995.

Between:

Peter Aitken

Appellant,

and

Elizabeth Ducasse

Respondent.

Before:

JUSTICE KENNEDY (PRESIDENT)
JUSTICE ROWLAND
JUSTICE FRANKLYN.

14 December 1995.

Order.

HAVING heard Mr M D Cuomo (of Counsel) for the appellant, and Ms J H Smith (of Counsel) for the respondent, THE COURT HEREBY ORDERS that the appeals be dismissed.

J.G. CARRIGG,
Clerk of the Court.

KENNEDY J, President, FRANKLYN and ANDERSON JJ
DRAFT JUDGMENT

THE MINISTER FOR EDUCATION v STATE SCHOOL
TEACHERS' UNION OF WESTERN AUSTRALIA (INC)

IAC 13 of 1995

THE PRESIDENT: In this matter we are of the opinion that the respondent should be entitled to costs. We are not of the view that there is any substance in the application for an extension of time by reason of the fact that the matter has already been determined by this Court and having regard also to the passage in the judgment of Sir Owen Dixon in *Maxwell v Murphy*, which notably uses the words "of course" and "not otherwise should be implied."

Nothing which has been put before us indicates that there is any argument which could possibly succeed in relation to an extension of time. The test for what is frivolous and vexatious was considered by this Court in *The Western Australian Builders Labourers, Painters and Plasterers Union of Workers v Clark*, library number 950635 delivered on 23 November 1995, and there is no need to elaborate upon the requirements to establish that a proceeding was frivolous and vexatious. In our view the present application falls within those terms as described in that case.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT

Industrial Relations Act 1979.

Appeal Nos. IAC 13 of 1995

IN THE MATTER OF an appeal against the decision of The Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 116 of 1995 dated the 27th day of September 1995.

BETWEEN

The Minister for Education

Appellant

and

State School Teachers' Union of Western Australia (Inc)

Respondent

BEFORE:

JUSTICE KENNEDY (PRESIDENT)
JUSTICE FRANKLYN
JUSTICE ANDERSON.

1 February 1996.

Order.

HAVING heard Mr B P King, (of Counsel) for the appellant, and Mr Drake-Brockman, (of Counsel) for the respondent, The Court Hereby Orders:

1. Leave be given to discontinue the appeal.
2. The appellant pay the respondent's costs fixed at the sum of \$600.00.

J. G. CARRIGG,
Clerk of the Court.

**FULL BENCH—
Appeals against decision of
Commission—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Mining Corporation Limited and WMC
Engineering Services Pty Ltd
(Appellants)

and

The Metal and Engineering Workers' Union—Western
Australian Branch and Others
(Respondents).

No 360 of 1995.

BEFORE THE FULL BENCH.

18 December 1995.

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER A R BEECH.

Order.

This matter having been due to come on for hearing before the Full Bench on the 18th and 19th days of December 1995, and the abovenamed appellants and The Metal and Engineering Workers' Union—Western Australian Branch having consented by letter to the Commission dated the 15th day of December 1995, filed herein, to the appeal being adjourned sine die, and both parties having consented in writing to the making of the following orders, and no other respondent having taken any part in these proceedings, it is this day, the 18th day of December 1995, ordered, by consent, as follows—

- (1) THAT appeal No 360 of 1995 be and is hereby adjourned sine die.
- (2) THAT the parties herein have leave to apply (on 24 hours notice to the other parties) to re-list the appeal by Friday, the 5th day of January 1996.
- (3) THAT in the event that the appeal is not re-listed, the appellants herein shall file and serve a notice of discontinuance of the appeal on Monday, the 8th day of January 1996.

By the Full Bench

(Sgd.) P. J. SHARKEY,

President.

[L.S.]

**COMMISSION IN COURT
SESSION—
Appeals against decisions of
Boards of Reference—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Yewdall

and

Midland Datsun Pty Ltd.

No. 916 of 1995.

COMMISSION IN COURT SESSION

COMMISSIONER C.B. PARKS.

COMMISSIONER P.E. SCOTT.

COMMISSIONER R.H. GIFFORD.

16 January 1996.

Order.

WHEREAS an appeal to the Commission in Court Session against the decision of the Board of Reference in matter no. BOR 3 of 1995 was filed on 8 August 1995; and

WHEREAS a hearing of the appeal was adjourned at the request of the applicant on 8 November 1995; and

WHEREAS the appeal was relisted for hearing on 3 January 1996; and

WHEREAS by facsimile transmission, dated 2 January 1996, the applicant declared his wish to withdraw his appeal; and

THERE being no appearance on behalf of the Applicant and having heard Mr M.J. Hawkins on behalf of the Respondent, and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT appeal No. 916 of 1995 be and is hereby withdrawn by leave of the Commission in Court Session.

By the Commission in Court Session,

(Sgd.) C. B. PARKS,

Commissioner.

[L.S.]

**PRESIDENT—
Matters dealt with—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia (Inc)
(Applicant)

and

Western Australian Centre for Pathology and Medical
Research and The Hospital Salaried Officers' Association of
Western Australia (Union of Workers)
(Respondents).

No 1348 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

13 December 1995.

Order.

This matter having come on for hearing before me on the 12th day of December 1995, and having heard Mr P Harris (of Counsel), by leave, on behalf of the applicant, Mr C Panizza on behalf of the secondnamed respondent, and there being no appearance by or on behalf of the firstnamed respondent, and having given my reasons for decision, and the Commission having, with the consent of the parties, waived the requirements of s.35 of the Industrial Relations Act 1979 (as amended) ("the Act"), it is this day, the 13th day of December 1995, ordered and declared as follows—

- (1) THAT the applicant has a sufficient interest as required by s.49(11) of the Act and was therefore entitled to apply for the orders which appear hereunder.
- (2) THAT appeal No 1347 of 1995 has been instituted within the meaning of s.49(11) of the Act.
- (3) THAT there be a stay of the operation of the whole of the decision of the Public Service Arbitrator made on the 23rd day of November 1995 in application No PSA AG 2 of 1995 pending the hearing and determination of appeal No 1347 of 1995 or until further order.

(Sgd.) P. J. SHARKEY,

President.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia (Inc)
(Applicant)

and

Western Australian Centre for Pathology and Medical
Research and The Hospital Salaried Officers' Association of
Western Australia (Union of Workers)
(Respondents).

No 1348 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

17 January 1996.

Reasons for Decision.

THE PRESIDENT: Given extemporaneously at the hearing of this matter on 12 December 1995 and edited by the President.

I will make an order in terms of the order of 28 November 1995 in application No 1311 of 1995, except for formal matters such as in the recitals as to the date and the appearances and with the amendments in order (3) to substitute in the fourth line the word "order" for "finding" and the date "22nd day of November 1995". By way of my reasons for making such order, I adopt and apply my reasons which issued in relation to my order of 28 November 1995 in application No 1311 of 1995.

I also adopt the argument that issue estoppel has arisen and should persuade me to make the orders which I propose to make, not necessarily as a matter of law, because I would like to hear argument one day as to how much estoppel binds this Commission, the Commission having held in McCorry v Como Investments Pty Ltd 69 WAIG 194 (FB) that estoppel did not necessarily bind it as a matter of law, but formed part of the equity, good conscience and the substantial merits of the case (see also McCorry v Como Investments Pty Ltd 69 WAIG 1000 (IAC)). Further, if the doctrine were applicable as a matter of law, then I would apply it in this case.

For those reasons, I make the order which I have made.

Appearances: Mr P Harris (of Counsel), by leave, on behalf of the applicant.

Mr C Panizza on behalf of the secondnamed respondent.

No appearance by or on behalf of the firstnamed respondent.

I have examined rule 6 of the respondent organisation's rules which provides that termination of membership is effected three months from the date the union receives written notice of intention to resign in the face of s.64A of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), which provides that resignation of membership takes effect on the day on which notice of resignation is served on the organisation or on a later date specified in the notice. I am also satisfied that rule 6 requires that, in addition to three months notice of termination of membership, that notice is not valid unless the member is financial up to the expiration of the three months or the notice is accompanied by payment of at least three months' contributions. Those provisions are contrary to and inconsistent with s.64B of the Act which provides as follows—

"(1) Where—

- (a) a period in respect of which a subscription has been paid to an organisation for a person's membership of the organisation expires; and
- (b) no subscription to continue or renew that membership has been paid to the organisation before, or within 3 months after, that expiry,

that membership ends by operation of this subsection at the end of that 3 month period.

- (2) Subsection (1) does not apply if the membership has already ended under section 64A or under the rules of the organisation."

(See also s.64A of the Act).

I am therefore satisfied that rule 6 of the respondent organisation's rules is contrary to or inconsistent with s.64A and s.64B of the Act, and I will make the following orders which will issue in a minute—

- (1) That I declare that rule 6 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A or s.64B of the Act.
- (2) THAT the said rule 6 of the said rules of the abovenamed respondent organisation be and is hereby disallowed as and from 22 January 1996.

Appearances: Ms J H Smith (of Counsel) on behalf of the applicant.

Ms D MacTiernan on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia—Western Australian
Branch.

(Respondent)

No 1325 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

22 January 1996.

Order.

This matter having come on for hearing before me on the 22nd day of January 1996, and having heard Ms J H Smith (of Counsel) on behalf of the applicant and Ms D MacTiernan on behalf of the respondent, and having given my reasons for decision herein, it is, this day, the 22nd day of January 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 6 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A or s.64B of the Industrial Relations Act 1979 (as amended).

**PRESIDENT—
Unions—Matters dealt with
under Section 66—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia—Western Australian
Branch.

(Respondent)

No 1325 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

2 February 1996.

Reasons for Decision.

THE PRESIDENT: Given extemporaneously at the hearing of this matter on 22 January 1996 and edited by me.

- (2) THAT the said rule 6 of the said rules of the abovenamed respondent organisation be and is hereby disallowed as and from the 22nd day of January 1996.

[L.S] (Sgd.) P. J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia—Western Australian
Branch.

(Respondent)

No 1325 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

11 December 1995.

Order.

This matter having come on for a directions hearing before me on the 11th day of December 1995, and having heard Mr J O'Sullivan (of Counsel), by leave, on behalf of the applicant and Ms D MacTiernan and with her Mr W W Tracey on behalf of the respondent, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, it is this day, the 11th day of December 1995, ordered and directed as follows—

- (1) THAT the application herein be and is hereby adjourned for hearing and determination to 10.00 am on Monday, the 22nd day of January 1996 for one hour.
- (2) THAT the respondent herein do file and serve upon the applicant a Minutes of Proposed Order on or before the 22nd day of December 1995.

[L.S] (Sgd.) P. J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Master Plumbers and Mechanical Services Association
of Western Australia (Union of Employers).

(Respondent)

No 1326 of 1995.

and

The Registrar
(Applicant)
and

The Master Painters, Decorators and Signwriters'
Association of Western Australia (Union of Employers).

(Respondent)

No 1332 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

2 February 1996.

Reasons for Decision.

THE PRESIDENT: Given extemporaneously at the hearing of these matters on 22 January 1996 and edited by me.

In each of these applications the subject rule is rule 6, sub-rule 12. In each case I am satisfied that rule 6.12 provides that resignation of membership is effected three months from the date the union receives written notice of intention to resign, and is contrary to or inconsistent with s.64A and s.64B of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), which provides that resignation of membership takes effect on the day on which notice of resignation is served on the organisation or on a later date specified in the notice. Further, it is the case that rule 6.12 of the respondents' rules requires that, in addition to three months' notice of resignation of membership, that notice is not effective unless the member has paid all dues up to the end of the three months' notice, or, in the alternative, that there be payment of three months' membership fees in lieu of notice.

In fact, contrary to that, s.64B of the Act provides—

"(1) Where—

- (a) a period in respect of which a subscription has been paid to an organisation for a person's membership of the organisation expires; and
- (b) no subscription to continue or renew that membership has been paid to the organisation before, or within 3 months after, that expiry, that membership ends by operation of this subsection at the end of that 3 month period.

- (2) Subsection (1) does not apply if the membership has already ended under section 64A or under the rules of the organisation."

I find therefore that rule 6.12, in the case of each organisation the subject of these two applications before me, does not comply, or, in fact, contravenes s.64A and s.64B of the Act. It therefore follows that the following orders are appropriate, and a minute will issue—

- (1) That rule 6.12 of the rules of the abovenamed respondent organisation, The Master Plumbers and Mechanical Services Association of Western Australia (Registered Union of Employers) and rule 6.12 of the rules of the abovenamed respondent organisation, The Master Painters, Decorators and Signwriters' Association of Western Australia (Union of Employers) are contrary to or inconsistent with s.64A or s.64B of the Act.
- (2) That in the case of each of the said respondent organisations, rule 6.12 of the rules of each of the abovenamed respondent organisations herein be and is hereby disallowed as and from 22 January 1996.

Appearances: Ms J H Smith (of Counsel) on behalf of the applicant.

Mr S Henry on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Master Plumbers and Mechanical Services Association
of Western Australia (Union of Employers).

(Respondent)

No 1326 of 1995.

and

The Registrar
(Applicant)
and

The Master Painters, Decorators and Signwriters'
Association of Western Australia (Union of Employers).

(Respondent)

No 1332 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

22 January 1996.

Order.

These matters having come on for hearing before me on the 22nd day of January 1996, and having heard Ms J H Smith (of

Counsel) on behalf of the applicant and Mr S Henry on behalf of the respondents, and having given my reasons for decision herein, it is, this day, the 22nd day of January 1996, ordered and declared, by consent, as follows—

- (1) THAT rule 6.12 of the rules of the abovenamed respondent organisation, The Master Plumbers and Mechanical Services Association of Western Australia (Registered Union of Employers) and rule 6.12 of the rules of the abovenamed respondent organisation, The Master Painters, Decorators and Signwriters' Association of Western Australia (Union of Employers) are contrary to or inconsistent with s.64A or s.64B of the Industrial Relations Act 1979 (as amended).
- (2) THAT in the case of each of the said respondent organisations, rule 6.12 of the rules of each of the abovenamed respondent organisations herein be and is hereby disallowed as and from the 22nd day of January 1996.

[L.S] (Sgd.) P. J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Master Plumbers and Mechanical Services Association
of Western Australia (Union of Employers).

(Respondent)
No 1326 of 1995.

and
The Registrar
(Applicant)
and

The Master Painters, Decorators and Signwriters'
Association of Western Australia (Union of Employers).

(Respondent)
No 1332 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

11 December 1995.

Order.

These matters having come on for a directions hearing before me on the 11th day of December 1995, and having heard Mr J O'Sullivan (of Counsel), by leave, on behalf of the applicant and Mr S Henry on behalf of the respondents, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of these matters, it is this day, the 11th day of December 1995, ordered and directed as follows—

- (1) THAT application Nos 1326 and 1332 of 1995 be and are hereby adjourned for hearing and determination to 11.00 am on Monday, the 22nd day of January 1996.
- (2) THAT the respondents herein do file and serve upon the applicant in application Nos 1326 and 1332 of 1995 Minutes of Proposed Orders on or before the 15th day of January 1996.
- (3) THAT application Nos 1326 and 1332 of 1995 be heard together.

[L.S] (Sgd.) P. J. SHARKEY,
President.

AWARDS/AGREEMENTS— Application for—

ADVANCE CEILINGS INDUSTRIAL AGREEMENT No. AG 306 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and
Redcroft Pty Ltd trading as Advance Ceilings.
No. AG 306 of 1995.

Advance Ceilings Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 24th day of November 1995.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Advance Ceilings Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Award
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Redcroft Pty Ltd trading as Advance Ceilings (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) ON BEHALF OF THE UNION

(signed) ON BEHALF OF THE COMPANY

Dated this 24th day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

ALAN CROLL ROOFING INDUSTRIAL AGREEMENT

No. AG 304 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
andClimaze Holdings Pty Ltd trading as Alan Croll Roofing.
No. AG 304 of 1995.

Alan Croll Roofing Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 24th day of November 1995.

[L.S] _____
(Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Alan Croll Roofing Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Climaze Holdings Pty Ltd trading as Alan Croll Roofing (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.

(c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed)

(signed)

ON BEHALF OF THE UNION

ON BEHALF OF THE COMPANY

Dated this 24th day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

**B & L FORMWORK INDUSTRIAL AGREEMENT
No. AG 316 of 1995.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Bertolini & Ladner Pty Ltd trading as B & L Formwork.
No. AG 316 of 1995.

B & L Formwork Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 6th day of December 1995.

(Sgd.) P.E. SCOTT,

[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the B & L Formwork Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
 16. Ratification
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Bertolini & Ladner Pty Ltd trading as B & L Formwork (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE,
RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$0.20 per hour per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 6th day of December 1995.

(signed) ON BEHALF OF THE UNION

(signed) ON BEHALF OF THE COMPANY

O. LADNER

Dated this 6th day of December 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

CO-GENERATION POWER STATION PROJECT AGREEMENT 1995
No. AG 311 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Clough Engineering Limited

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch.

No. AG 311 of 1995.

(Co-Generation Power Station Project Agreement 1995)

CHIEF COMMISSIONER W.S. COLEMAN.

20 December 1995.

Order:

HAVING heard Mr T Dobson on behalf of the Applicant and Mr C Saunders on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 20th day of December 1995.

[L.S.] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Co-Generation Power Station Project Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. General Conditions of Employment
5. Aims and Objectives
6. Non Precedent
7. Boots and Boot Allowance
8. Site Allowance
9. Coded Welding Allowance
10. Hours
11. Improvement Measures
12. Communications
13. Project Entry Requirements
14. Workforce Meetings
15. Flexibility of Labour Hire
16. Demarcation
17. Efficiency Payment
18. Superannuation
19. Resolution of Disputes
20. Safety
21. Safety Grievance Procedure
22. Hygiene
23. Equal Employment Opportunity
24. Wage Rates
25. No Extra Claims
26. Term
27. Signatories to Agreement

3.—AREA AND SCOPE

This Agreement shall apply to those companies named as signatories to this Agreement and to their employees who are employed on the Co-Generation Power Station Project at

Kwinana and bound by the following Awards and to the Unions listed hereunder—

Awards

Metal Trades (General) Award 1996 Part II No. 13 of 1965
Engine Drivers (Building and Steel) Construction Award No. 20 of 1973

Unions

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—WA Branch
The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

4.—GENERAL CONDITIONS OF EMPLOYMENT

Except as provided in this Agreement, the terms and conditions of each employee covered by this Agreement shall be as prescribed in the Award by which the employee would be bound if not for this agreement and where the provisions of such Award are inconsistent with the provisions of this Agreement, the provisions of this Agreement shall prevail.

5.—AIMS AND OBJECTIVES

This Agreement will facilitate a co-operative approach to employment relationships with the objective of achieving a productive and efficient working environment on the project.

Further, the parties are jointly committed to ensuring a successful and timely completion of the project.

6.—NON PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other project, plant or enterprise.

7.—BOOTS AND BOOT ALLOWANCE

(1) Each employee on commencing employment with the named signatories to the Agreement shall be provided with one pair of safety boots free of charge.

(2) Subclause (1) of this clause shall not apply if the employer has previously issued safety footwear to a current employee and such footwear is in good condition.

(3) Employees shall also be paid a safety footwear maintenance allowance of \$0.06 per hour for each hour worked, except where such an allowance is prescribed by their relevant Award.

8.—SITE ALLOWANCE

A site allowance of \$2.25 per hour for each hour worked shall be paid in recognition of the disabilities associated in carrying out construction work on the site and such payment shall be in lieu of all prescribed disability allowances in the named Awards.

9.—CODED WELDING ALLOWANCE

A special class welder who is qualified to and working to at least ASME-IX or AS-1210 standard and engaged in welding duties requiring x-ray quality shall be paid \$30.00 per week.

10.—HOURS

Notwithstanding the provisions of the relevant Award(s), starting times may be altered by agreement between the employer and employees concerned to facilitate a more productive working day, provided they are within the spread of hours 6.00am to 6.00pm.

11.—IMPROVEMENT MEASURES

In order to achieve the main aims of improved productivity, efficiency and flexibility, the following measures will be implemented.

(1) **Occupational Health & Safety**—Improved safety procedures and the monitoring of methods will reduce duration of time lost through injury. With the co-operation of all concerned and a determined commitment from management gains will be made in this area.

(2) **Electronic Fund Transfer**—Payment of wages will be by Electronic Fund Transfer into bank accounts nominated by employees.

(3) **Flexibility**—In the interests of developing a more highly skilled and flexible project workforce and removing restric-

tive demarcation barriers from the workplace, employees shall—

- (a) Carry out all directions and duties that are within the scope of their skill and training, whilst ensuring the safety and quality requirements of the project are maintained.
- (b) Acknowledge the importance of complying with and observing all safety rules and regulations set down for the project, particularly in a construction environment.
- (c) Subject to appropriate training, properly use all protective clothing and equipment provided by the employer for specified circumstances.
- (d) Comply with the disputes avoidance procedure as set out in this Agreement.
- (e) Recognise the right of the employer to have an appropriate number and mix of classification skills during any hours of work.

(4) **Sick Leave**—On lawful termination of employment under this Agreement an employee with sick leave accrued for their duration on the project under the terms of the relevant Award, which has not been taken, shall be paid the amount of outstanding sick leave hours at his ordinary rate of pay as prescribed by this Agreement.

The provisions of this clause do not apply to casual employees.

(5) **Self-supervision**—In keeping with the overall aims and objectives of this Agreement, and as a reflection of the company's faith in the ability and dedication of its employees, it is a further aim of this Agreement to promote the concept of self-supervision within its workforce on the project.

Employees are to be encouraged to use their initiative and self-discipline to ensure that their work is completed with as little supervision as possible. Employees shall also be encouraged to contribute ideas for productivity and efficiency enhancements.

Employees should at all times share with management a sense of responsibility for safety and quality of work at the workplace. A culture of dual commitment and responsibility is essential for the success of this project and for optimal job satisfaction and personal development.

(6) **Rostered Days Off (RDO's)**—Working hours will be arranged on a system which provides for an employee to accrue one rostered day off (RDO) over a four calendar week work cycle. A schedule of RDO's shall be established for the project.

Any scheduled RDO's may be substituted for alternative days by agreement between the employer and employee without penalty to the employer provided the alternative RDO is given within an agreed time frame.

12.—COMMUNICATIONS

The parties agree to take steps to improve and enhance communication between employees and management/supervisors through:

- Tool Box Talks
- Noticeboards
- Newsletters/Bulletins

13.—PROJECT ENTRY REQUIREMENTS

(1) To reinforce a safe site policy, access to the project will be restricted.

(2) Any official of a union party to this Agreement shall where practicable give site management appropriate notice of their intention to visit the project. On arrival at the project work site the visiting official(s) shall first call at the site office and introduce themselves to site management prior to pursuing any bona fide union duties on site.

(3) Union official(s) shall produce their union accreditation in accordance with the relevant award and observe the safety provisions for entry to the site.

14.—WORKFORCE MEETINGS

Where possible, twenty-four (24) hours notice of union workforce meetings shall be given to the employer by the relevant full-time union official. Where such meetings are con-

vened to discuss union matters or other issues they shall occur at the most convenient time for programming of work, ie prior to commencement of work, shift breaks, lunch time or smoko, etc.

15.—FLEXIBILITY OF LABOUR HIRE

(1) Whilst it is the contractors normal practice to employ labour directly, the company requires due to the peak and troughs nature of the work, that its site/project works are allowed flexibility in the employment of labour.

(2) It is agreed that Labour Hire contractors may be employed as required to meet the cyclic nature of the work being performed or when particular skills are in short supply.

(3) For the purpose of this Agreement, labour hire personnel are defined as employees of a company that provides supplementary labour to the respondents for the purpose of complementing the permanent workforce during periods of peak requirements, or for carrying out a specific task for a respondent on a "labour supply" only basis.

(4) All supplementary labour hire will be paid in accordance with this Agreement for their duration on the project.

16.—DEMARCATIION

If a dispute arises between unions over coverage of work, work shall continue on the pre-dispute basis while the issues are being resolved. There shall be no disruption to work in any form and if the issues in dispute cannot be resolved by discussion, the matters should be referred to the relevant Industrial Relations Commission for determination.

17.—EFFICIENCY PAYMENT

In keeping with the Aims, Objectives and Intent of this Agreement the parties are committed to following the various provisions contained herein.

Where an employee has complied with the provisions outlined in this Agreement and is ready, willing and available to work as required in any week in accordance with the relevant award provisions, an employee shall accrue an Efficiency Payment of \$75.00 per complete week of service on the project.

For the purposes of calculating pro-rata entitlements when required upon commencement or termination from the project, an employee on-site for less than one week shall accrue the payment only for those days which the employee worked on-site within that week, calculated at the rate of \$15.00 per day Monday to Friday.

The Efficiency Payment shall accrue weekly and by agreement between the employee and his/her employer be paid either weekly or on termination from the project.

18.—SUPERANNUATION

The respondents to this Agreement undertake to make contributions to an appropriate superannuation fund which meets the approved standards at the prevailing rate for the engineering construction industry.

19.—RESOLUTION OF DISPUTES

(1) Where a grievance arises, the employee concerned or his/her Shop Steward shall initially discuss the matter with their immediate Supervisor.

(2) If the grievance is still unresolved by the discussion referred to in subclause (1) hereof, the employee together with his/her Shop Steward and their Supervisor shall discuss and attempt to resolve the dispute with the Project Manager.

(3) Where the foregoing discussions fail to resolve the matter of concern, it shall be referred to a Senior Management representative and the relevant Union organiser, at which stage the parties shall then initiate steps to resolve the grievance as soon as possible.

(4) While the steps in subclauses (1), (2) and (3) hereof are being followed, industrial action shall not be taken.

(5) If the grievance remains unresolved, either party may refer the matter to the Western Australian Industrial Relations Commission, provided that any party reserves the right to refer an issue to the Commission at any time.

(6) The parties will give each other the earliest possible advice of any problem which may give rise to a grievance or dispute.

(7) The employer will ensure that all practices applied during the operation of the procedure are in accordance with safe working principles and consistent with established project custom and practices.

(8) At all stages of this process, the emphasis shall be on a negotiated settlement at the project level.

20.—SAFETY

All safety rules prescribed from time to time and applicable to the project shall be adhered to at all times by all employees.

Where safety glasses and/or helmets are required, they will be provided by the employer and must be worn on the job at all times in areas nominated by the employer. Failure to wear safety equipment and suitable footwear may lead to disciplinary action.

21.—SAFETY GRIEVANCE PROCEDURE

It is the intention of this procedure to resolve safety issues whilst wherever possible maintaining productive work. It is emphasised that at all times employees must accept responsibility for their own work.

(1) An employee shall first raise an issue relating to Occupational Health, Safety and Welfare with his/her Foreman, Supervisor or Safety Representative. Where an employee encounters what he/she believes to be a safety hazard, the employee shall immediately advise the Foreman, Supervisor or Safety Representative and that work shall not be carried out until such time as the matter is resolved, provided the work may continue on conditions agreed between the parties. The aim should be to resolve the matter as soon as possible.

(2) Should the safety issue remain unresolved, the Safety Adviser and the Safety Representative concerned shall meet and inspect the work with a view to resolving the issue.

(3) Should the safety issue remain unresolved the parties prescribed in subclause (2) shall meet with the Project Manager.

(4) Where the matter is still not resolved a special meeting of the project safety committee shall be convened. The committee shall ensure that it is joined by all persons necessary for the purpose of the resolution of that issue.

(5) If the issue is still not resolved, a DOHSAW inspector should be advised of the problem and that inspector may be requested by any of the parties to advise on the application and interpretation within the area of concern.

(6) All parties will endeavour to maintain continuous productive work for all employees.

Nothing herein diminishes an employee's right to refuse to work in an area where he/she has reasonable grounds to believe that to continue to work would expose him/her or any other persons to a risk of imminent and serious injury or imminent and serious harm to his/her health.

Employees who have removed themselves, or who are removed by the employer from their immediate area for reasons associated with the safety issue may be allowed alternative work in another area by their employer.

22.—HYGIENE

Crib rooms, messing facilities, showers and toilets are supplied for the employees use and are to be used for the appropriate purpose.

The displaying of posters, photographs, cartoons etc which may cause offence to other workers or visitors to site including the defacing of site facilities is prohibited.

Satisfactory standards of hygiene are required at all times.

23.—EQUAL EMPLOYMENT OPPORTUNITY

The Company has developed an equal employment opportunity program which seeks to identify and eliminate discrimination, victimisation and sexual harassment practices that may exist in the workplace.

In line with this programme the company will not condone any form of harassment, discrimination or victimisation, or any such conduct that has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment due to intimidation, innuendo or a display in the workplace of sexually suggestive pictures, sexually explicit or offensive jokes/graffiti or physical assault.

Any harassment, discrimination or victimisation will be considered to be a serious violation of company policy and will be dealt with accordingly by corrective counselling and may result in termination.

Any employee who feels that they are a victim of harassment, discrimination or victimisation by any supervision, management official, or other employee, Client, or any other person in connection with their employment should bring the matter to the immediate attention of the supervisor or a senior company officer.

24.—WAGE RATES

In accordance with the successful operation of this Enterprise Agreement and a continued commitment from all parties, wage increases as set out herein shall be payable from the beginning of the first pay periods, to commence on or after the dates specified in the schedule.

These wage increases are dependent on an ongoing commitment to and implementation of, the efficiencies detailed therein. Any additional/supplementary Safety Net Adjustment(s) arising from a decision of the Western Australian Industrial Relations Commission that may apply during the currency of this Agreement is deemed to be absorbed within the wage rates specified herein.

(1) Wage Rates for Classifications—**Metal Trades (General) Award 1966—Part II Construction Work**

Classification	EBA Rate Per Week (from the first pay period on or after ratification)	EBA Rate Per Week (from the first pay period on or after 1.3.96)
	\$	\$
Welder—Special Class	561.50	578.34
Welder	551.89	568.45
Boilermaker	551.89	568.45
Tradesperson the greater part of whose time is occupied in marking off and/or template making	556.64	573.34
Tradesperson	551.89	568.45
Pipe Fitter	551.89	568.45
Certificated Rigger or Scaffolder	519.80	535.39
Rigger or Scaffolder—Other	506.01	521.19
Tool and Material Storeperson	490.53	505.25
Tradesperson's Assistant	474.49	488.72
Tradesperson's Assistant— who from time to time uses a grinding machine	477.88	492.22

NOTE: The above "EBA Rate Per Week" excludes Award provisions relating to tool and leading hand allowances.

(2) Wage Rates for Classifications—**Engine Drivers (Build-
ing and Steel Construction) Award**

Classifications	EBA Rate Per Week (from the first pay period on or after ratification)	EBA Rate Per Week (from the first pay period on or after 1.3.96)
	\$	\$
Mobile Crane Operators		
—up to 8 tonnes	520.84	536.46
—8 to 15 tonnes	532.50	548.48
—15 to 40 tonnes	542.41	558.68
—40 to 80 tonnes	550.22	566.73
—80 to 100 tonnes	556.17	572.85
—100 to 140 tonnes	565.03	581.98
—140 to 180 tonnes	576.69	593.99
—180 to 220 tonnes	592.31	610.08
—over 220 tonnes	612.60	630.98

NOTE: The above "EBA Rate Per Week" contains all relevant Award provisions.

25.—NO EXTRA CLAIMS

A condition of this Agreement is that the Unions will make no further claims on the employer over and above the conditions set down in this Agreement for the life of the construction phase of the project.

26.—TERM

This Agreement shall have effect from the date of its ratification in the Western Australian Industrial Relations Commission and shall remain in force until practical completion of the project.

27.—SIGNATORIES

Clough WA—A Division of Clough Limited
 (Sgnd).....
 Date
 Witness.....
 Date.....
 The Automotive, Food, Metals, Engineering Printing and
 Kindred Industries Union of Workers—WA Branch
 (Sgnd).....
 Date
 Witness.....
 Date.....
 Construction, Mining, Energy, Timberyards, Sawmills and
 Woodworkers Union of Australia—WA Branch
 (Sgnd).....
 Date
 Witness.....
 Date.....

**COVENTRY GROUP LTD TRADING AS HOT MIX
 OR BITUMEN EMULSIONS CANNINGTON
 (ENTERPRISE BARGAINING) AGREEMENT 1995
 No. AG 312 of 1995.**

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.
 Industrial Relations Act 1979.

Coventry Group Ltd trading as Hot Mix Or Bitumen
 Emulsion
 and
 Transport Workers' Union of Australia, Industrial Union of
 Workers, Western Australian Branch.
 No. AG 312 of 1995.

Coventry Group Ltd trading as Hot Mix or Bitumen
 Emulsions Cannington (Enterprise Bargaining) Agreement
 1995.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr A Tomlinson on behalf of the Applicant and Mr A Waddell on behalf of the Respondent, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect from the beginning of the first pay period commencing on or after the 21st day of December 1995.

[L.S] (Sgd.) P.E. SCOTT,
 Commissioner.

Schedule.

1.—TITLE

This industrial agreement shall be referred to as the Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions Cannington (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope and Parties to this Agreement
4. Relationship to Parent Awards
5. Single Bargaining Unit

6. Aims and Objectives of the Agreement
7. Wages
8. Agreed Productivity Improvements
9. Measuring Productivity Improvements
10. Commitments
11. Term of Agreement
12. Dispute Resolution Procedure
13. No Further Claims
14. Not to be Used as a Precedent
15. Signatories to the Agreement

3.—SCOPE AND PARTIES TO THIS AGREEMENT

(1) This Agreement shall apply to and be binding on Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions ("the Company") and all the employees engaged in connection with the Transport Workers (General) Award No. 10 of 1961, at the Company's Bickley Road, Cannington operations.

(2) This Agreement shall also be binding upon the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

(3) The parties will oppose any applications by other parties to be joined to this Agreement.

4.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be used and interpreted wholly in connection with the Transport Workers (General) Award No. 10 of 1961.

(2) Where there is any inconsistency between this Agreement and the Award, this Agreement shall prevail to the extent of any inconsistency.

5.—SINGLE BARGAINING UNIT

(1) In accordance with the State Wage Decision in December 1994 (74 WAIG 198) the employees and the Company have formed a single bargaining unit in respect to the Cannington operations.

(2) The single bargaining unit will ensure that the framework of this enterprise agreement is adhered to by regularly conferring with the management through the meeting of the consultative committee.

(3) The single bargaining unit will assist in the implementation of measurements that are designed to improve the efficiency and productivity of the enterprise agreement that have been agreed to by the parties.

6.—AIMS AND OBJECTIVES OF THE AGREEMENT

(1) The purpose of entering into an enterprise bargaining agreement is to increase the productivity, efficiency and flexibility of the Cannington operations to ensure the Company remains competitive within the bitumen paving industry.

(2) The Company remains committed to the continual training of all Cannington personnel so that their skills base can be enhanced, and to provide an environment in which these new skills can be utilised and recognised to the satisfaction of individual employees.

(3) Pursuant to the Occupational Health and Safety Act 1984 the Company recognises the need to improve occupational health and safety for all employees and is therefore committed to the development and implementation of health and safety initiatives. This agreement provides for the participation of all employees in these initiatives in order that the Cannington operations will become a safer working environment.

7.—WAGES

(1) The wage rates which shall apply pursuant to this Agreement are as follows:

Award	Grade	Current Award Rate	EBA Rate July 1994	Rate Upon Registration	Rate FPPCOOA 1 July 1996	Rate FPPCOOA 24 February 1997
		\$	\$	\$	\$	\$
Transport Workers (General) Award No. 10 of 1961	1	367.20	381.90	392.90	403.90	414.90
	2	382.50	397.80	409.30	420.80	432.30
	3	390.20	405.80	417.50	429.20	440.90
	4	401.70	417.80	429.85	441.90	453.95
	5	409.30	425.70	438.00	450.30	462.60
	6	417.00	433.70	446.20	458.70	471.20
	7	424.70	441.70	454.45	467.20	479.95

(2) The increase prescribed in this clause shall operate with effect on and from the first pay period commencing on or after the registration of this Agreement.

(3) All current employees engaged under this Agreement shall be paid at their existing grade.

(4) All new employees will be paid at the grade at which they are engaged.

(5) All casual employees shall be paid the TWU rate for permanent, plus 10%, plus enterprise bargaining agreement.

(6) The rates specified in subclause (1) of this clause will increase by a further \$8.00 upon the variation by the Western Australian Industrial Relations Commission of the second safety net adjustment in the Transport Workers (General) Award No. 10 of 1961.

8.—AGREED PRODUCTIVITY IMPROVEMENTS

(1) Shot Gun Starts

- (a) Preparation of truck in own time eg. Routine check on air, water, oil, fuel and tyres etc.
- (b) Driver to be ready to commence work as per time displayed.
- (c) Workers compensation cover will commence from the moment the employee arrives on site at Cannington yard.

(2) Staggered Rest Periods

Meal breaks may be staggered to ensure the continued use of plant and machinery. No employee will be required to commence a meal break before 11.00am or after 2.00pm.

(3) Occupational Health and Safety

The parties to the agreement recognise the need to improve the Occupational Health and Safety of the work place by reducing lost time injuries to zero per year through the implementation of health and safety improvement programmes.

(4) Work Flexibility

- (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.
- (b) An employer may direct an employee to carry out duties and use such tools and equipment as may be required that the employee has been properly trained in the use of such tools and equipment.
- (c) Any direction issued by an employer pursuant to paragraphs (a) and (b) shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

(5) Rostered Days Off (RDO)

- (a) TWU employees to give full flexibility of RDO. Where ever possible the employer shall notify the employee with a minimum notification during working hours on the day prior or mutual consent of change to RDO. Deferred RDO to be taken at discretion of employer to suit work pattern.
- (b) TWU employees wanting to change RDO to suit themselves can do so provided management approve.
- (c) Intention is to accumulate RDO's and take during wet or slack periods.

9.—MEASURING PRODUCTIVITY IMPROVEMENTS

(1) The parties to this Agreement are committed to improving productivity over the life of this Agreement.

(2) This will be achieved through the successful implementation of Clause 8.—Agreed Productivity Improvements, of this Agreement.

10.—COMMITMENTS

(1) The Company recognises that employee contribution is essential to improved performance and therefore accepts those commitments by employees to work towards agreed targets as sincere and in the overall interest of increasing productivity and efficiency for the collective benefit of the Company and its work force.

(2) Furthermore, the Company maintains a commitment to multi-skilling and training so that employees can improve their skills base, develop a career within the Asphalt and Bitumen Industry and have greater job satisfaction.

(3) All employees will agree to carry out any tasks which may or may not involve the use of tools, plant and equipment, within their skills, competency or training as directed by the Company.

11.—TERM OF AGREEMENT

This Agreement shall remain in force for 18 months from the date of registration.

12.—DISPUTE RESOLUTION PROCEDURE

(1) The following procedure for settling disputes and grievances will be followed by the parties at Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions.

- (a) The matter shall first be discussed by the employee or shop steward with his/her foreman or supervisor.
- (b) If not settled, the matter shall be discussed between the accredited Union representative and the other appropriate officer of the Company.
- (c) If not settled, the entire dispute shall be documented and then further discussions between the Union secretary and other appropriate official of the Union, and the appropriate representative of the Company shall occur.
- (d) If the matter is still not settled it shall be submitted to the Western Australian Industrial Relations Commission by either party at any time.
- (e) Throughout the above procedures work shall continue normally on the understanding that there is to be no variations to work practices.
- (f) It is understood that reasonable time be given for each of stages (a) to (d) to be finalised.

13.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims, with respect to wages and working conditions, unless they are consistent with the State Wage Case Principles.

14.—NOT TO BE USED AS A PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as an example or precedent for other enterprise agreements whether they involve Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions or not.

15.—SIGNATORIES TO THE AGREEMENT

(signed)

On behalf of Coventry Group Ltd trading as Hot Mix or Bitumen Emulsions

(signed)

On behalf of Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch

DORIC CONSTRUCTIONS PTY LTD INDUSTRIAL AGREEMENT No. AG 303 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Doric Constructions Pty Ltd.

No. AG 303 of 1995.

Doric Constructions Pty Ltd Industrial Agreement.

COMMISSIONER P.E. SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 24th day of November 1995.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Doric Constructions Pty Ltd Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. Productivity Initiatives

Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Doric Constructions Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 and the National Building and Construction Industry Award 1990 (the "Awards").

5.—DURATION

This Agreement shall commence from the first pay period on or after 1 August 1995 and shall continue in effect until 31 July 1997. Provided that nothing in this clause shall prevent the implementation of an enterprise agreement as detailed in Clause 9.—Enterprise Agreement of this Agreement.

Neither the Union nor its members shall make any claim against the Company for increase in rates of remuneration or make any other claim at all in the life of this Agreement, except for any National or State award changes to specific allowances, in the Awards.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as that outlined in Clause 46.—Settlement of Disputes of the Award.

(1) DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURE

- (a) In the first instance an employee shall submit a request concerning an industrial issue to either their own site union representative or the immediate supervisor/foreperson. If the matter cannot be resolved at this stage then the following procedure shall be applied.

- (i) The Company and union delegate/shop steward shall submit the issue to the immediate supervisor/foreperson.

- (ii) If not settled at this stage the employee and union delegate/shop steward shall submit the issue to the site manager of the Company.
- (iii) If not settled at this stage the employee and union delegate/shop steward may submit the matter to the Union organiser for discussion with the project manager or industrial relations officer in consultation with the Company's site manager.
- (iv) If not settled at this stage the Union organiser may submit the matter to the Union Secretary for discussion with the project builder at the state senior manager level. The matter shall then be discussed further with the senior management representative of any other relevant contractors.
- (v) If the dispute still exists after the aforementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The decision of the Western Australian Industrial Relations Commission will be accepted by all parties subject to rights of appeal.

- (b) Whilst the above procedures are being carried out work will continue as it did prior to the issue arising. Neither parties shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

(2) PROCEDURE FOR SETTLING DISAGREEMENTS OVER SAFETY ISSUES

- (a) Where a safety problem exists work shall cease only in the affected area. Work shall continue elsewhere unless access to safe working areas is unsafe. However, any problem of access shall immediately be rectified and the employees will use an alternative safe access to such safe working areas while the usual access is being rectified.
- (b) Should the whole project be in dispute on the basis that the whole project is thought to be unsafe, a Worksafe WA Inspector shall be immediately called. Pending the arrival of the inspector the following procedures shall apply:
 - (i) Unless agreed by the Company and as far as it is reasonable the workers shall not leave the site but shall remain in the sheds.
 - (ii) Immediate inspections of the disputed areas involving both Company and employee representatives of the site safety committee shall take place in the order of priority nominated by the Company in consultation with other relevant contractors. These inspections shall identify what safety rectification needs to take place in the disputed areas.
 - (iii) All employees who can be gainfully employed shall immediately rectify that which needs to be rectified.
 - (iv) The project builder will nominate in order of priority the areas to be inspected by the safety committee as rectification work is completed. On verification that rectification has been completed productive work will resume. Such resumption of work shall take place in stages as each area has been cleared.
 - (v) Providing that any disagreement between the builder and the safety committee shall be determined by the recommendation of a Worksafe WA inspector.
 - (vi) The position of the chairperson of the Workplace Safety Committee or the safety representative shall be undertaken in addition to their normal work obligations to the Company.
- (c) The Company and employee(s) recognise their obligations as set out in the Occupational Health and Safety Act, as amended and any future amendments.

(3) DEMARCATION PROCEDURE

- (a) Consultation shall be the primary method of avoiding demarcation disputes. If a dispute does occur, then senior officials of the union concerned will meet with the aim of reaching a resolution as soon as possible.
- (b) A demarcation issue or dispute shall not result in a work stoppage, ban or limitation on the project. All work shall continue as normal whilst the dispute is being resolved.
- (c) If within a period of seven days the issue is not resolved the matter will be referred, where appropriate, to the Australian Industrial Relations Commission and/or the Western Australian Industrial Relations Commission.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended and in Division 2, section 170MA of the Industrial Relations Act 1988.

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Awards. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Awards shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Awards the higher rate shall apply.

9.—NATIONAL ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of National enterprise agreement, this Agreement may be terminated in accordance with the requirements of the relevant Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will increase in the first full pay period following ratification of this Agreement its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, which will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars per year.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October.

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11 per week per employee shall be paid by the employer to the Construction Skills Centre Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend training courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

The employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than payment of ordinary time earnings for the time involved.

Leave of absence granted pursuant to this clause shall count as services for all purposes of this Agreement.

The maximum leave with pay will be two weeks per annum or as otherwise agreed which cannot be accrued from year to year and will not be paid unless used for training, only related to the employee's trade/skills or to meet the Company requirements.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning).

14.—SENIORITY

The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority taking into account their skill levels.

15.—SICK LEAVE

For sick leave accrued from 1 August 1995, the following will apply:

- (1) The Company's employees shall have the option of:
 - (a) Being paid up to five days unused sick leave per annum and having the balance of unused sick leave accrue and paid out on termination.
 - (b) Having all unused sick leave accrued paid out on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PRODUCTIVITY INITIATIVES

In exchange for the significant wage increases and other benefits to employees which are provided in this Agreement, it is agreed that the following initiatives will be implemented as a means to improve productivity. Furthermore, this Agreement is intended to assist working relations and broaden the co-operation between the employee, Unions, and the Company.

(1) Wages will be paid direct into the employees bank account such that it will be available to the employee as per the Award provisions regarding the payment.

(2) Lost time due to inclement weather is to be kept to a minimum by discussion between unions and Company on site.

The Company will be allowed to take all reasonable measures to ensure that the employees can get to their place of work and carry on working in under cover areas during inclement weather. Where necessary, this may also extend to providing protection to allow workers to walk from one area to another, in line with Award provisions, keeping their normal clothes in a dry condition.

(3) Where the supply of amenities is affected by unforeseen circumstances the Company is to be given reasonable time to resolve this. The workers are not to leave site and are to continue to work until the matter is resolved, provided this is carried out in a reasonable time. Any penalty payments for the delay to meal breaks are to be as per the Awards.

(4) The employees and unions undertake to adhere to the following conditions of the Company:

- (a) It is agreed that neither the employer or the Unions shall place any restrictions or limitations on reasonable overtime work that may be required by the Company who is party to this Agreement.
- (b) Prior notification will be given to the relevant unions for Sunday work, however no triple time or day in lieu will be claimed or apply to Sunday work and the Award rates only will apply.

(5) It is agreed by the Union that stop work meetings on this project will be kept to a minimum and will be timed to create minimal disruption to work progress. An agreed number of employees will always remain at work to maintain continuity of essential production.

(6) Staggered Start Times: At the request of the project builder, and to suit sensible movement of people and materials throughout the site, especially in relation to hoisting problems, the Company will be allowed to implement staggered starting and finishing times within the ordinary spread of hours prescribed by the Awards without penalty payment.

(7) If a steward is absent from work he or she will be replaced with a casual if a Workers Safety Representative is not available to fill the role.

(8) The Company will ensure that on sites where a nurse is employed a nurse is available on site if at any time there are at least ten employees on site. Where the number of employees on site is less than ten the Company will ensure a first aid qualified employee is available on site.

(9) The parties agree to adopt a flexible approach to RDO's, and on occasions where it becomes necessary, due to the Company's needs to vary the taking of the RDO, the Union will not unreasonably withhold its agreement to the re-scheduling of days in accordance with the Award(s).

(signed)

(signed)

ON BEHALF OF THE UNIONS

ON BEHALF OF THE COMPANY

Dated this 24th day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

ENTACT CLOUGH INDUSTRIAL AGREEMENT No. AG 318 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Entact Clough Pty Ltd.

No. AG 318 of 1995.

Entact Clough Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 1st day of December 1995.

(Sgd.) P.E. SCOTT,

Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Entact Clough Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Redundancy Pay and Superannuation
12. Clothing and Footwear
13. Training Allowance and Training Leave
14. Seniority
15. Sick Leave
16. Productivity Initiatives
17. No Extra Claims
18. Ratification

Appendix A—Wage Rates

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Entact Clough Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the scope and terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 18.—Ratification, of this Agreement and shall continue in effect until 31 July 1997. Provided that nothing in this clause shall prevent the implementation of a comprehensive enterprise agreement as detailed in Clause 9.—Enterprise Agreement of this Agreement.

The parties agree to commence discussion on the terms and conditions of any future agreement within three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARD

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A—Wage Rates of this Agreement.

11.—REDUNDANCY PAY AND SUPERANNUATION

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will increase its level of payment into the Construction + Building

Unions Superannuation Scheme to \$50 per week per employee (except apprentices) from 1 September 1995. Provided that nothing in this Agreement shall affect the terms of the Company's Deed of Adherence to the C+BUS scheme.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, which will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars per year.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE AND TRAINING LEAVE

(1) From 1 October 1995 the Company agrees to pay to the Union Education and Training Fund a training allowance of 20 cents per hour per employee (except a casual or apprentice) who is either a member or eligible to be a member of the Union.

(2) The Company shall have access to the audited accounts of the Union Education and Training Fund.

(3) Subject to all qualifications in this clause, an employee shall, upon application to and with approval of the Company, be granted a reasonable period(s) of leave with pay each calendar year to attend training courses conducted or approved by the National Building and Construction Industry Training Council (NBCITC) and which are applicable to the employee's employment. The Company's approval shall not be unreasonably withheld.

(4) The application for leave shall be given to the Company at least two weeks in advance of the date of commencement of the course.

(5) The time of taking leave shall be arranged so as to minimise any adverse effect on the Company's operations.

(6) The Company shall not be liable for any additional expenses associated with an employee's attendance at a training course other than the payment of wages as specified in Appendix A—Wage Rates of this Agreement for up to eight hours ordinary time per day.

(7) The employee shall provide proof of attendance at a training course if required to do so by the Company prior to receiving payment for such course.

(8) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

(9) Any disagreement over any issue contained in this clause shall be resolved in accordance with the dispute settlement procedure.

14.—SENIORITY

(1) The parties agree that continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", and is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this, the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) Provided that nothing shall prevent the Company from instantly dismissing any employee for serious misconduct.

15.—SICK LEAVE

For sick leave accrued from 1 October 1995, the following will apply:

The Company's employees shall have the option of:

- (1) Being paid up to five days unused sick leave per annum and having the balance of unused sick leave accrue and paid out on termination; or

- (2) Having all unused sick leave accrued paid out on termination;
- (3) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PRODUCTIVITY INITIATIVES

In exchange for the significant wage increases and other benefits to employees which are provided in this Agreement, it is agreed that the following initiatives will be implemented as a means to improve productivity:

- (1) All demarcation issues will be resolved in accordance with the dispute settlement procedure.
- (2) The parties to this Agreement agree to adopt a reasonable and flexible approach to working hours in terms of starting and finishing times. Ordinary hours may be worked between 6.00am and 6.00pm on any week day.
- (3) Meetings of Union members held on site will be kept to a minimum and, wherever possible, held at a time likely to cause minimal disruption to work being performed on site.
- (4) All parties agree to adopt a reasonable and flexible approach to inclement weather in order to minimise lost time caused through inclement weather.
- (5) Any employee elected as a Job Steward or Health and Safety Representative will be required to carry out meaningful work, as directed by the Company, in addition to his/her duties as a Job Steward or Health and Safety Representative.

17.—NO EXTRA CLAIMS

(1) The Union agrees not to pursue any additional over-award claims against the Company for the duration of this Agreement.

(2) The parties to this Agreement agree to review any provision of this Agreement which is deemed contrary to any applicable legislation enacted by either state or federal government.

18.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 1st day of December 1995.

_____ (signed)	_____ (signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY
(K.J. LUTTRELL)	

Dated this 1st day of December 1995.

APPENDIX A—WAGE RATES

(1) Builders' Labourers and Tradespersons

	1 September 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

(2) Apprentices

Apprentices shall receive the following percentages of the applicable wage rates contained in subclause (1) of this Appendix:

First Year	42%
Second Year	55%
Third Year	75%
Fourth Year	88%

EXECUTIVE PAVING INDUSTRIAL AGREEMENT No. AG 295 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and

Stephen and Elizabeth Young and Stephen and Gayle
Holmes trading as Executive Paving.
No. AG 295 of 1995.

Executive Paving Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 17th day of November 1995.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Executive Paving Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Stephen and Elizabeth Young & Stephen and Gayle Holmes trading as Executive Paving (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) 17.11.95
ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY

Dated this 17th day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

GLEN ROSS BRICKLAYING INDUSTRIAL AGREEMENT No. AG 305 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and

Glenn Ross, Rick Bate and Paul Anderson trading as Glen
Ross Bricklaying.
No. AG 305 of 1995.

Glen Ross Bricklaying Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 29th day of November 1995.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Glen Ross Bricklaying Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Award
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Glenn Ross, Rick Bate and Paul Anderson trading as Glen Ross Bricklaying (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agree-

ment, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

(1) This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

(2) In addition to the hourly rate prescribed in the Appendix of this Agreement, an allowance of four dollars per hour worked will be paid.

This allowance will be paid in lieu of all special rates in Clause 9.—Special Rates and Provisions of the Award and any site allowance, structural allowance or productivity allowance that may be applicable to a particular site.

Provided that employees will be paid the rates and allowances contained in this agreement, or, the rates and allowances applicable to that site, whichever is the greater.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed)
ON BEHALF OF THE UNION

(signed)
ON BEHALF OF THE COMPANY
GLEN ROSS BRICKLAYING

Dated this 29th day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

GROUND WATER CONTROL (1974) INDUSTRIAL AGREEMENT No. AG 317 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and

Jason Nominees Pty Ltd as trustees for The Jason Unit Trust
trading as Ground Water Control (1974).
No. AG 317 of 1995.

Ground Water Control (1974) Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 6th day of December 1995.

[L.S]

(Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Ground Water Control (1974) Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Jason Nominees Pty Ltd as trustees for The Jason Unit Trust trading as Ground Water Control (1974) (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will

immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) _____ L J SKENE
ON BEHALF OF THE COMPANY (PRINT NAME)

(signed) _____ (signed) _____
ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY
W M DOUGLAS
(PRINT NAME)

Dated this 6th day of December 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

INFORM CONSTRUCTION INDUSTRIAL AGREEMENT No. AG 309 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Inform Construction Pty Ltd.

No. AG 309 of 1995.

Inform Construction Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 24th day of November 1995.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Inform Construction Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase

11. Redundancy Pay and Superannuation
12. Clothing and Footwear
13. Training Allowance and Training Leave
14. Seniority
15. Sick Leave
16. Productivity Initiatives
17. No Extra Claims
18. Ratification

Appendix A—Wage Rates

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Inform Construction Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the scope and terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 18.—Ratification, of this Agreement and shall continue in effect until 31 July 1997. Provided that nothing in this clause shall prevent the implementation of a comprehensive enterprise agreement as detailed in Clause 9.—Enterprise Agreement, of this Agreement.

The parties agree to commence discussion on the terms and conditions of any future agreement within three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act (ie. 30 days notice of termination).

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A—Wage Rates of this Agreement.

11.—REDUNDANCY PAY AND SUPERANNUATION

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee (except apprentices) from 1 September 1995. Provided that nothing in this Agreement shall affect the terms of the Company's Deed of Adherence to the C+BUS scheme.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, which will be replaced on a fair wear and tear basis.

- (b) 2 T-shirts with collars per year.

- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE AND TRAINING LEAVE

(1) From 1 October 1995 the Company agrees to pay to the Union Education and Training Fund a training allowance of 20 cents per hour per employee (except a casual or apprentice) who is either a member or eligible to be a member of the Union.

(2) The Company shall have access to the audited accounts of the Union Education and Training Fund.

(3) Subject to all qualifications in this clause, an employee shall, upon application to and with approval of the Company, be granted a reasonable period(s) of leave with pay each calendar year to attend training courses conducted or approved by the National Building and Construction Industry Training Council (NBCITC) and which are applicable to the employee's employment. The Company's approval shall not be unreasonably withheld.

(4) The application for leave shall be given to the Company at least two weeks in advance of the date of commencement of the course.

(5) The time of taking leave shall be arranged so as to minimise any adverse effect on the Company's operations.

(6) The Company shall not be liable for any additional expenses associated with an employee's attendance at a training course other than the payment of wages as specified in Appendix A—Wage Rates, of this Agreement for up to eight hours ordinary time per day.

(7) The employee shall provide proof of attendance at a training course if required to do so by the Company prior to receiving payment for such course.

(8) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

(9) Any disagreement over any issue contained in this clause shall be resolved in accordance with the dispute settlement procedure.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", and is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this, the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) Provided that nothing shall prevent the Company from instantly dismissing any employee for serious misconduct.

15.—SICK LEAVE

For sick leave accrued from 1 October 1995, the following will apply:

The Company's employees shall have the option of:

- (1) Being paid up to five days unused sick leave per annum and having the balance of unused sick leave accrue and paid out on termination; or
- (2) Having all unused sick leave accrued paid out on termination; or
- (3) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PRODUCTIVITY INITIATIVES

In exchange for the significant wage increases and other benefits to employees which are provided in this Agreement, it is agreed that the following initiatives will be implemented as a means to improve productivity:

- (1) All demarcation issues will be resolved in accordance with the dispute settlement procedure.
- (2) The parties to this Agreement agree to adopt a reasonable and flexible approach to working hours in terms of starting and finishing times. Ordinary hours may be worked between 6.00am and 6.00pm on any week day.
- (3) Meetings of Union members held on site will be kept to a minimum and, wherever possible, held at a time likely to cause minimal disruption to work being performed on site.
- (4) All parties agree to adopt a reasonable and flexible approach to inclement weather in order to minimise lost time caused through inclement weather.
- (5) Any employee elected as a Job Steward or Health and Safety Representative will be required to carry out meaningful work, as directed by the Company, in addition to his/her duties as a Job Steward or Health and Safety Representative.

17.—NO EXTRA CLAIMS

(1) The Union agrees not to pursue any additional over-award claims against the Company for the duration of this Agreement.

(2) The parties to this Agreement agree to review any provision of this Agreement which is deemed contrary to any applicable legislation enacted by either state or federal government.

18.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 24th day of November 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY
Dated this 24th day of November 1995.	

APPENDIX A—WAGE RATES

(1) Builders' Labourers and Tradespersons

	1 September 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

(2) Apprentices

Apprentices shall receive the following percentages of the applicable wage rates contained in subclause (1) of this Appendix:

First Year	42%
Second Year	55%
Third Year	75%
Fourth Year	88%

KEYWEST CONSTRUCTIONS INDUSTRIAL AGREEMENT
No. AG 301 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and

Keywest Constructions Pty Ltd.

No. AG 301 of 1995.

Keywest Constructions Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 23rd day of November 1995.

(Sgd.) P.E. SCOTT,

[L.S]

Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Keywest Constructions Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Award
9. Enterprise Agreement
10. Wage Increase
11. Redundancy Pay and Superannuation
12. Clothing and Footwear
13. Training Allowance and Training Leave
14. Seniority
15. Sick Leave
16. Productivity Initiatives
17. No Extra Claims
18. Ratification

Appendix A—Wage Rates

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Keywest Constructions Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the scope and terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 18.—Ratification of this Agreement and shall continue in effect until 31 July 1997. Provided that nothing in this clause shall prevent the implementation of a comprehensive enterprise agreement as detailed in Clause 9.—Enterprise Agreement of this Agreement.

The parties agree to commence discussion on the terms and conditions of any future agreement within three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARD

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act (ie. 30 days notice of termination).

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A—Wage Rates of this Agreement.

11.—REDUNDANCY PAY AND SUPERANNUATION

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee (except apprentices) from 1 September 1995. Provided that nothing in this Agreement shall affect the terms of the Company's Deed of Adherence to the C+BUS scheme.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, which will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars per year.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE AND TRAINING LEAVE

(1) From 1 October 1995 the Company agrees to pay to the Union Education and Training Fund a training allowance of 20 cents per hour per employee (except a casual or apprentice) who is either a member or eligible to be a member of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers.

(2) The Company shall have access to the audited accounts of the Union Education and Training Fund.

(3) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the Company, be granted a reasonable period(s) of leave with pay each calendar year to attend training courses conducted or approved by the National Building and Construction Industry Training Council (NBCITC) and which are applicable to the employee's employment. The Company's approval shall not be unreasonably withheld.

(4) The application for leave shall be given to the Company at least two weeks in advance of the date of commencement of the course.

(5) The time of taking leave shall be arranged so as to minimise any adverse effect on the Company's operations.

(6) The Company shall not be liable for any additional expenses associated with an employee's attendance at a training course other than the payment of wages as specified in Appendix A—Wage Rates, of this Agreement for up to eight hours ordinary time per day.

(7) The employee shall provide proof of attendance at a training course if required to do so by the Company prior to receiving payment for such course.

(8) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

(9) Any disagreement over any issue contained in this clause shall be resolved in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

14.—SENIORITY

(1) The parties agree that continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", and is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this, the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) Provided that nothing shall prevent the Company from instantly dismissing any employee for serious misconduct.

15.—SICK LEAVE

For sick leave accrued from 1 October 1995, the following will apply:

The Company's employees shall have the option of:

- (1) Being paid up to five days unused sick leave per annum and having the balance of unused sick leave accrue and paid out on termination; or
- (2) Having all unused sick leave accrued paid out on termination; or
- (3) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PRODUCTIVITY INITIATIVES

In exchange for the significant wage increases and other benefits to employees which are provided in this Agreement, it is agreed that the following initiatives will be implemented as a means to improve productivity:

- (1) All demarcation issues will be resolved in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.
- (2) The parties to this Agreement agree to adopt a reasonable and flexible approach to working hours in terms of starting and finishing times. Ordinary hours may be worked between 6.00am and 6.00pm on any week day.
- (3) Meetings of Union members held on site will be kept to a minimum and, wherever possible, held at a time likely to cause minimal disruption to work being performed on site.
- (4) All parties agree to adopt a reasonable and flexible approach to inclement weather in order to minimise lost time caused through inclement weather.
- (5) Any employee elected as a Job Steward or Health and Safety Representative will be required to carry out meaningful work, as directed by the Company, in addition to his/her duties as a Job Steward or Health and Safety Representative.

17.—NO EXTRA CLAIMS

(1) The Union agrees not to pursue any additional over-award claims against the Company for the duration of this Agreement.

(2) The parties to this Agreement agree to review any provision of this Agreement which is deemed contrary to any applicable legislation enacted by either state or federal government.

18.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after 23rd November 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY (WA) PTY LTD
Dated:23/11/95.....	Dated:23/11/95.....

APPENDIX A—WAGE RATES

(1) Builders' Labourers and Tradespersons

	1 September 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

(2) Apprentices

Apprentices shall receive the following percentages of the applicable wage rates contained in subclause (1) of this Appendix:

First Year	42%
Second Year	55%
Third Year	75%
Fourth Year	88%

**M & M STRICKLAND CONTRACTORS
INDUSTRIAL AGREEMENT
No. AG 314 of 1995.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and

M & M Strickland Contractors Pty Ltd.
No. AG 314 of 1995.

M & M Strickland Contractors Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 6th day of December 1995.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the M & M Strickland Contractors Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration

6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and M & M Strickland Contractors Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) ON BEHALF OF THE UNION

(signed) ON BEHALF OF THE COMPANY

MARK STRICKLAND
(PRINT NAME)

Dated this 6th day of December 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

MORLEY BRICKLAYING CONTRACTORS INDUSTRIAL AGREEMENT No. AG 315 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
and

Christopher Smith and Dennis Smith trading as Morley Bricklaying Contractors.

No. AG 315 of 1995.

Morley Bricklaying Contractors Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 5th day of December 1995.

(Sgd.) P.E. SCOTT,

[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Morley Bricklaying Contractors Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Christopher Smith and

Dennis Smith trading as Morley Bricklaying Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

(1) This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

(2) In addition to the hourly rate prescribed by Appendix A of this Agreement, an allowance of \$4.00 per hour worked will be paid.

This allowance will be paid in lieu of all special rates in Clause 9.—Special Rates and Provisions of the Award and any site allowance, structural allowance or productivity allowance that may be applicable to a particular site.

Provided that employees will be paid the rates and allowances contained in this Agreement, or, the rates and allowances applicable to that site, whichever is the greater.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed)

(signed)

ON BEHALF OF THE UNION

ON BEHALF OF THE COMPANY

C J Smith

Dated this 5th day of December 1995.

APPENDIX

	Date of Ratification	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.30	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$12.84	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.50	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$13.82	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.51	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$13.79	\$14.26	\$14.73	\$15.20	\$15.68

MULDOON TILES INDUSTRIAL AGREEMENT
No. AG 319 of 1995.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.
 Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
 Plasterers Union of Workers
 and

Muldoon Tiles Supply and Fix Pty Ltd.
 No. AG 319 of 1995.

Muldoon Tiles Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 7th day of December 1995.

(Sgd.) P.E. SCOTT,
 Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Muldoon Tiles Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Muldoon Tiles Supply and Fix Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) ON BEHALF OF THE UNION
COLIN MULCASTER
(PRINT NAME)

(signed) ON BEHALF OF THE COMPANY

Dated this 7th day of December 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

MYWEST AUSTRALIA INDUSTRIAL AGREEMENT No. AG 307 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Caralogue Pty Ltd and Molise Pty Ltd trading as
Mywest Australia.

No. AG 307 of 1995.

Mywest Australia Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 23rd day of November 1995.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Mywest Australia Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Caralogue Pty Ltd and Molise Pty Ltd trading as Mywest Australia (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) ON BEHALF OF THE UNION

(signed) ON BEHALF OF THE COMPANY

Dated this 23rd day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

**PILKINGTON (AUSTRALIA) OPERATIONS
LIMITED, MYAREE WHOLESALE (STAGE II 1995)
ENTERPRISE AGREEMENT.
No. AG 326 of 1995.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers and the Transport Workers'
Union of Australia, Industrial Union of Workers, WA
Branch

and

Pilkington (Australia) Operations Limited.

No. AG 326 of 1995.

Pilkington (Australia) Operations Limited, Myaree
Wholesale (Stage II 1995) Enterprise Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Ms J Harrison on behalf of the Applicant and
Mr J Morgan on behalf of the Respondent, now therefore the
Commission, pursuant to the powers conferred on it under the
Industrial Relations Act, 1979, and by consent, hereby
orders—

THAT the Enterprise Bargaining Agreement in the terms
of the following schedule be registered with effect from
the beginning of the first pay period commencing on or
after the 21st day of December 1995.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Pilkington (Australia)
Operations Limited, Myaree Wholesale (Stage II 1995)
Enterprise Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Application of Agreement
 4. Parties Bound
 5. Life of Agreement
 6. Relationship to Parent Awards
 7. Single Bargaining Unit
 8. Aim of Agreement
 9. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
 10. Statement of Implementation
 11. National Standards
 12. Avoidance of Industrial Disputes
 13. Rates of Pay
 14. Renewal of Agreement
 15. No Further Claims
 16. Not to be Used as a Precedent
 17. Union Dues
- Appendix A—Working Hours—Arrangements
 Appendix B—Machinery Maintenance
 Appendix C—Acceptance of New Technology
 Appendix D—Housekeeping
 Appendix E—World Class Performance
 Appendix F—Introduction of Fortnightly Payroll (Electronic Funds Transfer)
 Appendix G—Development of Classification Structure
 Appendix H—Weekly Rates
 Appendix I—Signatures of the Parties

3.—APPLICATION OF AGREEMENT

This Enterprise Consent Agreement shall apply at the Pilkington (Australia) Operations Limited Myaree Wholesale Operations in respect to all its employees who are covered by the following awards:

- Building Trades Award 1968, (No. 31 of 1966).
- Transport Workers (General) Award No. 10 of 1961.

4.—PARTIES BOUND

This Agreement shall be binding upon The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers, and the Transport Workers' Union of Australia, Industrial Union of Workers, WA Branch (hereinafter referred to as "the Unions") and officers and members thereof and upon the Company as to all its employees who are members of or eligible to be members of the Unions covered by this clause of this Consent Agreement.

5.—LIFE OF AGREEMENT

This Agreement shall operate from the beginning of the first full pay period to commence on or after the 21st day of December 1995 and shall remain in force for a period of 24 months.

6.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the following awards:

- Building Trades Award 1968, (No. 31 of 1966)
- Transport Workers (General) Award No. 10 of 1961

herein referred to as the "Parent Awards", provided that where there is any inconsistency this Agreement shall take precedence as to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The Unions named in this Agreement will act along with the Company as a single bargaining unit for the purpose of implementing and negotiating items of this Agreement in accordance with the decision in the January 1992 State Wage Case.

8.—AIM OF AGREEMENT

The parties to this agreement recognise that to compete effectively in the current economic environment significant advances are required and can be achieved by providing product of the highest quality at optimum cost providing excellent customer service and having highly trained and motivated employees.

This Agreement aims to achieve the following objectives:

- Increase the efficiency of the organisation, thereby attaining benefits for the employees, customers and shareholders.
- Supply product of a high quality on a timely basis.
- Develop and maintain a working environment in which the Company can compete effectively and reward employees for performance at agreed levels.
- Retain the principles of job rotation skills training in a team environment which are required for the delivery of effective career paths.
 "With the benefits of flexibility, and the right attitudes consistent with agreed goals, ie: cultural change leading to improved productivity."
- To ensure that stability and experience in key skilled areas are maintained to ensure the highest attainable yields and quality customer service, and maximise job security.

The Company needs to reduce order turnaround times, as demonstrated by a reduction in credit notes, improved customer service and quality to retain competitiveness.

There needs to be improved yield in controllable areas; processing control including minimum damage to product, cutting loss; time loss; rectification of reject production and improved employee skills.

There needs to be improved customer service (quality, timeliness, courtesy).

The parties recognise that an important factor in achieving these objectives is to develop a work culture in which all employees are involved in decisions affecting them, have access to required training activities and benefit from these efforts thereby providing employees with more secure and better paid jobs.

The parties agree that these are only the first steps in a path of continual improvements if the Company is to remain viable.

The need for flexibility of jobs and duties within and between work areas, subject only to limitations imposed by individual skill levels, safe working practices and legal requirements, is also recognised as critical to achieving the objectives of this Agreement.

It has been agreed that the dollar value of current level of factory errors which are generated through errors or damage over which employees covered by this Agreement have control will reduce by 10% over the first 12 months of this Agreement and a further 10% over the following 12 months.

The base figure will be the agreed monthly average over the 12 months to 30 June 1995 and this will be regarded as the monthly average less 10% for the next 12 months on a basis to give a total 12 month target. That figure will be reduced a further 10% for the target for the following 12 months.

The Company will provide monthly statements of progress showing target to date and achievement for that month and a cumulative result.

9.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) Measures introduced during the operation of the original Stage 1 Award will continue to be developed and advanced which includes:

Maintain Quality Accreditation ASI 9002 along with commitment and adherence to Work Instructions and Quality Procedures.

(2) The following new initiatives have been agreed to assist the business become more efficient and provide a better competitive base for the future.

- (a) Working hours to ensure the highest level of customer service. Appendix A.
- (b) A commitment to maintenance of machinery. Appendix B.
- (c) A commitment to the acceptance of new technology. Appendix C.
- (d) House keeping provisions to complement customer service. Appendix D.

- (e) The setting, striving and measuring of targets to support the Company's initiatives towards "World Class Performance". Appendix E.
- (f) Introduction of fortnightly pays. Appendix F.
- (g) Classification structure. Appendix G.

10.—STATEMENT OF IMPLEMENTATION

(1) The items dealt with in Appendices A, B, C and D of this Agreement will be effective immediately upon signing of this Agreement.

(2) The introduction of fortnightly payment of wages as described in Appendix F of this Agreement and agreed in the stage I Enterprise Award continuing the use of electronic funds transfer will commence within the first three months of the ratification of the Agreement and will involve consultation and communication on the methods and effect to the employees involved.

(3) The introduction of the initiatives by the Company under the World Class Performance program as described in Appendix E will be introduced within the first six months of ratification.

(4) The introduction of a classification structure as described in Appendix G will occur within three months of the ratification of this Agreement.

11.—NATIONAL STANDARDS

This Agreement shall not operate so as to cause any employee to suffer a reduction in ordinary time earnings or in national standards; such as national standard hours of work, annual leave or long service leave.

12.—AVOIDANCE OF INDUSTRIAL DISPUTES

It is the intention of this Agreement to deal with disputes between the parties which are liable to cause stoppages in the following manner:

When a matter coming within the ambit of this Agreement or Parent Award is in dispute between the Unions and an employer or a matter coming within the ambit of the Agreement or Parent Award arises that is likely to cause a dispute, the following procedure shall be followed.

(1) Work shall continue without interruption whilst the employee/s or their representative discusses the dispute with the employer concerned, and both parties shall attempt to reach agreement. In these discussions, the employee representative may seek the advice and assistance of an official of the Unions and the Employer may seek the advice and assistance of the Employer organisation or senior company I.R. representatives.

(2) In the event that the discussions provided for in subclause (1) hereof fail to settle the dispute, it shall be referred to the employer organisation or I.R. representative and the Secretary of the relevant Unions.

(3) A "cooling off" period of seven days shall apply as from the date the dispute notification is received by the employer organisation and the relevant Unions. The responsibility for notifying the dispute shall be equally on both the employer and the Unions. During the "cooling off" period, work shall continue without interruptions from industrial stoppages, bans and/or limitations.

(4) During this "cooling off" period, discussions to take place between the officers of the company or employer organisation and the Unions, with the view to settling the dispute.

(5) Failing a satisfactory settlement being achieved following such discussions, the dispute may then be referred to the Western Australian Industrial Relations Commission.

13.—RATES OF PAY

The following rates of pay shall apply to the Agreement rate classifications listed below from the 21st day of December 1995. The rates shown in the Column headed "Enterprise Agreement Rates" are attributable to the making of this Agreement.

This Agreement will provide for the wage rate increases in recognition of the productivity commitments made in this Agreement.

Wage increases will be implemented the following times in accordance with the attached table:

Stage 1: 6% upon ratification of this Agreement through the State Commission.

Stage 2: 2% six months after ratification.

Stage 3: 2% six months after Stage 2 wage increase.

Refer Appendix H—Weekly Rates. These increases are to be the only wage increases available under this Award, except where a Western Australian and/or National Wage Case Decision would have an effect on this Award or where a Western Australian and/or an Australian Industrial Relations Commission decision on minimum rates applies to the parent award. No double counting will exist in respect to wages.

14.—RENEWAL OF AGREEMENT

In accordance with the terms of the October 1991 National Wage Case Decision this Agreement shall be effective until the 21st day of December 1997. It is agreed between the parties that prior to any initiatives being taken to renew or replace this Agreement, discussions between the parties will commence at least two months prior to expiration to determine the appropriate course of action.

15.—NO FURTHER CLAIMS

No variation or amendment to the Agreement shall be sought or entertained by any of the parties during the defined term of the Agreement.

No claim will be made for the Company to increase contributions to or benefit from Superannuation other than those made by changes to the Trust Deed to which the Company is a signatory.

16.—NOT TO BE USED AS A PRECEDENT

This Arrangement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

17.—UNION DUES

When authorised by individual employees, the employer undertakes to arrange for the deduction of Union dues on a regular basis, and such monies deducted remitted to the Union.

APPENDIX A—WORKING HOURS—ARRANGEMENTS

The employees covered by this Agreement will work a 38 hour week within the spread of hours 6.00am to 6.00pm consisting of seven hours and 36 minutes work time with 30 minutes unpaid meal break in accordance with the Parent Award.

APPENDIX B—MACHINERY MAINTENANCE

It is recognised that improved productivity can be achieved by employees being responsible for a certain level of maintenance of their machinery and equipment.

Employees will undertake maintenance and repairs to machinery and equipment in accordance with management direction and within their classification level and competency, so long as the additional tasks are not designed to promote de-skilling of employees, and are incidental and peripheral to their major tasks.

APPENDIX C—ACCEPTANCE OF NEW TECHNOLOGY

It is recognised by both the employees and management that there may be a significant level of new technology introduced to the workplace over the next two years. It is agreed employees will be trained as required and accept the changes and work with the Company to ensure the new technology is expeditiously installed and commissioned, and operated at the direction of the Company. Where practical, appropriate nationally accredited training will be available to Pilkington employees, during work time, in order to operate the new technology.

APPENDIX D—HOUSEKEEPING

The employees accept that a high standard of housekeeping is an important part of good customer service and quality product. It is agreed that employees will be responsible and will be held accountable to maintain a high level of cleanliness and order in the work area. They will actively participate in regular housekeeping audits and undertake the duties, within skills levels, to keep the workplace neat and safe.

APPENDIX E—WORLD CLASS PERFORMANCE

The employees will be actively involved in the company's initiatives to improve the business within the World Class concept.

9. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
10. Statement of Implementation
11. Avoidance of Industrial Disputes
12. Rates of Pay
13. Renewal of Agreement
14. No Further Claims
15. Not to be Used as a Precedent
16. Union Dues

Appendix A—Customer Service Standards

Appendix B—Introduction of Fortnightly Payroll (Electronic Funds Transfer)

Appendix C—Working Hours—Arrangements

Appendix D—World Class Performance

Appendix E—Weekly Rates

Appendix F—Signatures of the Parties

3.—APPLICATION OF AGREEMENT

This Enterprise Consent Agreement shall apply at the Pilkington (Australia) Operations Limited Western Australian Retailing Operations located at:

Cockburn Road, Albany;
109 Hampton Road, South Fremantle;
20 Ganham Way, Greenwood;
234 Great Eastern Highway, Midland;
18 Scarborough Beach Road, North Perth;
1 Mint Street, Victoria Park;

in respect to all its employees who are covered by the (state) Building Trades (Construction) Award 1987, No. R 14 of 1978.

4.—PARTIES BOUND

This Agreement shall be binding upon The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and officers and members thereof and upon the Company as to all its employees who are members of or eligible to be members of the Union covered by this Consent Agreement.

5.—LIFE OF AGREEMENT

This Agreement shall operate from the beginning of the first full pay period to commence on or after 21 December 1995 and shall remain in force for a period of 24 months.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the State Building Trades (Construction) Award 1987, No. R 14 of 1978.

7.—AIM OF AGREEMENT

The parties to this agreement recognise that if the retail business of the Company is to survive in Western Australia in the face of increasing competition and a fluctuating economic environment it must create some competitive edge. The company also recognises that employees need to be competitively rewarded for the business to retain a stable and committed work force.

This Agreement seeks to recognise the flexibility and productivity gains provided by this Agreement with increases to wage rates to provide appropriate level of payments to its employees.

The Agreement also involves the implementation of productivity measures and company initiatives to make the business more competitive as per Clause 8.—Customer Service Standards of this Agreement.

8.—CUSTOMER SERVICE STANDARDS

Appendix A—Customer Service Standards sets out the basis of this Agreement setting out the elements of the Customer Service Standards.

(1) The Company Commitment

The Company will commit to provide the appropriate training on paid time to raise the skill levels of employees to those required in Appendix A. It will provide regular feedback meetings with employees involving at various occasions either the State Manager or Retail Manager to seek and evaluate views of the employees on methods to enhance the Customer Service aspects of the business. There will be feedback given on each suggestion either immediately or after appropriate consideration.

(2) The Employee Commitment

The employees will commit to undertake the appropriate training and implement the Customer Service Standards in Appendix A—Customer Service Standards. They will strive to enhance the business through customer service and to build a competitive business which will provide secure and well rewarded employment.

9.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

The following items have been agreed to improve the efficiency in running the business and provide an environment for enhanced customer services.

- (1) Fortnightly payment of wages through electronic funds transfer. **Appendix B.**
- (2) Working hours to ensure highest level of customer service. **Appendix C.**
- (3) World Class Performance initiatives which will be introduced by company. **Appendix D.**

10.—STATEMENT OF IMPLEMENTATION

(1) The customer service standards as set out—Appendix A—Customer Service Standards will be introduced within three months of the signing of this Agreement.

(2) Fortnightly pays will be implemented within three months of the signing of this Agreement.

(3) World Class Performance initiatives will be introduced within six months of the signing of this Agreement.

11.—AVOIDANCE OF INDUSTRIAL DISPUTES

It is the intention of this Agreement to deal with disputes between the parties which are liable to cause stoppages in the following manner:

When a matter coming within the ambit of this Agreement or Parent Award is in dispute between the Unions and an employer or a matter coming within the ambit of the Agreement or Parent Award arises that is likely to cause a dispute, the following procedure shall be followed:

- (1) Work shall continue without interruption whilst the employee/s or their representative discusses the dispute with the employer concerned, and both parties shall attempt to reach agreement. In these discussions, the employee representative may seek the advice and assistance of an official of the Unions and the Employer may seek the advice and assistance of the Employer organisation or senior company I.R. representatives.
- (2) In the event that the discussions provided for in subclause (1) hereof fail to settle the dispute, it shall be referred to the employer organisation or I.R. representative and the Secretary of the relevant Unions.
- (3) A "cooling off" period of seven days shall apply as from the date the dispute notification is received by the employer organisation and the relevant Unions. The responsibility for notifying the dispute shall be equally on both the employer and the Unions. During the "cooling off" period, work shall continue without interruptions from industrial stoppages, bans and/or limitations.
- (4) During this "cooling off" period, discussions to take place between the officers of the company or employer organisation and the Unions, with the view to settling the dispute.
- (5) Failing a satisfactory settlement being achieved following such discussions, the dispute may then be referred to the Western Australian Industrial Relations Commission.

12.—RATES OF PAY

The following rates of pay shall apply to the Agreement rate classifications listed below from 21 December 1995. The rates shown in the Column headed "Enterprise Agreement Rates" are attributable to the making of this Agreement.

This Agreement will provide for the wage rate increases in recognition of the productivity commitments made in this Agreement.

Wage increases will be implemented the following times in accordance with the attached table:

Stage 1: 6% upon ratification of this Agreement through the State Commission.

Stage 2: 2% six months after ratification.

Stage 3: 2% six months after Stage 2 wage increase.

Refer Appendix E—Weekly Rates. These increase are to be the only wage increases available under this Agreement, except where a National Wage or State Wage Case Decision would have an effect on this Agreement or where a Western Australian Industrial Relations Commission decision on minimum rates applies to the parent award. No double counting will exist in respect to wages.

13.—RENEWAL OF AGREEMENT

In accordance with the terms of the October 1991 National Wage Case Decision this Agreement shall be effective until 21 December 1997. It is agreed between the parties that prior to any initiatives being taken to renew or replace this Agreement, discussions between the parties will commence at least two months prior to expiration to determine the appropriate course of action.

14.—NO FURTHER CLAIMS

No variation or amendment to the Agreement shall be sought or entertained by any of the parties during the defined term of the Agreement.

No further claim will be made for the Company to increase contributions to or benefit from Superannuation other than those made by changes to the Trust Deed to which the Company is a signatory.

15.—NOT TO BE USED AS A PRECEDENT

This Arrangement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

17.—UNION DUES

When authorised by individual employees, the employer undertakes to arrange for the deduction of Union dues on a regular basis, and such monies deducted remitted to the Union.

APPENDIX A—CUSTOMER SERVICE STANDARDS

(The terms of this Appendix form part of this Agreement and are contained in the files of the Western Australian Industrial Relations Commission)

APPENDIX B—INTRODUCTION OF FORTNIGHTLY PAYROLL (ELECTRONIC FUNDS TRANSFER)

An agreement by all parties to move the current method of weekly payroll out to fortnightly.

Method of introduction is as follows:

- (1) Payment of wages shall remain on a Thursday.
- (2) As of implementation date the employees will receive a full two weeks pay on the normal Thursday, thus receiving a full week's pay in advance.
- (3) The next pay will be two weeks from that date.
- (4) To recover the advancement of pay a deduction will be made by equal fortnightly deductions made from the next and then subsequent 12 fortnightly pay periods (13 in total) i.e. reduction of fortnightly pay by 2.92 hours = 76 hours less 2.92 hours—73.08 hours per fortnight.
- (5) Employees will be required to sign authorisation for such deductions.
- (6) Where errors may occur in the fortnightly pay it will be corrected in a manner that is in agreement between the employee and pay office.

APPENDIX C—WORKING HOURS—ARRANGEMENTS

The ordinary working hours shall be worked Monday to Friday inclusive between the hours of 7.00am and 6.00pm, however prior to any alterations to rostering there will be consultation between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Pilkington (Australia) Operations Limited.

As agreed between the parties the following areas:

- (1) Rostered days off;
- (2) After hours callouts—rest period;

will be covered by an exchange of letters between the parties to confirm the above flexibilities.

APPENDIX D—WORLD CLASS PERFORMANCE

The employees will be actively involved in the company's initiatives to improve the business within the World Class concept.

The company will be instituting new production programming and scheduling systems to improve scheduling and production performance.

The employees will be involved in setting team targets, measuring progress and striving to meet the targets in these areas which are key to the performance and ongoing viability for both the Company and employee welfare. These areas include:

Production outputs and labour costs;
Occupational health and safety;
Customer satisfaction and Quality standards;
Individual and team based training and development;
Environmental management to at least comply with government legislation and community expectations.

APPENDIX E—WEEKLY RATES

Classification	1st December	1st June	1st December
	1995	1996	1996
	Weekly	Weekly	Weekly
	Rate	Rate	Rate
	(6%)	(2%)	(2%)
B.T.C. (Glazier)	\$504.31	\$514.40	\$524.69
B.T. (Labourer Group 4)	\$384.60	\$392.29	\$400.14

NB: THE ABOVE PERCENTAGE INCREASES WILL BE PAID TO APPRENTICES AND JUNIOR WORKERS

APPENDIX F—SIGNATURES OF THE PARTIES

Signed for and on behalf of Pilkington (Australia) Operations Ltd. (ACN: 006 904 052).

.....(signed)..... 21/12/95.....
Signature John Morgan Date
State Manager, WA

THE COMMON SEAL of:

Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

was hereunto fixed in the presence of: Jennifer Harrison

.....(signed)..... 21/12/95.....
Signature Kevin Reynolds Date
Secretary

SAMCON WA INDUSTRIAL AGREEMENT No. AG 296 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Samcon WA Pty Ltd.
No. AG 296 of 1995.

Samcon WA Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 22nd day of November 1995.

(Sgd.) P.E. SCOTT,

[L.S]

Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Samcon WA Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship With Awards
9. Enterprise Agreement
10. Wage Increase
11. Redundancy Pay and Superannuation
12. Clothing and Footwear
13. Training Allowance and Training Leave
14. Seniority
15. Sick Leave
16. Productivity Initiatives
17. No Extra Claims
18. Ratification

Appendix A—Wage Rates

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Samcon WA Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the scope and terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification as indicated in Clause 18.—Ratification of this Agreement and shall continue in effect until 31 July 1997. Provided that nothing in this clause shall prevent the implementation of a comprehensive enterprise agreement as detailed in Clause 9.—Enterprise Agreement of this Agreement.

The parties agree to commence discussion on the terms and conditions of any future agreement within three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as that outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act (ie. 30 days notice of termination).

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A—Wage Rates of this Agreement.

11.—REDUNDANCY PAY AND SUPERANNUATION

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee (except apprentices) from 1 December 1995. Provided that nothing in this Agreement shall affect the terms of the Company's Deed of Adherence to the C+BUS scheme.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, which will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars per year.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE AND TRAINING LEAVE

(1) From 1 October 1995 the Company agrees to pay to the Union Education and Training Fund a training allowance of 20 cents per hour per employee (except a casual or apprentice) who is either a member or eligible to be a member of the Union.

(2) The Company shall have access to the audited accounts of the Union Education and Training Fund.

(3) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the Company, be granted a reasonable period(s) of leave with pay each calendar year to attend training courses conducted or approved by the National Building and Construction Industry Training Council (NBCITC) and which are applicable to the employee's employment. The Company's approval shall not be unreasonably withheld.

(4) The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

(5) The time of taking leave shall be arranged so as to minimise any adverse effect on the Company's operations.

(6) The Company shall not be liable for any additional expenses associated with an employee's attendance at a course other than the payment of wages as specified in Appendix A—Wage Rates of this Agreement for up to eight hours ordinary time per day.

(7) The employee shall provide proof of attendance at a training course if required to do so by the Company prior to receiving payment for such course.

(8) Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(9) Any disagreement over any issue contained in this clause shall be resolved in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

14.—SENIORITY

(1) The parties agree that continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this, the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) Provided that nothing shall prevent the Company from instantly dismissing any employee for serious misconduct.

15.—SICK LEAVE

For sick leave accrued From 1 October 1995, the following will apply:

The Company's employees shall have the option of:

- (1) Being paid up to five days unused sick leave per annum and having the balance of unused sick leave accrue and paid out on termination; or
- (2) Having all unused sick leave accrued paid out on termination; or
- (3) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PRODUCTIVITY INITIATIVES

In exchange for the significant wage increases and other benefits to employees which are provided in this Agreement, it is agreed that the following initiatives will be implemented as a means to improve productivity:

- (1) All demarcation issues will be resolved in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.
- (2) The parties to this Agreement agree to adopt a reasonable and flexible approach to working hours in terms of starting and finishing times. Ordinary hours may be worked between 6.00am and 6.00pm on any week day.
- (3) Meetings of Union members held on site will be kept to a minimum and, wherever possible, held at a time likely to cause minimal disruption to work being performed on site.
- (4) All parties agree to adopt a reasonable and flexible approach to inclement weather in order to minimise lost time caused through inclement weather.
- (5) Any employee elected as a Job Steward or Health and Safety Representative will be required to carry out meaningful work, as directed by the Company, in addition to his/her duties as a Job Steward or Health and Safety Representative.

17.—NO EXTRA CLAIMS

(1) The Union agrees not to pursue any additional over-award claims against the Company for the duration of this Agreement.

(2) The parties to this Agreement agree to review any provision of this Agreement which is deemed contrary to any applicable legislation enacted by either state or federal government.

18.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after 22nd November 1995.

(signed)	(signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY SAMCON (WA) PTY LTD
Dated:	Dated:16/11/95.....

APPENDIX A—WAGE RATES

(1) Builders' Labourers and Tradespersons

	1 September 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

(2) Apprentices

Apprentices shall receive the following percentages of the applicable wage rates contained in subclause (1) of this Appendix:

First Year	42%
Second Year	55%
Third Year	75%
Fourth Year	88%

TRINITY DEMOLITION INDUSTRIAL AGREEMENT
No. AG 313 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Trinity Demolition.

No. AG 313 of 1995.

Trinity Demolition Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order:

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 5th day of December 1995.

(Sgd.) P.E. SCOTT,

Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Trinity Demolition Industrial Agreement.

2.—ARRANGEMENT

- 1. Title
 - 2. Arrangement
 - 3. Area and Parties Bound
 - 4. Application
 - 5. Duration
 - 6. Dispute Settlement Procedure
 - 7. Single Enterprise
 - 8. Relationship With Awards
 - 9. Enterprise Agreement
 - 10. Wage Increase
 - 11. Industry Standards
 - 12. Clothing and Footwear
 - 13. Training Allowance, Training Leave, Recognition of Prior Learning
 - 14. Seniority
 - 15. Sick Leave
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Trinity Demolition (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

(signed) _____
(signed) _____
 ON BEHALF OF THE UNION ON BEHALF OF THE COMPANY
BRIAN DONNELLY
(PRINT NAME)

Dated this 5th day of December 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

UNICA INDUSTRIAL AGREEMENT No. AG 308 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

John Casal trading as Unica.

No. AG 308 of 1995.

Unica Industrial Agreement.

COMMISSIONER P E SCOTT.

10 January 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following schedule be registered with effect on and from the 20th day of November 1995.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Unica Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
 16. Ratification
- Appendix

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and John Casal trading as Unica (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award").

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agree-

ment, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix of this Agreement.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an ability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure of this Agreement.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-

engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of ratification of this Agreement the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after the 20th day of November 1995.

_____ (signed)	_____ (signed)
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY UNICA

Dated this 20th day of November 1995.

APPENDIX

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
Labourer Group 1	\$13.75	\$14.21	\$14.66	\$15.11
Labourer Group 2	\$13.27	\$13.71	\$14.15	\$14.59
Labourer Group 3	\$12.92	\$13.35	\$13.77	\$14.20
Plasterer, Fixer	\$14.29	\$14.76	\$15.23	\$15.70
Painter, Glazier	\$13.97	\$14.43	\$14.89	\$15.35
Signwriter	\$14.26	\$14.73	\$15.20	\$15.68

WEST AUSTRALIAN NEWSPAPERS PRODUCTION EMPLOYEES (ENTERPRISE BARGAINING) AGREEMENT 1995 No. AG 259 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

West Australian Newspapers Limited
and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch and Others.

No. AG 259 of 1995.

COMMISSIONER R.N. GEORGE.

19 January 1996.

Order.

HAVING heard Mr R. Joyce on behalf of the Applicant and Mr G. Bucknall on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch; and The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers; Mr J. Fiala on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Ms D. MacTiernan on behalf of The Construction, Mining, Energy Timbryards, Sawmills and Woodworkers Union of Australia, Western Australian Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement in the terms of the following schedule be registered with effect on and from 14 December 1995.

[L.S]

(Sgd.) R.N. GEORGE,
Commissioner.

1.—TITLE

This agreement shall be referred to as the West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangements
3. Application of Agreement
4. Parties Bound
5. Date and Operation of Agreement
6. Relationship to Parent Award
7. Single Bargaining Unit
8. Measures to Increase Productivity, Efficiency and Flexibility
9. Wage Increase
10. Avoidance of Industrial Disputes
11. National Standards
12. Recognition of Future Requirements
Schedule A—Wages

3.—APPLICATION OF AGREEMENT

This agreement shall apply at the establishments of West Australian Newspapers Limited in respect of all employees who are engaged in any of the occupations, industries or callings specified in the Printing (Newspaper) Award 1979 or the Electrical, Engineering and Building Trades (WAN) Award 1988.

4.—PARTIES BOUND

- (1) West Australian Newspapers Limited
219 St. George's Terrace, Perth
- (2) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch
1111 Hay Street, West Perth.
- (3) The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia—Engineering and Electrical Division—West Australian Branch
401-403 Oxford Street, Mt Hawthorn
- (4) The Construction, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia, Western Australia Branch
102 Beaufort Street, Perth
- (5) The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
27 Moore Street, East Perth

5.—DATE AND OPERATION OF THIS AGREEMENT

This agreement shall operate from the beginning of the first pay period commencing on or after 1 July 1995 and shall remain in force for a period of 21 months until 31 March 1997. Discussions between the employer and the employee will commence not later than three (3) months before the expiry date of this agreement.

This Agreement shall not be cancelled or varied unless agreed to by the parties.

6.—RELATIONSHIP TO PARENT AWARDS AND THE WEST AUSTRALIAN NEWSPAPERS PRODUCTION EMPLOYEES (ENTERPRISE BARGAINING) AGREEMENT 1993

This agreement shall be read and interpreted wholly in conjunction with the Printing (Newspaper) Award 1979 and the Electrical Engineering and Building Trades (West Australian Newspapers) Award 1988, whichever is the relevant award. Where there is any inconsistency between this agreement and the said parent award(s), this agreement shall prevail to the extent of any inconsistency.

This agreement incorporates all the provisions of Attachments 1-5, and the ORGANISATIONAL AND WORKPLACE IMPROVEMENT (IMPLEMENTATION—JANUARY 1993) flow chart, which form part of the West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement AG44 of 1993 (hereinafter referred to as AG44 of 1993).

7.—SINGLE BARGAINING UNIT

In accordance with the State Wage Case Decision of December 1994 a single bargaining unit has been established between the above parties.

8.—MEASURES TO INCREASE PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

A Consultative Committee has been established in the form of a single bargaining unit, and in accordance with the State Wage Fixation Principles.

The parties reaffirm their commitment to the measures detailed in attachment 1 of the West Australian Newspapers Production Employees (Enterprise Bargaining) Agreement 1993 (AG44 of 1993) and the process of organisational and workplace change as detailed in the flow chart attached to AG44 of 1993 and to this end, these provisions are incorporated in to this agreement as an integral part of this agreement.

In addition to the measures detailed in attachment 1 of AG44 of 1993:

- (a) The Company will investigate a better method of measuring improvements in efficiency and productivity for agreement by the parties and implementation prior to the expiration of this agreement;
- (b) The parties will seek a resolution of issues associated with composing room rationalisation and associated career paths, training and redundancy.
- (c) The parties will commence to negotiate issues associated with achieving a "similar conditions of employment" agreement (single award). Such negotiations are predicated upon a suitable agreement being reached, prior to the commencement of negotiations, for outstanding issues or issues of disagreement to be referred to the Western Australian Industrial Relations Commission.
- (d) The Company acknowledges the existence of but opposes the claims for a VDT disability allowance for the Graphics Ares, and an increase in the night shift allowance in AMWU (Printing Division) areas. It is agreed that further discussions may take place between the parties and failing resolution of the matter they will be referred, if the union wishes to pursue the same, by the union to the Western Australian Industrial Relations Commission for final determination.

9.—WAGE INCREASES

(i) In recognition of the agreement and the potential of the agreed changes to increase productivity and efficiency the parties have agreed to the following increases in wages:

- * 5% from first pay period on or after 1 July 1995
- * 4% from first pay period on or after 1 January 1996
- * 5% from first pay period on or after 1 July 1996.

(ii) The actual rates to be paid, inclusive of the above increases, shall be as set out in Schedule "A" hereof.

The increases in wages have been agreed to not on the basis of one single issue but rather on the basis that the measures agreed to, and detailed in attachment 1 hereof, reflect real and demonstrable changes in both attitude and the way in which work is performed which facilitate improvement in productivity and efficiency. These changes are aimed at facilitating the fuller and more productive utilisation of company resources in the future.

(iii) The wage increases have been agreed and the staged payments will be paid on the due date with the first payment being made on the first pay period commencing on or after 1 July 1995.

(iv) There is a clear recognition by all parties that the wage increases provided for by this agreement are predicated on the basis that the parties will continue to address opportunities to become more competitive and to respond to challenges quickly and efficiently as they occur.

In recognition that there has been increased productivity over and above that required to be absorbed under AG44 of 1993 it is agreed that 4% of the increase provided for by this agreement is in full recognition of productivity and efficiency increases achieved under AG44 of 1993.

The remaining increases provided for by this agreement are predicated upon the parties agreement that throughout the life of this agreement the parties will continue to meet and address work place change and improvement through the process detailed in the ORGANISATIONAL AND WORKPLACE IMPROVEMENT (IMPLEMENTATION—JANUARY 1993) flow chart which forms part of AG44 of 1993. Any increases in productivity over and above the 10% provided for by this agreement, which has not already been recompensed in the wage increases granted by this agreement, shall form the basis for future wage claims following the expiry of this agreement.

(v) The wage increases as detailed shall not be absorbed into any overaward payments.

(vi) The provisions of clause 33 of the Printing (Newspaper) Award 1979 have been absorbed into and form part of the rates of wages as detailed in attachment 2.

(vii) It is agreed between the parties that the rate of wages for Apprentices employed pursuant to the Printing (Newspaper) Award 1979 will be calculated by applying the percentages specified by clause 39 subclause 2 to the appropriate trade classification upon which the apprentice is employed.

(viii) In lieu of the provisions of clause 39 subclause (4) of the Printing (Newspaper) Award 1979 the following shall apply;

Night and Intermediate shift loading

Adult Employees—17.5% of the Compositor Grade 2 rate.

Apprentices and Cadet Assistant Readers in their final year 17.5% of the Compositor Grade 2 rate.

Other apprentices and cadets five sixths of the night and intermediate shift loading of the adult employee.

(ix) In lieu of the provisions of clause 9 subclause (1) of the Electrical, Engineering and Building Trades (WAN) Award 1988 the following shall apply;

An employee working an intermediate or night shift shall receive a loading of 17.5% of the total rate of pay for that employee for each shift worked as provided in subclause (1) of the First Schedule Wages of the Award.

(x) The responsibility payment provided by clause (3)(a) Saturday and (3)(b) Sunday of the First Schedule Wages of the Electrical, Engineering and Building Trades (WAN) Award 1988 will be increased in accordance with the percentage increases granted under clause 9(i) of this Agreement. That is, (3)(a) \$6.25 and (3)(b) \$12.18 to be effective from the first pay period on or after 1 July 1995; (3)(a) \$6.50 and (3)(b) \$12.67 to be effective from the first pay period on or after 1 January, 1996; and (3)(a) \$6.83 and (3)(b) \$13.30 to be effective from the first pay period on or after 1 July 1996.

(xi) The electrical licence allowance provided by clause (6) of the First Schedule Wages of the Electrical Engineering and Building Trades (WAN) Award 1988 which is \$13.86 as of first pay period on or after 1 July 1996, \$14.41 as of first pay period on or after 1 January 1996 and \$15.13 as of first pay period on or after 1 July 1996, is consolidated into the base rate of all electrical classifications.

10.—AVOIDANCE OF DISPUTES

The parties to this agreement are committed to observing the dispute settlement procedures of the relevant awards.

11.—NATIONAL STANDARDS

This agreement shall no operate so as to cause any employee to suffer a reduction in ordinary time earnings or in Commission recognised national standards such as standard hours of work, annual leave or long service leave.

12.—RECOGNITION OF FUTURE REQUIREMENTS

There is a recognition by all parties that in order for this Company to remain competitive it must maintain an ability to respond quickly and positively to the demands of the market and the requirements of its customers.

SCHEDULE A—WAGES

DEPARTMENT/CLASSIFICATION	1 July 1995	1 Jan 1996	1 July 1996
PRESS ROOM			
Offset Printing Machinist	669.10	695.90	730.70
Assistant Machinist	553.90	576.10	604.90
General Hand	516.10	536.70	563.50
PUBLISHING			
Publishing Hand—Grade 1	544.00	565.80	594.10
Publishing Hand—Grade 2	426.00	443.00	465.20
PRE PRESS			
Graphic Reproducer—Grade 1	668.60	695.30	730.10
COMPOSING			
Grade 1	647.60	673.50	707.20
Grade 2	608.50	632.80	664.40
Reader	549.60	571.60	600.20
ELECTRICAL			
Electronic Technician (less than 2 yrs)	694.20	722.00	758.10
Electronic Technician (more than 2 yrs)	715.40	744.00	781.20
Electrician—Special Class	670.80	697.60	732.50
Trades Assistant	536.40	557.90	585.80
ENGINEERING			
Engineering Tradesperson—Special Class	670.80	697.60	732.50
Trades Assistant	536.40	557.90	585.80
BUILDING TRADES			
Building Tradesperson—Special Class (Carpenters and Painters)	660.70	687.10	721.50
AUTOMOTIVE MECHANICS			
Motor Mechanics	549.80	571.80	600.40
ELECTRICAL ALLOWANCES			
Responsibility Shift Allowance			
3a Saturday	6.25	6.50	6.83
3b Sunday	12.18	12.67	13.30
Electrical Licence Allowance	13.86	14.41	15.13

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

THE POLICE AWARD 1965.

No. 2 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon. Minister for Police

and

Western Australian Police Union of Workers.

No. 1396 of 1995.

The Police Award, 1965.

No. 2 of 1966.

CHIEF COMMISSIONER W.S. COLEMAN.

5 January 1996.

Order.

HAVING heard Mr P.J. Kelly and with him Sergeant J. Fielding on behalf of the Applicant and Mr S. Smith and with him Mr J. Bannan on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Police Award, 1965 be varied in accordance with the following Schedule pursuant to the Reasons for Decision which issued on the 5th day of January, 1996. The following schedule shall have effect from the beginning of the first pay period commencing on or after the 5th day of January, 1996.

(Sgd.) W. S. COLEMAN,

[L.S.]

Chief Commissioner.

Schedule.

Clause 14.—Additional Allowances:

- (a) Delete subclause (4) of this clause.
- (b) Delete subclause (6) of this clause and insert in lieu thereof the following:
 - (6) Each employee shall be paid a boot allowance of one hundred and forty dollars (\$140) per annum.
- (c) Renumber subclauses (5), (6) and (7) as (4), (5) and (6).

ELECTORATE OFFICERS' AWARD 1986 No. A 18 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Civil Service Association of Western Australian
Incorporated

and

The Hon. James Clarko, MLA and Others.

No. P 46 of 1993.

COMMISSIONER R.N. GEORGE.

25 May 1995.

Reasons for Decision.

THE COMMISSIONER: The matter before the Commission in these proceedings concerns an application to vary the Electorate Officers Award, 1986, No. A 18 of 1986, by adding a new Clause 20.—Resignation, Retirement and Severance and by making a consequential amendment to the existing Clause 11.—Continuity of Service.

The new Clause sought by the Application as originally filed was entitled Redeployment, Retraining and Severance and had as its primary focus provisions relating to Redeployment and Retraining in addition to Selective Voluntary Severance. In the course of negotiations between the parties it was agreed to stand aside those aspects of the claim concerning Redeployment, Retraining and Selective Voluntary Severance at this time and to deal only with the issues primarily relating to Severance, about which there was substantial agreement. By consent and leave of the Commission the Application was consequently varied in terms of an amended Schedule B submitted to the Commission in the course of proceedings and included in the Applicants Exhibit Book at Attachment 2. The amended Schedule is largely agreed but contains three subclauses which are in dispute and which the parties seek to have determined by the Commission.

The subclauses in dispute and the Commission's determination in each case are as follows.

1. Subclause (1) of Clause 20.

This subclause provides for:

- the period of notice of termination to be given on either side;
- summary dismissal;
- the age at which an employee is entitled to retire.

The period of notice required on either side is specified to be four weeks with the proviso that the employer may pay the employee four weeks salary in lieu of such notice. Where an employee fails to give the required notice and there is no agreement for a shorter period than that specified, the proposed clause also provides that the employee shall forfeit a sum of \$500.00 and that such sum shall be withheld from monies due at the date of resignation. This subclause is agreed except for the provision that entitles the employer to withhold from monies due on resignation the sum to be forfeited by an employee as a consequence of failure to give due notice. It is argued by Ms Franz for the Applicant Association that to withhold money in such circumstances without the consent of the employee is illegal in light of the procedures for the payment of salaries set out within Treasurer's Instructions issued pursuant to the

Financial, Administration and Audit Act and submitted to the Commission as part of the Applicant's Exhibit Book at Attachment 5. In support of her argument Ms Franz drew attention to Treasurer's Instruction 515, Mandatory Deductions, which reads as follows:

- "(1) Deductions shall be effected in accordance with any requirement of the written law or a court order.
- (2) Deductions of amounts owing to a department or statutory authority (e.g. Executive Vehicle Scheme, rent, messing) shall require prior authority of the employee in writing."

The wording of paragraph (2) of Treasurer's Instruction 515 is relied upon by Ms Franz in support of her contention that the withholding of the sum forfeited for failure to give the required notice would be illegal if it was withheld without the consent of the employee. Ms Franz also called evidence in an attempt to demonstrate that such a provision is not justified because of the special relationship between Electorate Officers and the Members for whom they work.

Ms Lloyd for the Respondent argued that the forfeiture of the sum of \$500.00 would be in the nature of a fine or the loss of a right rather than in the nature of an overpayment as suggested by the argument of Ms Franz and that Treasurer's Instruction 515 allowed for deductions to be made in those circumstances. It was further argued that the provision was justified on the grounds of administrative convenience and to avoid the possibility of expensive recovery action if an employee refused to authorise the deduction of the amount to be forfeited.

The argument by Ms Franz that a provision to enable the employer to withhold monies forfeited due to a failure to give the required notice would be illegal is in my view misconceived. The legislation which would prevent the withholding of monies from wages due without the authority of the employee is the Truck Act 1899. The Industrial Relations Act, 1979, however, by virtue of Section 5, provides that:

"Where any provision of this Act or of an award, industrial agreement or order made or deemed to be made under this Act is contrary to or inconsistent with any provision of the Truck Act 1899 the former provision prevails and the latter provision shall have no force or effect."

If a provision of the kind now in dispute were to be inserted into the Award it would therefore prevail over the Truck Act 1899 and in my view would not be inconsistent with Treasurer's Instruction 515, which provides in paragraph (1) that:

"Deductions shall be effected in accordance with any requirement of the written law or a Court Order."

The question to be answered is whether a provision to enable an employer to withhold from monies due to an employee on resignation the sum of money to be forfeited as a consequence of a failure to give the required notice under the Award has merit. The only argument presented on behalf of the Applicant Association on the question of merit went to the special relationship between the Electorate Officers and the Members for whom they work. Evidence called in relation to this established that the special relationship referred to does exist but just how this supports an argument on merit that the provision in dispute should not be included in the Award was not apparent. The witness was not able to say how the special relationship was relevant in this context and Mr Franz did not attempt to. Clearly if an employee left his/her employment without giving the specified notice and without agreement to the giving of a lesser period of notice than that specified, that would be an indication that the special relationship had broken down or did not exist. In these, or even in other circumstances, there is no doubt that the most appropriate course is for the penalty arising out of a failure to comply with the notice provisions of the award to be withheld from monies due on resignation. I therefore determine that the words, "Such monies shall be withheld from monies due at the date of resignation" be included at the end of paragraph (a) of subclause (1) of the proposed new Clause 20.

2. Subclause (2) of Clause 20.

The second matter in dispute concerns a provision that the termination date for Electorate Officers working for Members of the Legislative Assembly who fail to be re-elected or whose

seats are the subject of a re-count, is the date of the General Election. The particular paragraph of subclause (2) which is in contention is in the following terms.

- "(c) The termination date for officers working for Members of the Legislative Assembly who fail to be re-elected or whose seats are the subject of a recount, is the date of the State General Election."

The Respondent employer proposes the deletion from this paragraph the words "or whose seats are the subject of a recount". The Applicant Association opposes the deletion of these words on the basis firstly that they assist to clarify a particular situation and secondly, that it is not understood why the Respondent employer seeks their deletion. Neither the submissions of Ms Lloyd for the Respondent employer, nor the evidence of Ms Makowieki called by Ms Lloyd assisted in clarifying why the Respondent employer seeks the deletion of the words in dispute. It was confirmed, however, that under present arrangements the services of Electorate Officers are terminated effective from the date of the general election or by-election. Where a recount is required in a general election and the sitting Member is returned, the electorate officer has his/her pay made up for the period of the recount and continuity of service is established. In the end I was left with the impression that both Ms Franz and Ms Lloyd sought the same outcome, that outcome being to reflect the provisions of the Draft Parliamentary Officer Handbook [Exhibit C] as it relates to the effective termination date for Electorate Officers. The relevant provision from the Handbook in that regard is as follows:

"11.0 TERMINATION OF THE CONTRACT OF EMPLOYMENT

11.1 Expiration of the Contract of Employment

An Electorate Officer's contract of employment in deemed to be terminated when a member retires, fails to win re-election or otherwise vacates his/her seat.

(i) Effective Termination Date

The termination date for Electorate Officers to Legislative Assembly Members who fail to be re-elected is the date of that Election. This will also apply to those Members whose seats are the subject of recounts. Legislative Council Members, who are on fixed terms but lose their seats in any General Election, retain their positions until 21st May of the year of that Election (i.e. 1993, and every 4 years subsequent to this date).

In the event of a by-election, the Electorate Officer is employed to the date of the by-election, even though the retiring Member had officially left office some time before.

An incoming Member may temporarily extend the employment of the former Member's Electorate Officer for up to three months pending the appointment of the long term Electorate Officer. However, the Corporate Development Branch must be notified of the arrangement as soon as possible after the election to ensure that the Officer's termination benefit can be preserved."

This being the case it is my view that it would assist to make reference to Electorate Officers whose seats are subject to a recount, but in a slightly different form to that proposed. It would also, however, seem to be necessary to include reference to Electorate Officers who work for Members who lose their seats as a result of a by-election. I therefore propose that the Minutes of Proposed Order will include the words in dispute in paragraph (c) of subclause (2) of Clause 20, except that the word "or" will be replaced by the words "including Members". I further propose to insert a new paragraph (e) in the following terms.

- "(d) In the event of a by-election the termination date of an employee shall be the date of the by-election."

In the event that I have wrongly interpreted the intentions of the parties in this matter, rights are reserved on the giving of appropriate notice to have the hearing re-opened prior to the issue of the Order in its final form so that more detailed submissions on the issue may be put.

3. Subclause (3) of Clause 20.

The final matter in dispute relates to placitum (i) of paragraph (a) of subclause (3) of the proposed Clause 20 which is in the following terms in the Amended Schedule B:

- “(i) Where the employment is terminated in accordance with paragraph (b) of subclause (2) of this Clause; four weeks notice of termination, or equivalent salary in lieu of such notice, provided that no notice is payable where the employees termination is a consequence of their members resignation or retirement and the employee was reasonably aware of final date of resignation or retirement at least four weeks prior to the actual date of resignation or retirement.”

[my underlining]

The words underlined are in dispute and opposed by the Applicant Association on the following grounds.

1. The words are ambiguous because of the use of the term “reasonably aware”.
2. The special relationship between the Electorate Officers and the Member for whom they work can mean that although they are aware of the Member’s intention to resign or retire, the loyalty required in the employment relationship and/or the need to keep confidential the Member’s intentions may preclude them from seeking alternative employment in advance of the Member’s resignation or retirement.

In Ms Franz’ submission, the inclusion of the words in dispute create the potential for unfair or inequitable treatment of Electorate Officers in the context of their entitlement to severance benefits.

Ms Lloyd for the Respondent Employer argued that the proviso was necessary on the basis that the special relationship between the Electorate Officers and the Members for whom they work would on most occasions enable them to be aware of the Member’s circumstances well in advance of the Member’s resignation or retirement. It was further argued that the test of what is “reasonable” would be an objective test taking into account all facts and circumstances in a particular case. This would lead, it was argued, to protection for Electorate Officers and avoid inequities which could arise from the general provision. It was not said, however, how that protection would operate or what inequities might occur and again this was not clarified through the evidence called.

The position as I see it appears to be as follows.

Subclause (1) of Clause 20 provides that four weeks notice of termination is to be given on either side with the employer having the option to pay the employee four weeks pay in lieu of notice. This is reflected in placitum (i) of paragraph (a) of subclause (3) of Clause 20 where the severance benefits payable include four weeks notice of termination or equivalent salary in lieu where an Electorate Officer’s employment is terminated in circumstances referred to in paragraph (b) of subclause (2). The proviso in subclause (3) which is opposed by the Applicant Association appears to remove the obligation on the employer to provide notice or payment in lieu as prescribed for reasons which are not apparent on the arguments. It would seem to me that the question of whether an Electorate Officer receives four weeks notice or payment in lieu is at all times one for the employer and the answer to that question is within the employer’s control. If the Member for whom the Electorate Officer works is to resign or retire and has made that decision well in advance, it is open for the appropriate notice to be given to the Electorate Officer. If that notice is not given for the reason of confidentiality or in fact for any other reason, that is not something that is within the control of the Electorate Officer and payment in lieu of notice should apply. I therefore conclude that the proviso to placitum (i) of paragraph (a) of subclause (3) is inconsistent with the thrust of the general provisions of the new Clause 20 and should not form part of it.

There is one more matter which needs to be addressed concerning the proposed consequential amendments to Clause 11.—Continuity of Service.

The provisions of Clause 11.—Continuity of Service, as they currently exist, provide for continuity of service where the services of an Electorate Officer are terminated by the employer for any reason other than gross misconduct and the

Electorate Officer is re-employed not later than six months from the date on which the employment ended. The Application seeks to amend the existing wording of this clause to include the words “shall be” before the words “treated as if the employment was continuous”. This amendment is necessary to correct an error which previously occurred as a result of the omission of the words sought to be inserted. I also note from the amended Schedule B that the reference in the existing clause to “the calling of electorate officer” has been replaced with the words “the calling of employee”. Clause 4.—Scope, of the award, however, refers only to the calling of an “Electorate Officer employed by the Respondent”. Although “employee” is defined in the award to mean “an Electorate Officer as defined” there is no calling of “employee” in the award and given that the provisions of the Clause refer to “the calling of” the words “electorate officer” should be retained.

Minutes of a Proposed Order will now issue to reflect these Reasons for Decision, subject to the rights earlier referred to for the parties to re-open proceedings if necessary.

Appearances: Ms K. Franz appeared on behalf of the Applicant.

Ms S. Lloyd appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Civil Service Association of Western Australian
Incorporated
and

The Hon. James Clarko, MLA and Others.
No. P 46 of 1993.

Electorate Officers’ Award 1986
No. A 18 of 1986.

COMMISSIONER R.N. GEORGE.

1 February 1996.

Order:

HAVING heard Ms K. Franz on behalf of the Applicant and Ms S. Lloyd on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Electorate Officers’ Award 1986 be varied in accordance with the following Schedule and that such variations shall have effect from the beginning of the first pay period on or after 1 February 1996.

(Sgd.) R.N. GEORGE,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement:
 - A. Renumber Clause 20 as Clause 21.
 - B. Immediately after the number and title 19.—Relief Arrangements, insert the following new number and title.
 20. Resignation, Retirement, Termination and Severance
2. Clause 11.—Continuity of Service: Delete this Clause and insert in lieu thereof the following:

11.—CONTINUITY OF SERVICE

- (1) Where an employee’s services are terminated by the employer for any reason other than gross misconduct and the employee is re-employed by the employer in the calling of electorate officer not later than six months from the day on which the employment ended, such break shall be excised from service but that service before and after the break shall be treated as if the employment was continuous.

- (2) The provisions of this clause shall not apply where the employee is paid a severance payment in accordance with subclause (3) of Clause 20 of this Award.

3. Clause 19.—Relief Arrangements: Immediately following this Clause add a new Clause as follows:

20.—RESIGNATION, RETIREMENT,
TERMINATION AND SEVERANCE

- (1) Resignation, Retirement and Early Termination of Employment.

- (a) No employee shall leave the employ of the employer until the expiration of four weeks written notice of the employee's intention to do so without the approval of the employer. An employee who fails to give the required notice shall forfeit the sum of five hundred dollars unless agreement is reached between the employer and the employee for a shorter period of notice than that specified. Such monies shall be withheld from monies due at the date of resignation.
- (b) Four weeks written notice shall be given by the employer to an employee whose services are no longer required. Provided that the employer may pay the employee four weeks salary in lieu of said notice.
- (c) The employer may summarily dismiss an employee deemed guilty of gross misconduct or neglect of duty and the employee shall not be entitled to any notice or payment in lieu of notice.
- (d) An employee having attained the age of 55 years shall be entitled to retire from the employ of the employer.

- (2) Expiration of the Contract of Employment.

- (a) An employee's contract of service terminates when the Member for whom the employee works ceases to hold office.
- (b) For the purposes of this Clause, an employee's contract shall be deemed to have expired (terminated) if, through no fault of the employee, his or her services are no longer required and the Member for whom the employee works;
- (i) dies, resigns or retires; or
- (ii) is not re-elected for a second or subsequent term of office;
- (iii) is not required following changes to electoral boundaries; or
- (iv) other circumstances as agreed between the employer and the Association.
- (c) The termination date for officer's working for Members of the Legislative Assembly who fail to be re-elected, including Members whose seats are the subject of a recount, is the date of the State General Election.
- (d) The termination date for officers working for Members of the Legislative Council who fail to be re-elected is 21 May of the year of the General Election for the Legislative Council. An electorate officer in this situation shall only be entitled to the four weeks notice of termination as prescribed in subclause (3)(a)(i) of this Clause, if that date of that General Election for the Legislative Council is less than four weeks prior to that 21 May.
- (e) In the event of a by-election the termination date of an employee shall be the date of the by-election.

- (3) Severance Benefits Payable

- (a) An employee whose contract expires in accordance with the provisions of subclause (2)(b) of this Clause is entitled to a termination payment which shall be paid as follows;
- (i) Where the employment is terminated in accordance with paragraph (b) of subclause (2) of this Clause; four weeks notice of termination, or equivalent salary in lieu of such notice.
- (ii) termination pay at the rate of two weeks salary for each year of service to a maximum of 48 weeks;
- (iii) the monetary value of any accrued and pro rata annual leave and long service leave due upon the date of expiration of the contract; and
- (iv) annual leave loading payment on accrued annual leave.
- (b) The termination payment contained in this subclause shall not be payable to persons who;
- (i) Immediately following the expiration of their employment contract in accordance with the provisions of subclause (2) of this Clause, are re-employed with another Minister of Parliament in the same calling; or,
- (ii) are engaged for fixed periods to fill a vacancy caused through the absence of an electorate officer on sick, recreation, furlong or other leave, or to fill a temporary vacancy pending the appointment of a substantive electorate officer; or,
- (iii) cease employment for the purposes of retirement.
- (c) Should the employee be appointed or employed as an Electorate Officer before the expiry of;
- (i) the number of weeks in respect of which the person received a severance payment under this subclause, and
- (ii) the number of weeks in respect of which the person received cash payment in lieu of accrued annual leave or long service leave,

the Electorate Officer shall be liable to repay an amount equal to the difference between the number of weeks for which the termination payment was made, and the number of weeks which elapsed between termination and re-employment.

4. Clause 20.—Liberty to Apply: Renumber this Clause as Clause 21.

AWARDS/AGREEMENTS— Variation of—

BUILDING TRADES (GOVERNMENT) AWARD 1968.

No. 31 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia—Western Australian
Branch
and

Honourable Minister for Works.

No. 11 of 1996.

No. 12 of 1996.

Building Trades (Government) Award 1968.

No. 31A of 1966.

COMMISSIONER P E SCOTT.

9 January 1996.

Direction.

WHEREAS these applications to vary the Building Trades
(Government) Award 1968 were filed on 5 January 1996;

WHEREAS the Applicant has advised that the variations
sought therein only apply to the Western Australian Building
Management Authority; and

WHEREAS the Applicant has requested from the
Commission a direction that the applications need only be
served upon the Honourable Minister for Works, being the
Minister responsible for the Western Australian Building
Management Authority;

NOW THEREFORE the Commission pursuant to
Regulation 12(4) of the Industrial Relations Commission
Regulations, 1985 as amended, hereby directs—

THAT service of Application Numbers 11 and 12 of
1996 need only be effected upon the Honourable Minis-
ter for Works.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

CLUB WORKERS' AWARD, 1976

No. 12 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Liquor and Allied Industries Employees' Union
of Australia, Western Australian Branch, Union of Workers
and

Kalamunda Club (Inc) and Others.

No. 993 of 1995.

Club Workers' Award, 1976

No. 12 of 1976.

COMMISSIONER R.H. GIFFORD.

11 January 1996.

Order.

HAVING heard Mr E. Fry on behalf of the Applicant and Mr G.
Blyth and Mr K. Graham on behalf of the Respondents, and by
consent, the Commission, pursuant to the powers conferred on
it under the Industrial Relations Act, 1979, hereby orders:

THAT the Club Workers' Award, 1976 be varied in ac-
cordance with the following Schedule and that such varia-
tion shall have effect from the beginning of the first pay
period commencing on or after the 9th day of January 1996.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement. Immediately following the
number and title "44. Trainees", add the following new number
and title:

45. Enterprise Flexibility

2. Clause 11.—Casual Employees. Delete subclause (3) of
this clause and insert in lieu thereof the following:

(3) A casual employee shall be paid only the following
hourly wage rates for any work performed:

	Days Other than Holidays	Holidays
	\$	\$

CLASSIFICATIONS

(total wage per hour):

(1) Chef	13.57	22.34
(2) Qualified Cook	12.60	20.72
(3) Cook Employed Alone	12.03	19.77
(4) Breakfast and/or Other Cooks	11.90	19.56
(5) Bar Attendant	12.01	19.74
(6) Cellarman	12.31	20.24
(7) Head Waiter/Waitress	12.60	20.72
(8) Head Steward/Stewardess	12.60	20.72
(9) Hostess	12.60	20.72
(10) Waiter/Waitress	11.74	19.28
(11) Steward/Stewardess	11.74	19.28
(12) Housekeeper/Supervisor	12.89	21.20
(13) Night Porter	11.62	19.09
(14) Hall Porter	11.62	19.09
(15) Lift Attendant	11.62	19.09
(16) Cashier	12.01	19.74
(17) Snack Bar Attendant	11.74	19.28
(18) Butcher	12.60	20.72
(19) Kitchenhand	11.62	19.09
(20) Commissionaire and/or Car Parking Attendant	11.62	19.09
(21) Security Officer	12.60	20.72
(22) Timekeeper	12.01	19.74
(23) Storeman	11.90	19.56
(24) Housemaid	11.62	19.09
(25) Laundress	11.62	19.09
(26) Cleaner	11.62	19.09
(27) Maintenance Man	12.60	20.72
(28) Gardener	11.62	19.09
(29) Yardman	11.62	19.09
(30) General Hand	11.62	19.09

The rates of pay in this clause include the first \$8.00
per week (21 cents per hour) arbitrated safety net adjust-
ment payable under the December 1994 State Wage De-
cision. This first \$8.00 per week (21 cents per hour)
arbitrated safety net adjustment may be offset to the ex-
tent of any wage increase as a result of agreements reached
at enterprise level since 1 November 1991. Increases made
under previous State Wage Case Principles or under the
current Statement of Principles, excepting those result-
ing from enterprise agreements, are not to be used to off-
set arbitrated safety net adjustments.

The rates of pay in this clause include the second \$8.00
per week (21 cents per hour) arbitrated safety net adjust-
ment payable under the December 1994 State Wage De-
cision. This second \$8.00 per week (21 cents per hour)
arbitrated safety net adjustment may be offset to the ex-
tent of any wage increase payable since 1 November 1991,
pursuant to enterprise agreements, consent awards or
award variations to give effect to enterprise agreements,
insofar as that wage increase has not previously been used
to offset an arbitrated safety net adjustment. Increases
made under previous State Wage Case Principles or un-
der the current Statement of Principles, excepting those
resulting from enterprise agreements, are not to be used
to offset arbitrated safety net adjustments.

3. Clause 21.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) (a) Classifications	Base Rate (per fortnight)	Supplementary payment (per fortnight)	Arbitrated Safety Net Adjustments (per fortnight)	Total Award Rate (per fortnight)
	\$	\$	\$	\$
(1) Chef	771.90	16.00	32.00	819.90
(2) Qualified Cook	719.20	16.00	32.00	767.20
(3) Cook Employed Alone	678.20	16.00	32.00	726.20
(4) Breakfast and/or Other Cooks	671.50	16.00	32.00	719.50
(5) Bar Attendant	677.20	16.00	32.00	725.20
(6) Cellarman	693.60	16.00	32.00	741.60
(7) Head Waiter/Waitress	719.20	16.00	32.00	767.20
(8) Head Steward/Stewardess	719.20	16.00	32.00	767.20
(9) Hostess	719.20	16.00	32.00	767.20
(10) Waiter/Waitress	662.50	16.00	32.00	710.50
(11) Steward/Stewardess	662.50	16.00	32.00	710.50
(12) Housekeeper/Supervisor	734.80	16.00	32.00	782.80
(13) Night Porter	656.30	16.00	32.00	704.30
(14) Hall Porter	656.30	16.00	32.00	704.30
(15) Lift Attendant	656.30	16.00	32.00	704.30
(16) Cashier	677.20	16.00	32.00	725.20
(17) Snack Bar Attendant	662.50	16.00	32.00	710.50
(18) Butcher	719.20	16.00	32.00	767.20
(19) Kitchenhand	656.30	16.00	32.00	704.30
(20) Commissionaire and/or Car Parking Attendant	656.30	16.00	32.00	704.30
(21) Security Officer	719.20	16.00	32.00	767.20
(22) Timekeeper	677.20	16.00	32.00	725.20
(23) Storeman	671.50	16.00	32.00	719.50
(24) Housemaid	656.30	16.00	32.00	704.30
(25) Laundress	656.30	16.00	32.00	704.30
(26) Cleaner	656.30	16.00	32.00	704.30
(27) Maintenance Man	719.20	16.00	32.00	767.20
(28) Gardener	656.30	16.00	32.00	704.30
(29) Yardman	656.30	16.00	32.00	704.30
(30) General Hand	656.30	16.00	32.00	704.30

(b) Supplementary Payments

Supplementary payments prescribed in this clause are in substitution of any overaward payment as defined hereunder which would otherwise have been paid as at the date of this variation to the award.

“Overaward payment” is defined as the amount (whether it be termed “Overaward payment”, “attendance bonus”, or any similar term) which an employee would receive in excess of the “award wage” for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowance and any other ancillary payments of a like nature prescribed by this award.

(c) Arbitrated Safety Net Adjustments

- (i) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.
- (ii) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

4. Clause 21A.—Minimum Wage—Adult Males and Females. Delete this clause and insert in lieu thereof the following:

21A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than the minimum rates prescribed by the Minimum Conditions of Employment Act, 1993, as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

5. Clause 44.—Trainees. Immediately after this clause, add the following new clause:

45.—ENTERPRISE FLEXIBILITY

(1) Employers and employees covered by this award may negotiate and reach agreement to apply to vary any provision of this award so as to make the enterprise or workplace operate more efficiently according to its particular needs.

(2) Employees may seek advice from, or be represented by, the union during the negotiations for an agreement.

(3) Where agreement is reached at an enterprise or workplace and where giving effect to such agreement requires this award, as it applies at the enterprise or workplace, to be varied, an application to vary the award shall be made to the Commission.

(4) A copy of the agreement shall be made available in writing to all employees at the enterprise or workplace and to the union party to this award.

(5) The union shall not unreasonably oppose the application to vary the award to give effect to the terms of the agreement.

(6) When this award is varied to give effect to an agreement made pursuant to this clause the variation shall become a schedule to this award and the variation shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.

(7) The agreement must meet the following requirements to enable the Commission to vary this award to give effect to it:

- (a) that the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;
- (b) that the majority of employees covered by the agreement genuinely agree to it;
- (c) where the union has members at the enterprise or workplace, the union has been given reasonable advice of the intention to negotiate an agreement, provided that this paragraph shall not apply where the employer could not reasonably be expected to have known the union has members at the enterprise or workplace;
- (d) that the award variation necessitated by the agreement does not in relation to their terms and conditions of employment, disadvantage the employees who would be affected by the variation.

(8) For the purposes of subclause (7) hereof, an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if:

- (a) it would result in the reduction of any entitlements or protection of those employees under:

- (i) the award; or

- (ii) any other law of the Commonwealth or State that the Commission thinks relevant; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.

(9) Nothing in this clause shall be taken as limiting the right of any party to apply to give effect to an enterprise agreement under any other provisions of the Industrial Relations Act, 1979.

**FIRE BRIGADE EMPLOYEES (WORKSHOPS)
AWARD 1983.
No. A 6 of 1981.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Fire Brigade Board
and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another.

No. 1284 of 1995.

Fire Brigade Employees (Workshops) Award 1983.
No. A 6 of 1981.

COMMISSIONER P E SCOTT.

30 January 1996.

Order.

HAVING heard Ms N Hartz and with her Ms G Marton on behalf of the Applicant and Mr G C Sturman and with him Mr B Healy on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Fire Brigade Employees (Workshops) Award 1983 as amended be further varied in the terms of the following Schedule with effect from the beginning of the first pay period commencing on or after the 12th day of January 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1. Clause 9.—Overtime: Immediately following subclause (8) of this clause, insert the following new subclause:

(9) **Out of Hours Contact**—For the purposes of maintaining adequate customer service outside of normal working hours, the employer may require employees to remain contactable outside of normal working hours in accordance with the following:

- (a) (i) An employee shall be deemed to be on-call where he or she as instructed by the employer, remains at his or her residence or is otherwise immediately contactable by telephone or paging system, outside of the employee's normal hours of duty in case of a call out requiring an immediate return to duty.
- (ii) An employee "on-call" in accordance with subparagraph (i) of paragraph (a) of this subclause shall receive an allowance equal to six times the employees' normal hourly rate for each week the employee is required to be on-call. This allowance shall be paid on a pro-rata basis for each "part week" where an employee is required to be on-call.

- (b) (i) An employee shall be deemed to be available where he or she as instructed by the employer, is contactable but not necessarily in immediate proximity to a telephone or paging system, outside the employee's normal hours of duty for recall to duty.
- (ii) An employee who is available in accordance with subparagraph (i) of paragraph (b) of this subclause shall be paid an allowance of \$44.08 for each week the employee is required to be available. This allowance shall be paid on a pro-rata basis for each "part week" where the employee is required to be available.
- (iii) An availability allowance paid regularly and in accordance with this subclause will be offset against any on call payments which may be paid from time to time.
- (iv) An availability allowance paid in accordance with this subclause shall be included in, and form part of the ordinary "all purpose" weekly wage as prescribed in Clause 19.—Wages of this Award.
- (c) Where an employee either on-call or available is recalled to duty during the period for which the employee is on-call or available, the employee shall receive payment for hours worked in accordance with the overtime provisions prescribed by this clause.

2. Clause 11.—Special Rates And Provisions:

In subclause (3) of this clause, delete the amount of "\$12.90" and insert "\$13.20" in lieu thereof.

3. Clause 13.—Annual Leave: Delete subclause (2) of this clause, and insert the following in lieu thereof:

- (2) "Ordinary wages" for an employee shall mean the rate of wage including service pay, the employee has received for the greatest proportion of the calendar month prior to taking leave. Ordinary wages shall not include any regular overtime or on call payments.

4. Clause 19.—Wages:

A. Delete subclauses (1) and (2) of this clause and insert the following in lieu thereof:

- (1) Subject to this clause, an adult employee in the classification specified in the table set out in subclause (2) hereof (other than an apprentice) shall be paid at the respective total wage rate per week assigned to that class of work.

An employee's total rate of pay is inclusive of the award rate, Arbitrated Safety Net Adjustment/s and additional payment, where applicable.

The all-purpose rate for this award shall be 1/38th of the total rate prescribed herein plus any allowances specified in this award as being all purpose.

(2) (a)

Classification	Award Rate	1st & 2nd Safety Net Adjustments	Additional Payment	Years of Service	Total Wage Per Week
	\$	\$	\$		\$
Tradesperson —					
C8 Level 3	458.89	16.00	118.70	(1-2)	593.59
			139.30	(3-8)	614.19
			166.80	(over 8)	641.69
C9 Level 2	437.98	16.00	77.30	(1)	531.28
C10 Level 3	407.00	16.00	81.10	(1)	504.10
Engineering Employee—					
C11 Level 4	385.40	16.00	57.70	(1)	459.10
C12 Level 3	364.59	16.00	21.50	(1)	402.09

- (b) (i) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the

extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

- (ii) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

B. Immediately following subclause (4) of this clause insert the following new subclause and renumber the existing subclauses (5) and (6) as (6) and (7) respectively:

- (5) (a) The employer shall pay employees an allowance for service of:
 \$5.20 in the second year of service.
 \$10.30 in the third and subsequent years of service.
 (b) This allowance shall be paid as "all purpose".

C. Subclause (6):

- I. In subparagraphs (i) and (ii) of paragraph (a) of this subclause delete the amounts of "\$9.00" and insert "\$9.20" in lieu thereof.
 II. Delete paragraph (b) of this subclause and insert the following in lieu thereof:
 (b) Any tool allowance paid pursuant to paragraph (a) hereof will be included in, and form part of, the all purpose ordinary weekly wage prescribed in this clause.

GAOL OFFICERS' AWARD No. 12 of 1968.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Prison Officers' Union of Workers

and

Hon. Attorney General.

No. 1378 of 1995.

Gaol Officers' Award No. 12 of 1968.

CHIEF COMMISSIONER W.S. COLEMAN.

24 January 1996.

Order.

HAVING heard Mr R. Stingemore on behalf of the Applicant and Ms J. Sheridan on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Gaol Officers' Award No. 12 of 1968 be varied in accordance with the following Schedule and

that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of January, 1996.

[L.S.] (Sgd.) W.S. COLEMAN,
 Chief Commissioner.

Schedule.

Clause 18.—Rates of Pay: Delete this clause and insert in lieu thereof the following:

The Rates of Pay in this Award include the second \$8.00 per week Arbitrated Safety Net Adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements insofar as that wage increase has not previously been used to offset Arbitrated Safety Net Adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset Arbitrated Safety Net Adjustments.

Title Rank	Existing Salary \$	Second Arbitrated Safety Net Adjustment \$	Total Per Annum \$	Total Weekly Rate \$
(a) Trainee Prison Officers	23409.00	417	23826.00	456.73
(b) Prison Officers				
Mon-Fri				
1st Year	27147.00	417	27564.00	528.39
2nd Year	28274.00	417	28691.00	549.99
3-7 Year	29693.00	417	30110.00	577.19
Thereafter	30528.00	417	30945.00	593.19
Shifts				
1st Year	35607.00	417	36024.00	690.56
2nd Year	37168.00	417	37585.00	720.48
3-7 Years	39065.00	417	39482.00	756.84
Thereafter	40188.00	417	40605.00	778.37
Drivers—Casuarina				
1st Year	33666.00	417	34083.00	653.35
2nd Year	35066.00	417	35483.00	680.19
3-7 Year	36816.00	417	37233.00	713.73
Thereafter	37866.00	417	38283.00	733.86
Drivers—CW Campbell Remand Centre				
1st Year	31124.00	417	31541.00	604.62
2nd Year	32417.00	417	32834.00	629.41
3-7 Year	34033.00	417	34450.00	660.38
Thereafter	35003.00	417	35420.00	678.98
Alternate Weekends				
1st year	31516.00	417	31933.00	612.13
2nd Year	32958.00	417	33375.00	639.78
3-7 Year	34505.00	417	34922.00	669.43
Thereafter	35449.00	417	35866.00	687.53
Alternative Weekends—Relief				
1st Year	32077.00	417	32494.00	622.89
2nd Year	33410.00	417	33827.00	648.44
3-7 Year	35077.00	417	35494.00	680.40
Thereafter	36076.00	417	36493.00	699.55
Prison Officers Shift—No Additional Shift				
1st Year	33871.00	417	34288.00	657.28
2nd Year	35354.00	417	35771.00	685.71
3-7 Year	37158.00	417	37575.00	720.29
Thereafter	38226.00	417	38643.00	740.76

Title Rank	Existing Salary \$	Second Arbitrated Safety Net Adjustment \$	Total Per Annum \$	Total Weekly Rate \$	Title Rank	Existing Salary \$	Second Arbitrated Safety Net Adjustment \$	Total Per Annum \$	Total Weekly Rate \$
First Class Prison Officers					Canning Vale Prison				
Mon-Fri	31383.00	417	31800.00	609.58	Canteen	34151.00	417	34568.00	662.65
Shift	41247.00	417	41664.00	798.67	Wooroloo Canteen	33228.00	417	33645.00	644.95
Industrial Officer Group 2					Metropolitan Security Unit—Dog Unit	39493.00	417	39910.00	765.05
Mon-Fri					Albany Activities	34612.00	417	35029.00	671.48
1st Year	32510.00	417	32927.00	631.19	Bandyup Activities	37814.00	417	38231.00	732.86
2nd Year	33345.00	417	33762.00	647.19	Bunbury Activities	36918.00	417	37335.00	715.69
3rd Year	34179.00	417	34596.00	663.18	EAGO Activities	38301.00	417	38718.00	742.20
Thereafter	35035.00	417	35452.00	679.59	Greenough Activities	38895.00	417	39312.00	753.58
Mon-Fri + Public Holidays					Karnet Activities	38607.00	417	39024.00	748.06
1st Year	33466.00	417	33883.00	649.51	Wooroloo Activities	37855.00	417	38272.00	733.65
2nd Year	34335.00	417	34752.00	666.17	Canning Vale Prison Reception	35657.00	417	36074.00	691.51
3rd Year	35205.00	417	35622.00	682.85	CW Campbell Remand Centre—Reception	37076.00	417	37493.00	718.72
Thereafter	36075.00	417	36492.00	699.53	(c) Senior Officers				
Alternate Weekends					Mon-Fri				
1st Year	37782.00	417	38199.00	732.25	1st Year	32510.00	417	32927.00	631.19
2nd Year	38727.00	417	39144.00	750.36	2nd Year	33345.00	417	33762.00	647.19
3rd Year	39698.00	417	40115.00	768.98	3rd Year	34179.00	417	34596.00	663.18
Thereafter	40700.00	417	41117.00	788.19	Thereafter	35035.00	417	35452.00	679.59
Alternate Weekends + Self Relief					Shift				
1st Year	38409.00	417	38826.00	744.27	1st Year	42592.00	417	43009.00	824.45
2nd Year	39409.00	417	39826.00	763.44	2nd Year	43798.00	417	44215.00	847.57
3rd Year	40409.00	417	40826.00	782.61	3rd Year	44909.00	417	45326.00	868.87
Thereafter	41409.00	417	41826.00	801.78	Thereafter	46022.00	714	46439.00	890.20
East Perth Lock Up					Security—Albany				
1st Year	35958.00	417	36375.00	697.28	1st Year	39390.00	417	39807.00	763.07
2nd Year	36893.00	417	37310.00	715.21	2nd Year	40415.00	417	40832.00	782.72
3rd Year	37828.00	417	38245.00	733.13	3rd Year	41441.00	417	41858.00	802.39
Thereafter	38763.00	417	39180.00	751.05	Thereafter	42466.00	417	42883.00	822.04
Metropolitan Security Unit—Dog Unit					Security—Canning Vale Prison				
1st Year	40914.00	417	41331.00	792.29	1st Year	39390.00	417	39807.00	763.07
2nd Year	41980.00	417	42397.00	812.72	2nd Year	40415.00	417	40832.00	782.72
3rd Year	43047.00	417	43464.00	833.18	3rd Year	41441.00	417	41858.00	802.39
Thereafter	44112.00	417	44529.00	853.59	Thereafter	42466.00	417	42883.00	822.04
Bunbury Cook Instructors					Reception—Canning Vale Prison				
1st Year	40452.00	417	40869.00	783.43	1st Year	37592.00	417	38009.00	728.61
2nd Year	41505.00	417	41922.00	803.62	2nd Year	38570.00	417	38987.00	747.35
3rd Year	42559.00	417	42976.00	823.82	3rd Year	39549.00	417	39966.00	766.12
Thereafter	43613.00	417	44030.00	844.03	Thereafter	40527.00	417	40944.00	784.87
Kitchen—Canning Vale Prison					Reception—CW Campbell Remand Centre				
1st Year	36366.00	417	36783.00	705.11	1st Year	37592.00	417	38009.00	728.61
2nd Year	37312.00	417	37729.00	723.24	2nd Year	38593.00	417	39010.00	747.80
3rd Year	38258.00	417	38675.00	741.37	3rd Year	39574.00	417	39991.00	766.60
Thereafter	39204.00	417	39621.00	759.51	Thereafter	40553.00	417	40970.00	785.37
Hospital Officers					Senior Officer Training				
1st Year	50143.00	417	50560.00	969.20	1st Year	40511.00	417	40928.00	784.56
2nd Year	51278.00	417	51695.00	990.96	2nd Year	41658.00	417	42075.00	806.55
Thereafter	52784.00	417	53201.00	1019.83	3rd Year	42714.00	417	43131.00	826.79
Senior Hospital Officer	40966.00	417	40383.00	793.28	Thereafter	43772.00	417	44189.00	847.07
Industrial Officer Group 1					(d) In addition to the rates prescribed above, any Officer or Industrial Officer attaining First Class status prior to 12 November, 1987 shall be paid an additional \$8.00 per week.				
Mon-Fri	31383.00	417	31800.00	609.58					
Mon-Fri + Public Holidays									
Holidays	32306.00	417	32723.00	627.28					
Alternate Weekends	36276.00	417	36693.00	703.38					
Alternate Weekends with Reliefs	37076.00	417	37493.00	718.72					
Bunbury/Casuarina Canteen	35381.00	417	35798.00	686.22					

HOTEL AND TAVERN WORKERS' AWARD, 1978.
No. R31 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Liquor and Allied Industries Employees' Union
of Australia, Western Australian Branch, Union of Workers
and

Sheraton Perth Hotel and Others.

No. 994 of 1995.

Hotel and Tavern Workers' Award, 1978.
No. R 31 of 1977.

COMMISSIONER R.H. GIFFORD.

11 January 1996.

Order.

HAVING heard Mr E. Fry on behalf of the Applicant and Mr G. Blyth on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Hotel and Tavern Workers' Award, 1978 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 9th day of January 1996.

(Sgd.) R. H. GIFFORD,

[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement. Immediately following the number and title "45. Trainees", add the following new number and title:

46. Enterprise Flexibility

2. Clause 11.—Casual Employees. Delete subclause (3) of this clause and insert in lieu thereof the following:

(3) A casual employee shall be paid only the following hourly wage rates for any work performed:

CLASSIFICATIONS (total wage per hour):	Days	
	Other than Holidays \$	Holidays \$
(1) Chef	13.57	22.34
(2) Qualified Cook	12.60	20.72
(3) Cook Employed Alone	12.03	19.77
(4) Breakfast and/or Other Cooks	11.90	19.56
(5) Bar Attendant— Category 1	12.01	19.74
(6) Bar Attendant— Category 2	12.25	20.13
(7) Cellarman	12.31	20.24
(8) Head Waiter/Waitress	12.60	20.72
(9) Head Steward/Stewardess	12.60	20.72
(10) Hostess	12.60	20.72
(11) Waiter/Waitress	11.74	19.28
(12) Steward/Stewardess	11.74	19.28
(13) Housekeeper/Supervisor	12.89	21.20
(14) Night Porter	11.62	19.09
(15) Hall Porter	11.62	19.09
(16) Lift Attendant	11.62	19.09
(17) Cashier	12.01	19.74
(18) Snack Bar Attendant	11.74	19.28
(19) Butcher	12.60	20.72
(20) Kitchenhand	11.62	19.09
(21) Commissionaire and/or Car Parking Attendant	11.62	19.09
(22) Security Officer	12.60	20.72
(23) Timekeeper	12.01	19.74
(24) Storeman	11.90	19.56
(25) Housemaid	11.62	19.09
(26) Laundress	11.62	19.09
(27) Cleaner	11.62	19.09

CLASSIFICATIONS

(total wage per hour):

	Days Other than Holidays \$	Holidays \$
(28) Maintenance Man	12.60	20.72
(29) Gardener	11.62	19.09
(30) Yardman	11.62	19.09
(31) General Hand	11.62	19.09

The rates of pay in this clause include the first \$8.00 per week (21 cents per hour) arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This first \$8.00 per week (21 cents per hour) arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this clause include the second \$8.00 per week (21 cents per hour) arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week (21 cents per hour) arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

3. Clause 21.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) (a) Classifications	Base Rate (per fortnight) \$	Supple- mentary payment (per fortnight) \$	Arbitrated Safety Net Adjustments (per fortnight) \$	Total Award Rate (per fortnight) \$
(1) Chef	771.90	16.00	32.00	819.90
(2) Qualified Cook	719.20	16.00	32.00	767.20
(3) Cook Employed Alone	678.20	16.00	32.00	726.20
(4) Breakfast and/or Other Cooks	671.50	16.00	32.00	719.50
(5) Bar Attendant— Category 1	677.20	16.00	32.00	725.20
(6) Bar Attendant— Category 2	690.00	16.00	32.00	738.00
(7) Cellarman	693.60	16.00	32.00	741.60
(8) Head Waiter/Waitress	719.20	16.00	32.00	767.20
(9) Head Steward/Stewardess	719.20	16.00	32.00	767.20
(10) Hostess	719.20	16.00	32.00	767.20
(11) Waiter/Waitress	662.50	16.00	32.00	710.50
(12) Steward/Stewardess	662.50	16.00	32.00	710.50
(13) Housekeeper/Supervisor	734.80	16.00	32.00	782.80
(14) Night Porter	656.30	16.00	32.00	704.30
(15) Hall Porter	656.30	16.00	32.00	704.30
(16) Lift Attendant	656.30	16.00	32.00	704.30
(17) Cashier	677.20	16.00	32.00	725.20
(18) Snack Bar Attendant	662.50	16.00	32.00	710.50
(19) Butcher	719.20	16.00	32.00	767.20
(20) Kitchenhand	656.30	16.00	32.00	704.30
(21) Commissionaire and/or Car Parking Attendant	656.30	16.00	32.00	704.30
(22) Security Officer	719.20	16.00	32.00	767.20
(23) Timekeeper	677.20	16.00	32.00	725.20
(24) Storeman	671.50	16.00	32.00	719.50
(25) Housemaid	656.30	16.00	32.00	704.30
(26) Laundress	656.30	16.00	32.00	704.30
(27) Cleaner	656.30	16.00	32.00	704.30
(28) Maintenance Man	719.20	16.00	32.00	767.20
(29) Gardener	656.30	16.00	32.00	704.30
(30) Yardman	656.30	16.00	32.00	704.30
(31) General Hand	656.30	16.00	32.00	704.30

(b) Supplementary Payments

Supplementary payments prescribed in this clause are in substitution of any overaward payment as defined hereunder which would otherwise have been paid as at the date of this variation to the award.

"Overaward payment" is defined as the amount (whether it be termed "Overaward payment", "attendance bonus", or any similar term) which an employee would receive in excess of the "award wage" for the classification in which such employee is engaged. Provided that such payment shall exclude

overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowance and any other ancillary payments of a like nature prescribed by this award.

(c) Arbitrated Safety Net Adjustments

- (i) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.
- (ii) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

4. Clause 21A.—Minimum Wage—Adult Males and Females. Delete this clause and insert in lieu thereof the following:

21A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than the minimum rates prescribed by the Minimum Conditions of Employment Act, 1993, as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

5. Clause 45.—Trainees. Immediately after this clause, add the following new clause:

46.—ENTERPRISE FLEXIBILITY

- (1) Employers and employees covered by this award may negotiate and reach agreement to apply to vary any provision of this award so as to make the enterprise or workplace operate more efficiently according to its particular needs.
- (2) Employees may seek advice from, or be represented by, the union during the negotiations for an agreement.
- (3) Where agreement is reached at an enterprise or workplace and where giving effect to such agreement requires this award, as it applies at the enterprise or workplace, to be varied, an application to vary the award shall be made to the Commission.
- (4) A copy of the agreement shall be made available in writing to all employees at the enterprise or workplace and to the union party to this award.
- (5) The union shall not unreasonably oppose the application to vary the award to give effect to the terms of the agreement.

- (6) When this award is varied to give effect to an agreement made pursuant to this clause the variation shall become a schedule to this award and the variation shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.
- (7) The agreement must meet the following requirements to enable the Commission to vary this award to give effect to it:
- (a) that the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;
- (b) that the majority of employees covered by the agreement genuinely agree to it;
- (c) where the union has members at the enterprise or workplace, the union has been given reasonable advice of the intention to negotiate an agreement, provided that this paragraph shall not apply where the employer could not reasonably be expected to have known the union has members at the enterprise or workplace;
- (d) that the award variation necessitated by the agreement does not in relation to their terms and conditions of employment, disadvantage the employees who would be affected by the variation.
- (8) For the purposes of subclause (7) hereof, an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if:
- (a) it would result in the reduction of any entitlements or protection of those employees under:
- (i) the award; or
- (ii) any other law of the Commonwealth or State that the Commission thinks relevant; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.
- (9) Nothing in this clause shall be taken as limiting the right of any party to apply to give effect to an enterprise agreement under any other provisions of the Industrial Relations Act, 1979.

**MEAT INDUSTRY (STATE) AWARD, 1980
No. R9 of 1979.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australasian Meat Industry Employees' Union, Industrial
Union of Workers, West Australian Branch

and

Action Food Barns (WA) Pty Ltd and Others.

No. 1086 of 1995.

Meat Industry (State) Award, 1980
No. R9 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

11 January 1996.

Reasons for Decision.

SENIOR COMMISSIONER: This is an application to vary the Meat Industry (State) Award, 1980 No. R9 of 1979 to incorporate the second \$8.00 per week Safety Net Adjustment. The application was by consent of the parties with the exception of the wage rates for tally workers. When the Meat Indus-

try (State) Award was varied for the first \$8.00 per week Safety Net Adjustment, the parties, by consent, reserved the issue of tally work wage rates to await a decision on that issue by the A.I.R. Commission. On the 5th December, 1994, Mr Justice Boulton issued a decision (Print L 7360) which determined that issue in relation to tally workers in respect to some ten (10) federal meat industry awards.

The union's contention in this matter is simply that Boulton J. has determined the issue in principle and this Commission should follow that principle. Set out hereunder in full, are the reasons for decision of Boulton J. relied upon by the Union in the present case:

"In the present applications the Union has sought the variation of the awards so that the \$8 adjustment will apply to the loading for regular daily employees and to above minimum tally payments. It was submitted by the Union that the first safety net adjustment should be applied to the awards in the same way as other flat rate national wage increases have been applied in the past. This was opposed by MATFA and the employers appearing in the proceedings. It was submitted by MATFA that the safety net adjustment should be a flat amount of \$8 per week for workers covered by the awards and should not be compounded in relation to regular daily employees and employees in receipt of tally payments. If it was, then it was said that for some workers the effective safety net increase in these awards would be up to \$11.55 per week.

The application of flat rate national wage increases in meat industry awards was considered by Deputy President Riordan in two decisions relating to the structural efficiency principle established in the August 1989 National Wage Case decision [Print H9100]. In his decision of 24 April 1990 relating to the first structural efficiency increase [Print J1915], the Deputy President rejected an argument by employers regarding the compounding effect of the increase in respect of regular daily employees and pieceworkers. The Deputy President said:

"An issue has arisen in relation to what was called the compounding effect of the increased wage rates in respect of persons engaged on piecework schemes and those who are employed on the basis of "regular daily hire" for which a loading of 10% is paid. There is no merit in the expressed concern in respect of these matters.

No reference was made to any decision of any industrial tribunal by which this effect was redressed. There can be no doubt that such a compounding effect is widespread. Once the base rate in any award is adjusted there some compounding of the increase in relation to penalty rates paid for overtime, shift work, work on holidays, Saturdays and Sundays and for casual work. Similarly annual leave loading, contributions for the provision of superannuation and other matters are affected on each and every occasion the base rate is altered. This fact could not have escaped the knowledge of National Wage Case Full Benches over the years and no restriction has been placed on the application of the various increases awarded. In the circumstances the employers' concern is not adopted and there will be no alteration to the proposed increased rates to offset this effect."

A similar approach was adopted by the Deputy President in relation to the second structural efficiency increase in the awards [see Print J6776].

In the present proceedings it was submitted by MATFA that the Commission should depart from the above approach because of a number of developments since 1991. The developments include the Meat Industry Inquiry decision of 17 June 1992 and the intention in that decision that minimum rates time work awards should be put in place. It was submitted that in such awards the compounding effect now complained of (at least in relation to tally payments) would not arise. Further, MATFA relied upon what was said to be the intention of the Commission in awarding the \$8 safety net adjustments in the September 1994 decision. In this regard, reference was made in particular to the following passages in the decision:

"Our decision will ensure that all employees covered by Federal awards will receive a minimum wage increase

of \$24 per week over a period of more than four and a half years from 1 November 1991 to 1 July 1996.

Such increases will arise through either enterprise bargaining or access to the arbitrated safety net adjustments made available as a result of this decision." [Print L5300, pp.23-24].

And later:

"The form of the adjustments we have determined is on a flat dollar basis rather than as percentage increases. This is because flat dollar increases generally provide greater assistance to employees on lower wage rates while not incurring the aggregate labour cost impact of a percentage increase for all employees equivalent to that provided to lower paid employees." [Print L5300,p34].

Reference was also made to the relevant principles attached to the decision including that which deals with the form of order to give effect to safety net adjustments and which provides (inter alia) that:

"A safety net adjustment at award level should specify a separate 'arbitrated safety net' amount for each classification in the award". [Print L5300,p.69].

I have carefully considered the submissions of the parties regarding the way in which the first arbitrated safety net adjustment available under the September 1994 decision should be applied in the meat industry awards. In all the circumstances I have decided that it is preferable, in the absence of agreement between the parties, that the approach which has been applied by the Commission in the past with respect to flat rate national wage adjustments in the meat industry awards be continued at this stage and in relation to the first adjustment.

In order to give effect to the intent of the September 1994 decision in the meat industry awards, the first adjustment should be applied to the classification rates in the awards. By virtue of existing provisions in awards, these rates include a daily hire loading of 10% and are the basis for the calculation of above minimum tally payments. To the extent that this approach results in some compounding of the \$8 adjustment in relation to certain employees, it is justified having regard to the nature and circumstances of employment under meat industry awards, the structure and operation of existing award provisions and the similar impact of safety net adjustments on entitlements such as casual loadings in other awards.

In so deciding, it is noted that the special nature of employment in the meat industry was recognised by the Commission in the Meat Industry Inquiry decision. The Full Bench in that decision suggested that weekly employment on a permanent basis should be encouraged and that "employees in the meat industry should be given the same degree of security and associated benefits as employees in almost every other industry covered by awards of the Commission." [Print K3313,p.9]

Further the Full Bench decided that there should be three minimum rates awards covering the retail, smallgoods and processing sectors and that the awards should be based on time work. It said that:

"The minimum rates award for the processing sector should contain a provision under which it is clear that an employer and his employees and their union may agree on the introduction of an incentive payments scheme based on productivity performance. That provision should also provide a minimum level of earnings under that incentive payments scheme. ... Details of such incentive pay schemes are appropriately covered by enterprise agreements." [Print K3313,p.13]

In the Review of Wage Fixing Principles August 1994 decision [Print L4700], the Commission made the following comments in relation to Payment by Results systems:

"The issue of payment by results (PBR) was also raised by a number of parties. For example, the ACTU sought a statement of guidance from the Commission regarding the equitable operation of PBR schemes in the context of a wages system based on safety net adjustments. ACCI and ACM supported by other employers indicated they were not opposed to the review of PBR arrangements but

considered such a review ought to take place on an award by award basis, possibly through reviews pursuant to s.150A.

The Commission considers that given the diverse nature of such schemes any review should be dealt with on a case by case basis in the context of the applicable PBR arrangement. In conducting such reviews regard should be had to the need to ensure that (in the context of a system under which awards may be reviewed and adjusted from time to time to ensure that they are maintained at a relevant level) the scheme in question operates equitably and that the incentive nature of the scheme is maintained.” [Print L4700,p.32]

Having regard to the abovementioned statements and comments, the relationship between safety net adjustment and daily loadings, tallies and incentive rates of pay in the meat industry awards should be further considered by the parties as part of the review of the awards.

It was submitted by MATFA and by the Smorgon Meat Group that the first adjustment should not be applied to certain awards. In relation to the Federal Meat Processing (St. George Abattoir) Award 1989 it was said that the plant has not been operating for approximately 12 months and that the award is under appeal and a stay order has been made [Print L6283]. In these circumstances, it is appropriate to await the outcome of the appeal and/or the lifting of the stay before varying the award in accordance with this decision. In relation to the Meat Processing (The Angliss Group) Award 1981 and the S.E. Meat (Aust.) Limited Interim Industrial Agreement Award 1989 I am satisfied that, despite the circumstances raised in relation to those awards by the Smorgon Group, the awards should be varied to include the first adjustment as the requirements of the current principles have been met. As indicated earlier in this decision, the parties may seek the assistance of the Commission in relation to problems arising with enterprise negotiations. Further, the finalisation of enterprise agreements does not mean that safety net provisions should no longer be maintained in awards covering the relevant plants.

Conclusion and Orders

For the above reasons, the meat industry awards will be varied to include the first arbitrated safety net adjustment in accordance with the September 1994 decision. The variations will operate from the first pay period to commence on or after the date of this decision.”

(Print L7360)

The application is strongly opposed by MATFA. Mr Darcy contending inter alia as follows:

“Federal award in the meat industry is totally devoid from the operations of a State award in Western Australia. Those factors must be taken into consideration in applying—or the purpose of applying the \$8 safety net adjustment.

The claim in the Federal Meat Industry Award where they made it all-purpose, there was argument used that the compounding effect would increase the \$8 under the Federal award to an amount of about \$11.55—is the figures quoted in that decision. In effect, in Western Australia, if such a decision was to be granted in the same vain, this increase would not be \$11.55 but, in actual fact, it would amount to some \$20 — in excess of \$20 increase per week. If it was to be compounded with two \$8's, in which I understand Mr Kucera is seeking: both \$8's to come all-purpose to the first one which was granted in April of 84, and the one to date; this would increase the cost to some 40 to \$50.

When one goes through the decision of the Federal Commission—decision of Bolton J, there is a lost of argument there regarding daily hire. There is talk about the operations of a Federal award. These types of arrangements do not operate in the Western Australian system. To outline that: in the Federal system we have minimum and maximum tallies. Maximum tally being a quarter of the over-tally—being a quarter in excess of tally. In W.A. it is quite common, and attempts are always made to work in excess of double tally per day. We also point out the

mode of tally payment is not payment for overtime. It is an incentive payment that is earned in ordinary hours. It is not earned in over-time. We are not questioning the rights of all-purpose for the purposes of time workers, where it would apply in over-time.

We are looking at a totally unique situation that people that are working and earning their income within the normal span of hours and this \$8 being compounded substantially. The industry currently is experiencing extremely hard times and an additional burden, which this would incur, of making the rate an all-purpose rate for the purposes of over-tally, would put the industry in dire straits, I believe, and could possible lead to further closures.

...

I believe that the commission has the power in exceptional circumstances to grant what either party want in a particular case, but I would really seek the assistance of the commission in this way: in granting the order in the terms that were outlined by the Meat and Allied Trades in their responses, and that the rate not to be as an all-purpose rate for the purposes of over-tally.”

(Transcript pages 7 & 8)

(My Emphasis)

Simply stated, the basis of Mr Darcy's concern is that the wage rate adjustment not become the all purpose rate for purposes of over-tally calculations. This is highlighted in the following exchange:

“SENIOR COMMISSIONER: Mr Darcy, so I am absolutely clear: most of what you just said to me dealt with over-tally payments - - -

DARCY MR: That is correct.

SENIOR COMMISSIONER: - - - as distinct from calculation of tally itself. Do you still make - - - are you saying to me that the \$8 adjustment is okay for tally in the way the union - - -

DARCY MR: Yes. What I am saying, sir - - -

SENIOR COMMISSIONER: - - - in the way the union proposes it, but it is not okay for the reasons you have advanced in respect of over-tally?

DARCY MR: Yes. I am saying, for the purposes - - - if an employee was to - - - simple English - - - if he was to only work tally for a week, the \$16 would apply, but where he receives an over-tally payment, that money would be diminished accordingly. So it would not apply in any over-tallies whatsoever - - the \$8. If the person was to have a public holiday fall in that period, he would receive the benefit of what a day of \$8 is worth, which I think it came out to be, counting both increases, would be \$3.20. So if he was on sick leave, annual leave or any of those purposes he would receive the safety net adjustments accordingly - - -”

(Transcript Page 9)

A consideration of the reasons for decision of the Commission in Court Session in the 1992, 1993 and 1994 State Wage Case decisions (72 WAIG @ 191, 74 WAIG @ 198 and 75 WAIG @ 23) make it plain, that two of the fundamental purposes of the award Safety Net Wage Adjustments was that lower paid employees and employees who had not benefited from bargained wage increases should receive a flat wage increase. However, as Justice Boulton records (Print L7360 @ page 7), “If it was then it was said that for some workers the effective Safety Net increase in the awards would be up to \$11.55 per week”.

In the Meat Industry (State) Award, 1980 No. R9 of 1979, the effect of two Safety Net increases would produce an increase of up to \$40 per week for tally workers.

In the Commission's view, such a result was never intended under the Principles contained in the State Wage Case decisions (supra). Basically, the level of the monetary increase is brought about here by the completion of tally usually in three (3) to five hours of work depending on the type of animal being processed. In this context, over-tally is not an overtime payment. It is a true incentive payment and this is the basic difference between the Federal and State Awards.

For the above reasons, the Commission concludes that the application so far, as it relates to the all-purpose rate for over-tally purposes be refused.
Appearances: Mr T. Kucera appeared on behalf of the applicant.

Mr M. Darcy appeared on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australasian Meat Industry Employees' Union, Industrial
Union of Workers, West Australian Branch

and

Action Food Barns (WA) Pty Ltd and Others

No. 1086 of 1995.

Meat Industry (State) Award, 1980.

No. R9 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

11 January 1996.

Order.

HAVING heard Mr T. Kucera on behalf of the Applicant and Mr M. Darcy on behalf of the Respondents the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application so far as it seeks a variation of the all-purpose rate for over-tally be dismissed.

[L.S] (Sgd.) G.G. HALLIWELL,
Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australasian Meat Industry Employees' Union, Industrial
Union of Workers, West Australian Branch

and

Action Food Barns (WA) Pty Ltd and Others

No. 1086 of 1995.

Meat Industry (State) Award, 1980

No. R9 of 1979.

SENIOR COMMISSIONER G.G. HALLIWELL.

3 January 1996.

Order.

HAVING heard Mr T. Kucera on behalf of the Applicant, Mr J. Uphill on behalf of the members of the Chamber of Commerce and Industry of Western Australia and Mr M. Darcy on behalf of the members of the Meat and Allied Trades Federation of Australia (Western Australian Division) and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Meat Industry (State) Award, 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 8th day of December, 1995.

[L.S] (Sgd.) G.G. HALLIWELL,
Senior Commissioner.

Schedule.

Clause 9.—Rates of Wages: Delete this clause and insert in lieu thereof the following:

9.—RATES OF WAGES

The following are the minimum rates of wages payable to employees covered by this Award and shall include the second Arbitrated Safety Net Adjustment of \$8.00 per week as expressed hereunder.

The second \$8.00 Safety Net Adjustment shall be absorbed against any amount currently paid, whether by overaward payment or enterprise agreement in excess of the rates of pay expressed hereunder.

The provisions of the \$16.00 per week Arbitrated Safety Net Adjustments shall not apply to calculations of tally or overtally payments as provided for in Clause 29.—Work of Employees in Boning Rooms and Clause 30.—Work of Employees in Slaughtering. Sections of this Award, except when only tally is paid on any one day, in which case the base daily rate shall increase by \$3.20 for that day.

The minimum rates of wages set out hereunder shall be payable for all purposes of the Award and operate from the first pay period commencing or after the 8th day of December, 1995.

(1) Adult employees in retail establishments
(other than supermarkets)

	Base Rate \$	Safety Net Adjustment \$	Minimum Rate \$
(a) First Shopperson—in shop employing two or up to five employees inclusive	378.20	16.00	394.20
(b) First Shopperson—in shop employing more than five employees	382.50	16.00	398.50
(c) General Butcher	375.40	16.00	391.40
(d) Smallgoodsperson	375.40	16.00	391.40
(e) Filler Operator	336.50	16.00	352.50
(f) Linker and Table Hand	336.50	16.00	352.50
(g) Salesperson	351.30	16.00	367.30
(h) Cashier	344.20	16.00	360.20
(i) Wrapper and Packer	335.00	16.00	351.00
(j) Counterhand	335.00	16.00	351.00
(k) Cleaner	326.00	16.00	342.00
(l) When a General Butcher is required by the employer to accept temporary responsibility additional to his/her normal duties he/she shall be paid the rate equal to a First Shopperson as specified in this subclause.			

(2) Adult employees (supermarkets)

(a) Supermarket Butcher	414.70	16.00	430.70
(b) Wrapper, Packer, Pricer, Cabinet Attendant	355.20	16.00	371.20
(c) Cleaner	326.00	16.00	342.00

(3) Employees in meat auctions, wholesale, contract carterers, prefacing and export processing establishments

(a) General Butcher	360.50	16.00	376.50
(b) Boner	363.90	16.00	379.90
(c) Slicer	344.50	16.00	360.50
(d) Carcass Pretrimmer	330.50	16.00	346.50
(e) Electric Meat Saw Operator	314.60	16.00	330.60
(f) Meat Lumper (Auction Room)	331.40	16.00	347.40
(g) Filler Operator	324.90	16.00	340.90
(h) Chiller Hand	322.60	16.00	338.60
(i) Strapping or Wiring Machine Operator	314.60	16.00	330.60

	Base Rate \$	Safety Net Adjustment \$	Minimum Rate \$		Base Rate \$	Safety Net Adjustment \$	Minimum Rate \$
(j) Operator of Electric Wizard Knife	314.60	16.00	330.60	(e) By-products Employee not otherwise classified	314.60	16.00	330.60
(k) Spotter or Quality Control Tester	333.20	16.00	349.20	(6) Drivers of motor vehicles			
(l) Employee in Prefacing Section whose work includes pricing	323.60	16.00	339.60	(a) Not exceeding 1.2 tonnes capacity	343.10	16.00	359.10
(m) Wrapper and Packer	323.60	16.00	339.60	(b) Exceeding 1.2 tonnes and not exceeding 3 tonnes capacity	346.10	16.00	362.10
(n) Carton Room Employee, being an employee who makes up cartons, stockinets, hessian wraps or polythene or who stencils cartons	314.60	16.00	330.60	(c) Exceeding 3 tonnes and under 6 tonnes capacity	349.80	16.00	365.80
(o) General Hand	314.60	16.00	330.60	For each complete tonne over 5 tonnes capacity 87 cents additional margin, provided that the maximum shall not exceed \$13.11.			
(4) Employees in saleyards and slaughtering establishments				(d) Driver of Fork Lift	349.80	16.00	365.80
(a) (i) Slaughterperson (on rail beef)	378.10	16.00	394.10	(e) Driver of articulated vehicle Exceeding 8 tonnes capacity	362.60	16.00	378.60
(ii) Slaughterperson (on rail mutton chain and dead rail system)	363.90	16.00	379.90	For each complete additional tonne, 58 cents additional margin, provided that the maximum amount shall not exceed \$12.02.			
(iii) Slaughterman (solo)	363.90	16.00	379.90	Drivers of loaded motor vehicles (except tractors) drawing a loaded trailer (not to include a mechanical horse), \$1.45 per day extra.			
(b) Critter or Dagger	345.70	16.00	361.70	(f) Driver of Tractor	348.80	16.00	364.80
(c) Head Skinner (when not part of slaughtering duties)	336.70	16.00	352.70	(7) Employees in freezers			
(d) Trimmer	330.50	16.00	346.50	(a) Freezer Hand (i.e., an employee who is required to work in a temperature between minus 15 degrees Celsius (4 degrees Fahrenheit) and 0 degrees Celsius (32 degrees Fahrenheit))	331.40	16.00	347.40
(e) Dehorner and Tonga	330.50	16.00	346.50	(b) Employees required to work in a temperature below minus 16 degrees Celsius (4 degrees Fahrenheit) shall be paid \$1.45 per day extra; provided that if the temperature is below minus 18 degrees Celsius (0 degrees Fahrenheit), he/she shall be paid \$2.80 per day extra; and if the temperature is below minus 23 degrees Celsius (minus 10 degrees Fahrenheit), he/she shall be paid \$5.60 per day extra.			
(f) Jaw Puller, Head Trimmer and Head Splitter	330.50	16.00	346.50	(8) Employees in bacon curing and smallgoods making establishments			
(g) Head Splitter (Mutton or Goats)	330.50	16.00	346.50	(a) Pork Slaughtering and Breaking Up Sections:			
(h) Tally Clerk	329.90	16.00	345.90	Slaughterperson	363.90	16.00	379.90
(i) Viscera Separator	326.70	16.00	342.70	Flair Puller	331.00	16.00	347.00
(j) Hide Salter	325.00	16.00	341.00	Scales Clerk	329.60	16.00	345.60
(k) (i) Skin Shed Hand	320.40	16.00	336.40	Stockperson and/or Penner Up	320.00	16.00	336.00
(ii) Classer and/or Grader of Skins	388.10	16.00	404.10	Chiller Labourer	322.60	16.00	338.60
(l) Gambrel and Spreader Inserter	324.00	16.00	340.00	Labourer on Slaughter Floor	314.60	16.00	330.60
(m) Operator of Rumblier Cleaning Roller and Skids	324.00	16.00	340.00	Boner	363.90	16.00	379.90
(n) Spray Washer	321.40	16.00	337.40	Breaking Up Hand	335.40	16.00	351.40
(o) Weight Recorder	319.70	16.00	335.70	Trimmer	335.40	16.00	351.40
(p) Brander (including labelling of carcass)	314.60	16.00	330.60	Knife Hand, trimming meat pieces and bones received from the pork breaking up team	335.40	16.00	351.40
(q) Stockperson or Penner Up	319.90	16.00	335.90	Viscera Separator	326.70	16.00	342.70
(r) Chiller Hand	322.50	16.00	338.50	General Hand	314.60	16.00	330.60
(s) Watchperson or Caretaker	314.60	16.00	330.60	Intrascoper Operator	329.90	16.00	345.90
(t) Laundry Hand	314.60	16.00	314.60				
(u) Canteen Employee	314.60	16.00	330.60				
(v) General Hand	314.60	16.00	330.60				
(w) Quality Standards Officer (Aus Meat)	333.20	16.00	349.20				
(x) Scale System Operator	329.90	16.00	345.90				
(y) Grader	333.20	16.00	349.20				
(5) Employees in by-products processing establishments							
(a) Operator of Continuous Rendering Processing Plant	334.50	16.00	350.50				
(b) Blood Cooker or Separator Operator	326.30	16.00	342.30				
(c) Employee in Condemned Area	326.30	16.00	342.30				
(d) Operator of Hasher Washer	314.60	16.00	330.60				

	Base Rate \$	Safety Net Adjustment \$	Minimum Rate \$
(b) Curing Section:			
Making Pickle and/or Pickle Pumper	335.40	16.00	351.40
Bacon and Ham Turner	323.20	16.00	339.20
Dry Salter	323.20	16.00	339.20
General Hand	314.60	16.00	330.60
(c) Yard Section:			
Yard Hand	314.60	16.00	330.60
(d) Smallgoods Section:			
Smallgoodsmaker	360.50	16.00	376.50
Butcher	360.50	16.00	376.50
Smallgoods Seller from vehicle who collects cash	365.50	16.00	381.50
Boner	363.90	16.00	379.90
Slicer	344.50	16.00	360.50
Rasher Machine Operator	340.20	16.00	356.20
Salter	340.20	16.00	356.20
Cooker	340.20	16.00	356.20
Knife Hand, removing excess fat from meat in the Pressed Meat Cooking Section	335.20	16.00	351.20
Trimming Ham or Bacon pieces or cutting Lard	328.00	16.00	344.00
Packing Room Hand	323.20	16.00	339.20
Despatch	329.90	16.00	345.90
Fillerperson	324.90	16.00	340.90
Linker	324.90	16.00	340.90
Operator, Linker Machine	324.90	16.00	340.90
Operator, Knobbing Machine where not attached to filling machine	324.90	16.00	340.90
Operator, Slicing Machine not including rasher machine	324.90	16.00	340.90
Tablehand	324.90	16.00	340.90
General Hand	314.60	16.00	340.60
(e) Canning Section:			
Extract Maker	335.20	16.00	351.20
Copper Hand	323.90	16.00	339.90
Evaporator Operator	323.90	16.00	339.90
Open Copper	323.90	16.00	339.90
Fillerperson	324.70	16.00	340.70
Packer or Canning Hand	323.20	16.00	339.20
General Hand	314.60	16.00	330.60
(f) Miscellaneous Section:			
By-Products Employees operating machinery	314.60	16.00	330.60
Smoke and Drying Room employees	323.20	16.00	339.20
Labourer (cleaning skids, gambrels, rollers and other equipment)	314.60	16.00	330.60
Loader and/or Lumper	331.40	16.00	347.40
Watchperson or Caretaker	314.60	16.00	330.60
Gatekeeper	314.60	16.00	330.60
General Hand	314.60	16.00	330.60
(9) Employees in pet food establishments			
Boner and/or Skinner	360.50	16.00	376.50
Trimmers and/or Slicers	356.90	16.00	372.90
Cutting and/or Mincing Machine Operator	331.10	16.00	347.10
Counterhand	337.40	16.00	353.40
Knife Hand—an employee who may use a knife, shears or scissors to trim dirt or hair or slice meat prior to being weighed	332.70	16.00	348.70
Wrappers or Packers	323.60	16.00	339.60
Strapping or Wire Machine Operator	314.60	16.00	330.60
General Hand	314.60	16.00	330.60
(10) Employees in casing sections or establishments			
General Hand	346.50	16.00	362.50

(11) Apprentices: The minimum weekly wage rate of apprentices shall be based on the percentage of the total wage applicable to a General Butcher, as follows:

(a) Four year term	%
First year	40
Second year	50
Third year	75
Fourth year	95
(b) Three year term	
First year	50
Second year	75
Third year	95

(12) Junior employees (other than those in casing sections, retail establishments including supermarkets or those employed as drivers of motor vehicles) and subject to Clause 25.—Junior Employees:

The minimum weekly wage rates of juniors shall be based on the following percentage of the total wage applicable to a General Hand as defined in subclause (3)(o) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(12A) Junior employees (Retail Establishments other than supermarkets):

The minimum weekly wage rates of juniors shall be based on the following percentage of the total wage applicable to a Cleaner as defined in subclause (1)(k) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(13) Junior employees (Supermarkets)

Junior employees employed on all or any of the duties of a wrapper/packer/pricer/cabinet attendant, shall be paid as follows:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

Junior employees employed solely to perform the end of day clean up shall be paid the following percentage of the total wage applicable to a cleaner pursuant to subclause (2)(c) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(14) (a) Junior employees—drivers of motor vehicles

Rates of Pay—(% of wage payable to Adult Employee for capacity of vehicle being driven)

	%
Under 19 years of age	70
Under 20 years of age	80
20 and over years of age	100

(b) No junior employee under 17 years of age shall be permitted to have sole charge of a motor vehicle.

(15) Junior employees—casing section—subject to Clause 25.—Junior Employees:

The minimum weekly rate of wage of juniors shall be based on the percentage of the General

Hand rate expressed in subclause (10) of this clause:

	%
Under 18 years of age	60
18 to 19 years of age	70
19 to 20 years of age	80
20 to 21 years of age	90

(16) Adult leading hands

Any employee who is placed in charge for not less than one day of:

Not less than three and not more than ten other employees, shall be paid per week extra, an all purpose rate of \$11.50.

More than ten and not more than twenty employees, shall be paid per week extra, an all purpose rate of \$17.95.

More than twenty other employees, shall be paid per week extra, an all purpose rate of \$23.60.

2. Clause 9A.—Minimum Wage Adult Males and Females: Delete this clause and insert in lieu thereof the following:

9A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this Award, no employee (including an apprentice), 21 years of age or over, shall be paid less than \$317.10 per week as his/her ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$317.10.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this Award.

Notwithstanding the foregoing, where in this Award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this Award for the classification in which the employee is employed.

3. 13.—Meal Money: Delete this clause and inset in lieu thereof the following:

13.—MEAL MONEY

- (1) An employee required to work overtime for more than two hours prior to his/her normal starting time or after his/her normal finishing time on any day shall be supplied with a meal by the employer or be paid \$6.50 by the employer for a meal.
- (2) If the amount of overtime required to be worked necessitates a second or subsequent meal the employer shall supply such meal or pay to the employee the sum of \$4.40 for each such second or subsequent meal.
- (3) No such meals need to be provided or payments need to be made to employees living in the same locality as their place of employment and who can reasonably return home for such meal.

METAL TRADES (GENERAL) AWARD, 1966.

No. 13 of 1965.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union of Workers—Western Australian Branch

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

and

Anodisers WA and Others.

No. 1108 of 1995.

Metal Trades (General) Award 1966.

No. 13 of 1965.

SENIOR COMMISSIONER G.G. HALLIWELL.

31 January 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicants and Mr M. Borlase on behalf of the Respondents, and by consent, Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

1. THAT the Metal Trades (General) Award 1966, be varied in accordance with the following Schedule and that such variation shall have effect on or after 4 January 1996.
2. Upon application to the Commission any Company which is party to a current s41 agreement shall be granted an exemption from the variations contained in this Order, where that agreement contains no extra claims provisions relating to wages and/or allowances and/or working conditions except where the no extra claims provision is qualified by the claim being in accordance with the State Wage Case Decision.

(Sgd.) G. G. HALLIWELL,

Senior Commissioner.

[L.S.]

Schedule.

PART I—GENERAL

1. Clause 14.—Overtime. Delete paragraph (f) in subclause (3) of this clause and insert in lieu thereof the following:
 - (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$6.60 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required, the employee shall be supplied with each such meal by the employer or be paid \$4.50 for each meal so required.
2. Clause 21.—Distant Work. Delete subclauses (4)(a) and (5) of this clause and insert in lieu thereof the following:
 - (4) An employee, to whom the provisions of subclause (1) of this clause apply, shall be paid an allowance of \$23.10 for any weekend the employee returns home from the job, but only if—
 - (a) the employee advises the employer or the employer's agent of such intention not later than the Tuesday immediately preceding the weekend in which the employee so returns;
 - (5) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job, the employee shall be provided with suitable transport to and from that job or

be paid an allowance of \$10.20 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

3. Clause 31.—Wages and Supplementary Payments. Delete subclause (6) of this clause and insert in lieu thereof the following:

(6) Minimum Wage:

Notwithstanding the provisions of this Award, no employee (including an apprentice), 21 years of age or over, shall be paid less than \$317.10 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this Award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the Award rate) is not less than \$317.10. Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave, and any other leave prescribed by this Award.

Notwithstanding the foregoing, where in this Award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this Award for the classification in which the employee is employed.

PART II—CONSTRUCTION

1. Clause 6.—Allowance for Travelling and Employment in Construction Work. Delete paragraphs (a), (b) and (c) in subclause (1) of this clause and insert in lieu thereof the following:

- (a) On places within a radius of 50 kilometres from the General Post Office, Perth—\$11.30 per day.
- (b) For each additional kilometre to a radius of 60 kilometres from the General Post Office, Perth—60 cents per kilometre.
- (c) Subject to provisions of paragraph (d) hereof, work performed at places beyond a 60 kilometre radius from the General Post Office, Perth shall be deemed to be distant work unless the employer and the employees, with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause, in which case an additional allowance of 60 cents per kilometre shall be paid for each kilometre in excess of the 60 kilometre radius.

2. Clause 7.—Distant Work. Delete subclauses (6)(a) and (7) of this clause and insert in lieu thereof the following:

- (6) An employee, to whom the provisions of subclause (1) of this clause apply, shall be paid an allowance of \$23.10 for any weekend that the employee returns home for the job, but only if—
 - (a) the employee advises his/her employer or the employer's agent of his/her intention not later than the Tuesday immediately preceding the weekend in which he/she so returns.

- (7) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job the employee shall be provided with suitable transport to and from the job or be paid an allowance of \$10.20 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

3. Clause 10.—Wages. Delete subclause (8) of this clause and insert in lieu thereof the following:

(8) Minimum Wage:

Notwithstanding the provisions of this Award, no employee (including an apprentice), 21 years of age or over, shall be paid less than \$317.10 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this Award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable

in addition to the award rate) is not less than \$317.10. Where the said minimum rate of pay is applicable, the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this Award.

Notwithstanding the foregoing, where in this Award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this Award for the classification in which the employee is employed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing And Kindred Industries Union of Workers—Western Australian Branch

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

and

Anodisers WA and Others.

No. 1108 of 1995.

Metal Trades (General) Award 1966.

No. 13 of 1965.

SENIOR COMMISSIONER G.G. HALLIWELL.

8 February 1996.

Correction Order.

WHEREAS, an error occurred in matter No. 1108 of 1995 dated 31 January 1996, the following correction is made:

1. THAT the Metal Trades (General) Award 1966, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 4th January, 1996.

(Sgd.) G. G. HALLIWELL,

[L.S.]

Senior Commissioner.

**MOTEL, HOSTEL, SERVICE FLATS AND
BOARDING HOUSE WORKERS' AWARD, 1976.**

No. 29 of 1974.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers

and

Toorak Lodge and Others.

No. 995 of 1995.

Motel, Hostel, Service Flats and Boarding House Workers' Award, 1976.

No. 29 of 1974.

COMMISSIONER R.H. GIFFORD.

11 January 1996.

Order.

HAVING heard Mr E. Fry on behalf of the Applicant and Mr G. Blyth on behalf of the Respondents, and by consent, the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Motel, Hostel, Service Flats and Boarding House Workers' Award, 1976 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 9th day of January 1996.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement. Immediately following the number and title “44. Trainees”, add the following new number and title:

45. Enterprise Flexibility

2. Clause 11.—Casual Employees. Delete subclause (3) of this clause and insert in lieu thereof the following:

(3) A casual employee shall be paid only the following hourly wage rates for any work performed:

CLASSIFICATIONS (total wage per hour):	Days	Holidays
	Other than Holidays \$	\$
(1) Chef	13.57	22.34
(2) Qualified Cook	12.60	20.72
(3) Cook Employed Alone	12.03	19.77
(4) Breakfast and/or Other Cooks	11.90	19.56
(5) Bar Attendant— Category 1	12.01	19.74
(6) Bar Attendant— Category 2	12.25	20.13
(7) Cellarman	12.31	20.24
(8) Head Waiter/Waitress	12.60	20.72
(9) Head Steward/Stewardess	12.60	20.72
(10) Hostess	12.60	20.72
(11) Waiter/Waitress	11.74	19.28
(12) Steward/Stewardess	11.74	19.28
(13) Housekeeper/Supervisor	12.89	21.20
(14) Night Porter	11.62	19.09
(15) Hall Porter	11.62	19.09
(16) Lift Attendant	11.62	19.09
(17) Cashier	12.01	19.74
(18) Snack Bar Attendant	11.74	19.28
(19) Butcher	12.60	20.72
(20) Kitchenhand	11.62	19.09
(21) Commissionaire and/or Car Parking Attendant	11.62	19.09
(22) Security Officer	12.60	20.72
(23) Timekeeper	12.01	19.74
(24) Storeman	11.90	19.56
(25) Housemaid	11.62	19.09
(26) Laundress	11.62	19.09
(27) Cleaner	11.62	19.09
(28) Maintenance Man	12.60	20.72
(29) Gardener	11.62	19.09
(30) Yardman	11.62	19.09
(31) General Hand	11.62	19.09

The rates of pay in this clause include the first \$8.00 per week (21 cents per hour) arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This first \$8.00 per week (21 cents per hour) arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this clause include the second \$8.00 per week (21 cents per hour) arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week (21 cents per hour) arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise

agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

3. Clause 21.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) (a) Classifications	Base Rate (per fortnight)	Supplementary payment (per fortnight)	Arbitrated Safety Net Adjustments (per fortnight)	Total Award Rate (per fortnight)
	\$	\$	\$	\$
(1) Chef	771.90	16.00	32.00	819.90
(2) Qualified Cook	719.20	16.00	32.00	767.20
(3) Cook Employed Alone	678.20	16.00	32.00	726.20
(4) Breakfast and/or Other Cooks	671.50	16.00	32.00	719.50
(5) Bar Attendant— Category 1	677.20	16.00	32.00	725.20
(6) Bar Attendant— Category 2	690.00	16.00	32.00	738.00
(7) Cellarman	693.60	16.00	32.00	741.60
(8) Head Waiter/Waitress	719.20	16.00	32.00	767.20
(9) Head Steward/Stewardess	719.20	16.00	32.00	767.20
(10) Hostess	719.20	16.00	32.00	767.20
(11) Waiter/Waitress	662.50	16.00	32.00	710.50
(12) Steward/Stewardess	662.50	16.00	32.00	710.50
(13) Housekeeper/Supervisor	734.80	16.00	32.00	782.80
(14) Night Porter	656.30	16.00	32.00	704.30
(15) Hall Porter	656.30	16.00	32.00	704.30
(16) Lift Attendant	656.30	16.00	32.00	704.30
(17) Cashier	677.20	16.00	32.00	725.20
(18) Snack Bar Attendant	662.50	16.00	32.00	710.50
(19) Butcher	719.20	16.00	32.00	767.20
(20) Kitchenhand	656.30	16.00	32.00	704.30
(21) Commissionaire and/or Car Parking Attendant	656.30	16.00	32.00	704.30
(22) Security Officer	719.20	16.00	32.00	767.20
(23) Timekeeper	677.20	16.00	32.00	725.20
(24) Storeman	671.50	16.00	32.00	719.50
(25) Housemaid	656.30	16.00	32.00	704.30
(26) Laundress	656.30	16.00	32.00	704.30
(27) Cleaner	656.30	16.00	32.00	704.30
(28) Maintenance Man	719.20	16.00	32.00	767.20
(29) Gardener	656.30	16.00	32.00	704.30
(30) Yardman	656.30	16.00	32.00	704.30
(31) General Hand	656.30	16.00	32.00	704.30

(b) Supplementary Payments

Supplementary payments prescribed in this clause are in substitution of any overaward payment as defined hereunder which would otherwise have been paid as at the date of this variation to the award.

“Overaward payment” is defined as the amount (whether it be termed “Overaward payment”, “attendance bonus”, or any similar term) which an employee would receive in excess of the “award wage” for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowance and any other ancillary payments of a like nature prescribed by this award.

(c) Arbitrated Safety Net Adjustments

(i) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(ii) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award

variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

4. Clause 21A.—Minimum Wage—Adult Males and Females. Delete this clause and insert in lieu thereof the following:

21A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than the minimum rates prescribed by the Minimum Conditions of Employment Act, 1993, as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

5. Clause 44.—Trainees. Immediately after this clause, add the following new clause:

45.—ENTERPRISE FLEXIBILITY

- (1) Employers and employees covered by this award may negotiate and reach agreement to apply to vary any provision of this award so as to make the enterprise or workplace operate more efficiently according to its particular needs.
- (2) Employees may seek advice from, or be represented by, the union during the negotiations for an agreement.
- (3) Where agreement is reached at an enterprise or workplace and where giving effect to such agreement requires this award, as it applies at the enterprise or workplace, to be varied, an application to vary the award shall be made to the Commission.
- (4) A copy of the agreement shall be made available in writing to all employees at the enterprise or workplace and to the union party to this award.
- (5) The union shall not unreasonably oppose the application to vary the award to give effect to the terms of the agreement.
- (6) When this award is varied to give effect to an agreement made pursuant to this clause the variation shall become a schedule to this award and the variation shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.
- (7) The agreement must meet the following requirements to enable the Commission to vary this award to give effect to it:
 - (a) that the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;
 - (b) that the majority of employees covered by the agreement genuinely agree to it;
 - (c) where the union has members at the enterprise or workplace, the union has been given reasonable advice of the intention to negotiate an agreement, provided that this paragraph shall not apply where the employer could not reasonably be expected to have known the union has members at the enterprise or workplace;
 - (d) that the award variation necessitated by the agreement does not in relation to their terms

and conditions of employment, disadvantage the employees who would be affected by the variation.

- (8) For the purposes of subclause (7) hereof, an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if:
 - (a) it would result in the reduction of any entitlements or protection of those employees under:
 - (i) the award; or
 - (ii) any other law of the Commonwealth or State that the Commission thinks relevant; and
 - (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.
- (9) Nothing in this clause shall be taken as limiting the right of any party to apply to give effect to an enterprise agreement under any other provisions of the Industrial Relations Act, 1979.

**NURSES' (ABORIGINAL MEDICAL SERVICE)
AWARD No. A23 of 1987.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation Industrial Union of
Workers Perth

and

Kimberley Aboriginal Medical Service Aboriginal
Corporation and Others.

No. 1059 of 1995.

COMMISSIONER C.B. PARKS.

4 December 1995.

Order.

HAVING heard Mr A. Dzieciol on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Nurses' (Aboriginal Medical Service) Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 16 November 1995.

(Sgd.) C.B. PARKS,

[L.S] Commissioner.

Schedule.

Clause 26.—Delete this clause and insert in lieu thereof—

26.—WAGES

The following rates shall be paid to nurses classified at each level:

	Base Rate Per Week \$	First and Second Arbitrated Safety Net Adjustment \$	Total Rate \$
(1) Nurse Grade 1—			
Level 1	663.80	16.00	679.80
2	675.60	16.00	691.60
3	691.50	16.00	707.50
4	724.60	16.00	740.60

	Base Rate Per Week \$	First and Second Arbitrated Safety Net Adjustment \$	Total Rate \$
5	742.20	16.00	758.20
6	758.70	16.00	774.70
7	776.30	16.00	792.30
8	794.70	16.00	810.70
9	826.40	16.00	842.40
10	877.50	16.00	893.50

- Note: 1. A registered nurse shall enter the service at Level 1 and shall proceed by annual increments to Level 3 subject to satisfactory performance unless otherwise specified in this clause.
2. A registered nurse with one post basic certificate shall enter the service at Level 2 and shall proceed by annual increments to Level 4, subject to satisfactory performance.
3. A registered nurse with two post basic certificates shall enter the service at Level 2 and shall proceed by annual increments to Level 7, subject to satisfactory performance.
4. A registered nurse with a post basic tertiary nursing qualification from a university or college of advanced education shall enter the service at Level 4 and proceed by annual increments to Level 8, subject to satisfactory performance.
5. A registered nurse appointed to provide the staff development programmes to the service shall enter at Level 8 and proceed by annual increments to Level 10, subject to satisfactory performance.
6. Where an employee who is designated "Senior Nurse" by the employer has not reached the penultimate increment of the employee's range, that employee shall nevertheless be paid at that rate plus 4.5 per cent whilst so designated. Advancement to the final increment shall occur in the same manner as would have been the case if the employee had not been designated as a senior nurse and if the employee is still so designated, 4.5 per cent shall be added to the final increment.
7. An employee who is designated as "Nurse in Charge" shall receive an allowance equal to 4.5 per cent of her ordinary base wage whilst so designated.
8. The determination of a salary range with these levels shall be at the discretion of the employer and will have regard for the qualification(s) required by the employer and used in the employee's employment.

(2) Nurse Grade 2—

	Base Rate Per Week \$	First and Second Arbitrated Safety Net Adjustment \$	Total Rate \$
Level 1	927.70	16.00	943.70
2	943.50	16.00	959.50
3	975.30	16.00	991.30
4	979.10	16.00	995.10

A nurse appointed as Health Services Co-ordinator or Senior Health Educator shall commence on a level within the Nurse Grade 2 classification commensurate with the nurses' experience in community nursing as a co-ordinator or educator respectively and/or relevant tertiary or post basic qualifications.

Progression beyond the commencing level will be dependent on the attainment of additional qualifications relevant to the position held and/or service in such position provided that advancement by service only shall be limited to one level for each year of service to a maximum of two beyond the commencing level.

- (3) Employees who have had recent, relevant experience in community nursing shall have such experience recognised by the employer when determining the rate of wage payable under Grade 1 of this award. The onus of proof of previous experience shall rest on the employee and any calculation arising from the production of work records or other documentary evidence shall only apply from the time such proof is supplied.
- (4) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. The first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.
- (5) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

PLASTIC MANUFACTURING AWARD 1977.
No. 5 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
and

Various Respondents.

File No. 76/80/153.

Plastic Manufacturing Award 1977.

No. 5 of 1977.

SENIOR COMMISSIONER G.G. HALLIWELL.

23 January 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and there being no appearance on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Plastic Manufacturing Award 1977 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 23rd January 1996.

(Sgd.) G. G. HALLIWELL,
Senior Commissioner.

[L.S.]

Schedule.

Schedule B—Respondents: Delete the following respondents:

PRECISION MOULDINGS PTY. LTD., 83 BELMONT AVENUE, BELMONT, 6104.

CORDINGLY SURF BOARDS PTY. LTD., 24 JERSEY STREET, JOLIMONT, 6014.

THERMAL INDUSTRIES PTY. LTD., 3 MALLAND STREET, MYAREE, 6154.

LUSTERITE PLASTICS LTD., 193 ABERNETHY ROAD, BELMONT, 6104.

LEISURE DEVELOPMENTS PTY. LTD., LOT 19 STOCK ROAD, O'CONNOR, 6163.

PRINTING (GOVERNMENT) AWARD.

No. A8 of 1990.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers Western Australian
Branch

and

The Government Printer.

No. 1312 of 1995.

Printing (Government) Award 1990.

No. A 8 of 1990.

COMMISSIONER A.R. BEECH.

23 January 1996.

Order.

HAVING heard Mr G Sturman on behalf of the Applicant and Mr D Ferguson on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

- (1) THAT the Printing (Government) Award, 1990 be varied in accordance with the following Schedule.
- (2) THAT Clause 10.—Rates of Wages be effective from the first pay period on or after the 8th day of January 1996.
- (3) THAT in all other respects the variation be effective from the first pay period on or after the 23rd day of January 1996.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

Schedule.

1. Clause 10.—Rates of Wages: Delete subclause (2) of this clause and insert in lieu the following:

(2) CLASSIFICATIONS:

	Base Rate \$	Supple- mentary Payment \$	First Arbitrated Additional Payment \$	Safety Net Adjust- ments \$	Total Wage \$	Relativity to Level 4 %
PRINTING WORKER						
Level 1	299.50	42.60	48.20	16.00	406.30	82
Level 2	319.20	45.40	52.30	16.00	432.90	87.4
Level 3A	337.40	48.00	55.00	16.00	456.40	92.4
Level 3B	354.20	50.40	58.20	16.00	478.80	97
PRINTING TRADESPERSON						
Level 4	365.20	52.00	59.60	16.00	492.80	100
Level 5	383.50	54.50	62.70	16.00	516.70	105
Level 6	401.70	57.20	65.30	16.00	540.20	110
Level 7	420.00	59.80	68.90	16.00	564.70	115
PRINTING OFFICER						
Level 8	438.30	62.30	71.60	16.00	588.20	120
Level 9	456.50	65.00	74.20	16.00	611.70	125
Level 10	474.80	67.50	76.90	16.00	635.20	130
Level 11	493.00	70.10	80.60	16.00	659.70	135

The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

2. Clause 16.—Overtime: Delete subclause (3) of this clause and insert in lieu the following:

- (3) When a worker is required to continue working for more than one hour after his/her rostered finishing time, he/she shall be paid \$5.50 for meal money. Such amount shall be paid separately to ordinary wages on the first working day following pay day and include entitlements up to the completion of the ordinary hours of day shift on the preceding Wednesday.

3. Schedule B—Named Union Party: Delete this Schedule and insert in lieu the following:

SCHEDULE B—NAMED UNION PARTY

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

QUADRIPLAGIC CENTRE AWARD

No. A 1 of 1993.

**TRAINING ASSISTANTS' AND COMMUNITY
SUPPORT STAFF (SPASTIC WELFARE)
AWARD 1987.**

No. A 16 of 1986.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers' Union, Miscellaneous Workers' Division, Western
Australian Branch

and

Quadriplegic Centre.

No. 1147 of 1994.

The Australian Liquor, Hospitality and Miscellaneous
Workers' Union, Miscellaneous Workers' Division,
Western Australian Branch

and

Cerebral Palsy Association of WA Ltd.

No. 1161 of 1994.

COMMISSIONER C.B. PARKS.

22 January 1995.

Reasons for Decision.

THE COMMISSIONER: The two applications before the Commission contain claims to amend the Quadriplegic Centre Award, and the Training Assistants' and Community Support Staff (Spastic Welfare) Award 1987 and, by consent of the parties, have been dealt with conjointly. Each application seeks

to amend the named awards by prescribing therein the second \$8.00 Arbitrated Safety Net Adjustment made available by the State Wage Case Decision—December 1994, and in addition, a new clause containing enterprise flexibility provisions.

The parties are agreed that, subject to the determination of appropriate enterprise flexibility provisions, all other precedent conditions enunciated by the aforementioned State Wage case decision have been satisfied and therefore they ask that the Commission amend the awards to include the \$8.00 increase.

That which the applicant union claims should be prescribed as the appropriate terms of clauses 35.—Enterprise Flexibility, (per application 1147 of 1994), and 28.—Enterprise Flexibility Provision, (per application 1161 of 1994), are as follows—

- “(1) At each enterprise or workplace, a consultative mechanism and procedures shall be established, comprising representatives of the employer, employees and the Union.
- (2) The purpose of such consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise and/or workplace according to its particular needs.
- (3) The particular mechanism and procedure established shall be appropriate to the site, structure and needs of the enterprise and/or workplace.
- (4) Where agreement is reached at an enterprise and/or workplace through such mechanism and procedure, and where giving effect to such agreement requires this award, as it applies at the enterprise and/or workplace, to be varied, an application to vary shall be made to the Commission.
- (5) The agreement shall be made available in writing, and be filed with the Commission.
- (6) Where an agreement made pursuant to this clause varying this award is approved it shall become a Schedule to this award, and the agreement shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.
- (7) The agreement must meet the following requirements:
- (a) The purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;
 - (b) The majority of employees must genuinely agree to the change;
 - (c) No employee shall lost income as a result of the change;
 - (d) The Union must have been involved in the consultative mechanism or process;
 - (e) No employee is disadvantaged as a result of the agreement through reduction of any award or other legal requirements or protections, in the context of their terms and conditions of employment considered as a whole;
 - (f) The Commissions safety net standards are not diminished.
- (8) Any dispute arising in relation to these matters will be dealt with in accordance with the award disputes procedure.”

In answer to the union claim, the respondents propose that each enterprise flexibility related clause be couched in the following terms—

- “(1) (a) Employees covered by this award, may reach agreement to apply to vary any provision of this award to meet the requirements of the employer’s business and the aspirations of the employees concerned.
- (b) Such agreements shall be subject to the procedures contained in subclause (2) of this clause.
- (2) (a) The proposal variations shall be committed to writing, and shall be the subject of negotiation between the persons directly concerned with their effect.

- (b) Nothing in this clause shall prevent the employees from seeking advice from, or representation by, the union during such negotiations.
 - (c) Any agreement reached out of this negotiation process shall be committed to writing and, if the union has not been involved in the negotiations, a copy shall be sent to the Secretary of the union.
 - (d) Where the agreement represents the consent of the employer and the majority of the employees concerned, the union shall not unreasonably oppose the terms of that agreement.
 - (e) No employees shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of an enterprise flexibility agreement, provided that employers and employees may agree on terms and conditions in the aggregate no less favourable to the employees than those prescribed by the award for working ordinary hours of work.
- (3) Any agreement to vary the award shall be processed in accordance with section 40 of the Industrial Relations Act 1979 and shall be subject to approval by the Western Australian Industrial Relations Commission. If approved, it shall operate as a schedule to the award and take precedence over any inconsistency.
- (4) Provided that nothing in this clause shall be taken as limiting the rights of any of the parties to apply to give effect to an enterprise agreement under any other provision of the Industrial Relations Act 1979.”

Both the union’s proposal and the respondents’ proposal are framed so as to recognise that, notwithstanding existing award regulation, provisions which are better suited to the needs of an employer and the employees of a particular enterprise may be formulated and given legal force and effect. The competing proposals each reflect different approaches to the means by which flexible provisions are formulated, the limitations to be applied thereto, and the role of the union therein.

Essentially the fundamental differences in the parties proposals are those described hereunder—

Union Proposal

- A consultative regime and regimen is required to be established in each enterprise bound by the award.
- The union is required to have been involved in the consultation process leading to, an agreement, or at the least, any provision that is agreed and which is to be given force and effect by means of a variation to the award.
- An agreement—
 - . Is limited in its purpose to achieving enterprise or workplace efficiency.
 - . Requires the approval of the majority of employees.
 - . Shall not operate so as to cause an employee to lose income, or otherwise disadvantage an employee when considered as a whole in relation to the award or any legislated provisions.
 - . Shall not diminish award safety net standards.

Employers Proposal

- Employers and employees in an enterprise may agree provisions which best suit the purposes of both of them.
- The union may be involved in the negotiation process if such is requested by an employee.
- An agreement which proposes a variation to the award—
 - . Shall be negotiated by the persons directly concerned with their effect.
 - . Shall to the extent of the proposed variation not be unreasonably opposed by the union.

- . Shall not operate so as to cause an employee to lose existing earnings for ordinary hours of work, provided that an agreement may be made which is no less favourable in the aggregate.
- . Regarding any award variation, shall be subject to approval by the Commission.

The common clause claimed by the union is identical to that which the union claimed in Applications No. 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994 relating to seven other awards to which it is a party. Equally, the employers party to the present applications have responded to the unions claimed clause with a proposal that is in identical terms to that which the employers proposed in reply to the aforementioned seven applications. At the time the Commission heard the parties in relation to the present two applications, the decision of the Commission as presently constituted, regarding applications 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994, had not been published.

Essentially the argument which the union has put in support of the two present applications is a condensed version of that previously submitted to the Commission when the earlier seven applications were heard. The respondents, with the consent of the union, put no oral argument in reply but adopted verbatim the argument submitted on behalf of the respondents in Applications 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994 as recorded in the transcript of proceedings dated 30 May 1995.

By Decisions published 3 October 1995, accompanied by Reasons for Decision dated 13 September 1995 (75 WAIG 2815), the Commission as presently constituted determined matters 1090, 1091, 1102, 1121, 1129, 1135 and 1146 of 1994. The arguments of the respective parties which have been relied upon in the present two applications have been identified, considered and weighed in the Reasons for Decision dated 13 September 1995 and therefore it is axiomatic that the same resolution be applied to the present matters. Thus, it is the decision of the Commission that the enterprise flexibility clause determined in those earlier matters (75 WAIG 2815 at 2819) is that which, together with the matters agreed, will be included in the orders to amend the awards under review.

Appearances: Ms S. Ellery appeared for the applicant.

Mr M. O'Connor appeared for the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Quadriplegic Centre.

No. 1147 of 1994.

COMMISSIONER C.B. PARKS.

31 January 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr M. O'Connor on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Quadriplegic Centre Award 1993 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 1 January 1996.

(Sgd.) C.B. PARKS,
Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement: Insert after the number and title “34. Liberty To Apply”, the new number and title as follows—
35. Enterprise Flexibility Provisions

2. Clause 27.—Wages:

- A. Delete subclauses (1) and (2) of Part A of this clause and insert in lieu thereof—

The minimum rate of wage payable under this award for Enrolled Nurses and Nursing Assistants shall be as follows:

	Base Rate Per Week \$	1st & 2nd Arbitrated Safety Net Adjustment Per Week \$	Total Per Week \$
(1) Enrolled Nurse Level One			
1st year of employment	418.80	16.00	434.80
2nd year of employment	423.80	16.00	439.80
3rd year of employment and thereafter	434.70	16.00	450.80
(2) Nursing Assistant (at 19 years of age and over)			
1st year of employment	377.40	16.00	393.40
2nd year of employment	387.80	16.00	403.80
3rd year of employment and thereafter	398.30	16.00	414.30

- B. Delete subclause (1) of Part B of this clause and insert in lieu thereof—

- (1) The minimum rate of wage for employees other than Enrolled Nurses and Nursing Assistants payable under this Award shall be as follows:

	Base Rate Per Week \$	1st & 2nd Arbitrated Safety Net Adjustment Per Week \$	Total Per Week \$
LEVEL 1			
Cleaner			
Domestic			
Catering Attendant			
All other employees			
1st year of employment	369.50	16.00	385.50
2nd year of employment	374.10	16.00	390.10
3rd year of employment and thereafter	378.00	16.00	394.00
LEVEL 2			
Handyperson			
1st year of employment	383.40	16.00	399.40
2nd year of employment	388.00	16.00	404.00
3rd year of employment and thereafter	392.00	16.00	408.00
LEVEL 3			
Senior Food Service Attendant			
Cleaning Services Supervisor			
1st year of employment	399.10	16.00	415.10
2nd year of employment	403.90	16.00	419.90
3rd year of employment and thereafter	408.30	16.00	424.30
LEVEL 4			
Tradesperson Cook			
1st year of employment	445.10	16.00	461.10
2nd year of employment	451.10	16.00	467.10
3rd year of employment and thereafter	457.00	16.00	473.00

- C. Delete subclauses (2) of Part C of this clause and insert in lieu thereof—

(2) (a) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 Novem-

ber 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(b) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

3. Insert after "Clause 34.—Liberty to Apply", the following new clause—

35.—ENTERPRISE FLEXIBILITY PROVISIONS

- (1) Subject to the provisions contained elsewhere in this clause an employer, and an employee or group of employees, covered by this Award may reach agreement upon terms and conditions of employment to meet the requirements of the employers enterprise and the aspirations of the employee or employees.
- (2) Where a matter arises for consideration between an employer, and an employee or group of employees which—
 - (a) were it to be settled between them as a term of an enterprise flexibility agreement such a term would be inconsistent with a provision of this Award, and
 - (b) were an inconsistent term of any such agreement to be given legal force and effect it would apply to a current employee who is known to the employer to be a member of the Union, and
 - (c) if it be intended that the Western Australian Industrial Relations Commission be requested to exercise its powers to give legal force and effect to such an inconsistent term of any agreement, the employer shall notify the Union of the matter raised for consideration as soon as reasonably practicable after it arises and before the matter is settled as a term of any agreement.
- (3) Nothing in this clause shall prevent an employee seeking advice from, or being represented by, the Union during negotiations with the employer.
- (4) No employee shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of an enterprise flexibility agreement, provided that an employer and an employee or groups of employees may agree on terms and conditions in the aggregate no less favourable to the employees than those prescribed by this Award for working ordinary hours of work.
- (5) Where an enterprise flexibility agreement is made with the genuine consent of the employer and the majority of the employees covered by the scope of that agreement, the Union shall not unreasonably oppose the terms of the agreement.
- (6) Any enterprise flexibility agreement made between the employer, and an employee or group of employees, shall be committed to writing and, if the Union participated in the related negotiations or it is intended that the agreement be given legal force and effect by the Western Australian Industrial Relations Commission pursuant to the Industrial Relations Act, 1979, the employer shall forward a copy of the agreement to the Secretary of the Union.
- (7) An enterprise flexibility agreement made pursuant to this clause is entered into on the condition that, if an application be made to the Western Australian Industrial Relations Commission to give it legal force and effect by means of a variation to this Award, such variation is subject to the approval of the Western Australian Industrial Relations Commission and will, if approved, be made in the form of a schedule to this Award.
- (8) Nothing in this clause shall be taken as limiting a right to apply the Western Australian Industrial Relations Commission to have the Commission exercise any one of its several powers that enable the Commission to give legal force and effect to an enterprise flexibility agreement.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Cerebral Palsy Association of WA Ltd.

No. 1161 of 1994.

COMMISSIONER C.B. PARKS.

31 January 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr M. O'Connor on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Training Assistants and Community Support Staff (Spastic Welfare) Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 1 January 1996.

(Sgd.) C.B. PARKS,

Commissioner.

[L.S]

Schedule.

1. Clause 2.—Arrangement: Insert after the number and title "27. Structural Efficiency Implementation Tasks", the new number and title as follows—

28. Enterprise Flexibility Provisions

2. Clause 14.—Wages: Delete subclause (1) of this clause and insert in lieu thereof:

(1) (a) TRAINING ASSISTANTS AND SUPPORT STAFF:

	Base Rate Per Week	1st & 2nd Arbitrated Safety Net Adjustments Per Week	Total Rate Per Week
	\$	\$	\$
1st year of employment	395.90	16.00	411.90
2nd year of employment	407.30	16.00	423.30
3rd year of employment	422.20	16.00	438.20
2nd year of employment	434.50	16.00	450.50

- (b) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, except those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

- (c) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

4. Insert after "Clause 27. Structural Efficiency Implementation Tasks", the following new clause—

28.—ENTERPRISE FLEXIBILITY PROVISIONS

- (1) Subject to the provisions contained elsewhere in this clause an employer, and an employee or group of employees, covered by this Award may reach agreement upon terms and conditions of employment to meet the requirements of the employers enterprise and the aspirations of the employee or employees.
- (2) Where a matter arises for consideration between an employer, and an employee or group of employees which—
 - (a) were it to be settled between them as a term of an enterprise flexibility agreement such a term would be inconsistent with a provision of this Award, and
 - (b) were an inconsistent term of any such agreement to be given legal force and effect it would apply to a current employee who is known to the employer to be a member of the Union, and
 - (c) if it be intended that the Western Australian Industrial Relations Commission be requested to exercise its powers to give legal force and effect to such an inconsistent term of any agreement, the employer shall notify the Union of the matter raised for consideration as soon as reasonably practicable after it arises and before the matter is settled as a term of any agreement.
- (3) Nothing in this clause shall prevent an employee seeking advice from, or being represented by, the Union during negotiations with the employer.
- (4) No employee shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of an enterprise flexibility agreement, provided that an employer and an employee or groups of employees may agree on terms and conditions in the aggregate no less favourable to the employees than those prescribed by this Award for working ordinary hours of work.
- (5) Where an enterprise flexibility agreement is made with the genuine consent of the employer and the majority of the employees covered by the scope of that agreement, the Union shall not unreasonably oppose the terms of the agreement.
- (6) Any enterprise flexibility agreement made between the employer, and an employee or group of employees, shall be committed to writing and, if the Union participated in the related negotiations or it is intended that the agreement be given legal force and effect by the Western Australian Industrial Relations Commission pursuant to the Industrial Relations Act, 1979, the employer shall forward a copy of the agreement to the Secretary of the Union.
- (7) An enterprise flexibility agreement made pursuant to this clause is entered into on the condition that, if an application be made to the Western Australian Industrial Relations Commission to give it legal force and effect by means of a variation to this Award, such variation is subject to the approval of the Western Australian Industrial Relations Commission and

will, if approved, be made in the form of a schedule to this Award.

- (8) Nothing in this clause shall be taken as limiting a right to apply the Western Australian Industrial Relations Commission to have the Commission exercise any one of its several powers that enable the Commission to give legal force and effect to an enterprise flexibility agreement.

RESTAURANT, TEAROOM AND CATERING WORKERS' AWARD, 1979.

No. R48 of 1978.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers and

Western Australian Hotels and Hospitality Association Incorporated (Union of Employers) and Others.

No. 992 of 1995.

Restaurant, Tearoom and Catering Workers' Award, 1979. No. R 48 of 1978.

COMMISSIONER R.H. GIFFORD.

11 January 1996.

Order.

HAVING heard Mr E. Fry on behalf of the Applicant and Mr G. Blyth on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Restaurant, Tearoom and Catering Workers' Award, 1979 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 9th day of January 1996.

(Sgd.) R. H. GIFFORD,

Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement. Immediately following the number and title "44. Trainees", add the following new number and title:

45. Enterprise Flexibility

2. Clause 11.—Casual Employees. Delete subclause (3) of this clause and insert in lieu thereof the following:

(3) A casual employee shall be paid only the following hourly wage rates for any work performed:

CLASSIFICATIONS (total wage per hour):	Days	Holidays
	Other than Holidays \$	\$
(1) Chef	13.57	22.34
(2) Qualified Cook	12.60	20.72
(3) Cook Employed Alone	12.03	19.77
(4) Breakfast and/or Other Cooks	11.90	19.56
(5) Bar Attendant— Category 1	12.01	19.74
(6) Bar Attendant— Category 2	12.25	20.13
(7) Head Waiter/Waitress	12.60	20.72
(8) Head Steward/Stewardess	12.60	20.72
(9) Hostess	12.60	20.72
(10) Waiter/Waitress	11.74	19.28
(11) Steward/Stewardess	11.74	19.28
(12) Cashier	12.01	19.74

	Days	
	Other than Holidays	Holidays
	\$	\$
(13) Counterhand	11.74	19.28
(14) Kitchenhand	11.62	19.09
(15) Laundress	11.62	19.09
(16) Cleaner	11.62	19.09
(17) Yardman	11.62	19.09
(18) General Hand	11.62	19.09

The rates of pay in this clause include the first \$8.00 per week (21 cents per hour) arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This first \$8.00 per week (21 cents per hour) arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this clause include the second \$8.00 per week (21 cents per hour) arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week (21 cents per hour) arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

3. Clause 21.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) (a) Classifications	Base Rate (per fortnight)	Supplementary payment (per fortnight)	Arbitrated Safety Net Adjustments (per fortnight)	Total Award Rate (per fortnight)
	\$	\$	\$	\$
(1) Chef	771.90	16.00	32.00	819.90
(2) Qualified Cook	719.20	16.00	32.00	767.20
(3) Cook Employed Alone	678.20	16.00	32.00	726.20
(4) Breakfast and/or Other Cooks	671.50	16.00	32.00	719.50
(5) Bar Attendant—Category 1	677.20	16.00	32.00	725.20
(6) Bar Attendant—Category 2	690.00	16.00	32.00	738.00
(7) Head Waiter/Waitress	719.20	16.00	32.00	767.20
(8) Head Steward/Stewardess	719.20	16.00	32.00	767.20
(9) Hostess	719.20	16.00	32.00	767.20
(10) Waiter/Waitress	662.50	16.00	32.00	710.50
(11) Steward/Stewardess	662.50	16.00	32.00	710.50
(12) Cashier	677.20	16.00	32.00	725.20
(13) Counterhand	662.50	16.00	32.00	710.50
(14) Kitchenhand	656.30	16.00	32.00	704.30
(15) Laundress	656.30	16.00	32.00	704.30
(16) Cleaner	656.30	16.00	32.00	704.30
(17) Yardman	656.30	16.00	32.00	704.30
(18) General Hand	656.30	16.00	32.00	704.30

(b) Supplementary Payments

Supplementary payments prescribed in this clause are in substitution of any overaward payment as defined hereunder which would otherwise have been paid as at the date of this variation to the award.

“Overaward payment” is defined as the amount (whether it be termed “Overaward payment”, “attendance bonus”, or any similar term) which an employee would receive in excess of the “award wage” for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowance and any other ancillary payments of a like nature prescribed by this award.

(c) Arbitrated Safety Net Adjustments

- (i) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. The first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result

of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

- (ii) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

4. Clause 21A.—Minimum Wage—Adult Males and Females. Delete this clause and insert in lieu thereof the following:

21A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than the minimum rates prescribed by the Minimum Conditions of Employment Act, 1993, as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

5. Clause 44.—Trainees. Immediately after this clause, add the following new clause:

45.—ENTERPRISE FLEXIBILITY

- (1) Employers and employees covered by this award may negotiate and reach agreement to apply to vary any provision of this award so as to make the enterprise or workplace operate more efficiently according to its particular needs.
- (2) Employees may seek advice from, or be represented by, the union during the negotiations for an agreement.
- (3) Where agreement is reached at an enterprise or workplace and where giving effect to such agreement requires this award, as it applies at the enterprise or workplace, to be varied, an application to vary the award shall be made to the Commission.
- (4) A copy of the agreement shall be made available in writing to all employees at the enterprise or workplace and to the union party to this award.
- (5) The union shall not unreasonably oppose the application to vary the award to give effect to the terms of the agreement.
- (6) When this award is varied to give effect to an agreement made pursuant to this clause the variation shall become a schedule to this award and the variation shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.
- (7) The agreement must meet the following requirements to enable the Commission to vary this award to give effect to it:
 - (a) that the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;

- (b) that the majority of employees covered by the agreement genuinely agree to it;
 - (c) where the union has members at the enterprise or workplace, the union has been given reasonable advice of the intention to negotiate an agreement, provided that this paragraph shall not apply where the employer could not reasonably be expected to have known the union has members at the enterprise or workplace;
 - (d) that the award variation necessitated by the agreement does not in relation to their terms and conditions of employment, disadvantage the employees who would be affected by the variation.
- (8) For the purposes of subclause (7) hereof, an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if:
- (a) it would result in the reduction of any entitlements or protection of those employees under:
 - (i) the award; or
 - (ii) any other law of the Commonwealth or State that the Commission thinks relevant; and
 - (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.
- (9) Nothing in this clause shall be taken as limiting the right of any party to apply to give effect to an enterprise agreement under any other provisions of the Industrial Relations Act, 1979.

RETAIL FOOD SERVICES EMPLOYEES' AGREEMENT 1991.

No. AG10 of 1991.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Coles Fossey and Others.

No. 1078 of 1995.

The Retail Food Services Employees' Agreement 1991.

No. AG 10 of 1991.

COMMISSIONER R.H. GIFFORD.

31 January 1996.

Order.

Having heard Mr W. Johnston on behalf of the Applicant and Ms M. Armstrong on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

THAT the Retail Food Services Employees' Agreement 1991, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 11th day of January 1996.

(Sgd.) R. H. GIFFORD,

Commissioner.

[L.S.]

Schedule.

1. Clause 7.—Casual Employees.

A. Delete subclause (3) of this clause and insert in lieu thereof the following:

(3) The rate for casual employees within ordinary time shall unless otherwise stated, be determined by dividing the appropriate wage rate prescribed by Clause 28.—Wages of this agreement by thirty eight (38) and adding the appropriate loading prescribed by the agreement.

Provided that no casual employee shall have their ordinary hourly rate reduced from that applicable as at 10 January 1996.

(4) A casual employee shall be paid an additional loading in accordance with the following scale:

- (a) where the casual engagement on any day is for a full day's work—a loading of twenty (20) per cent.
- (b) where the casual engagement on any day is for less than a full day's work—a loading of twenty-five (25) per cent.

(5) Calculation of Saturday rates for casual employees

The rate of pay for casual employees working on Saturdays during ordinary time shall be determined according to the following formula:

Weekly rate for full-time employee Monday to Friday.	+	Weekly rate for ordinary hours between Monday and Saturday with the completion of ordinary hours after 1.00 pm Saturday— weekly rate for ordinary hours Monday to Friday.	
_____		_____	
38		7.6	x 120%

B. Re-number existing subclauses (4) and (5) as (6) and (7) respectively.

2. Clause 8.—Part-Time Employees.

A. Delete subclause (2) of this clause and insert in lieu thereof the following:

(2) A part-time employee shall receive payment for wages, annual leave, holidays, sick leave and long service leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to 38 hours.

B. Delete subclause (7) of this clause and insert in lieu thereof the following:

(7) The rate of pay for part-time employees working on Saturdays during ordinary time shall be determined according to the following formula:

(a) For all hours worked between 8.00 am and 1.00 pm:

Weekly rate for full-time employee Monday to Friday.	+	Weekly rate for ordinary hours between Monday and Saturday with the completion of ordinary hours at or before 1.00 pm Saturday—weekly rate for ordinary hours Monday to Friday.	
_____		_____	
38		4	

(b) For all hours worked after 1.00 pm and up to and including 6.00 pm:

Weekly rate for full-time employee Monday to Friday.	+	Weekly rate for ordinary hours between Monday and Saturday with the completion of ordinary hours after 1.00 pm Saturday— weekly rate for ordinary hours Monday to Friday.	
_____		_____	
38		7.6	

3. Clause 28.—Wages. In Part I of this Clause, delete subclause (1) and (2) and insert in lieu thereof the following:

(1) From the beginning of the first pay period commencing on or after 11 January 1996.

ADULTS (Classifications and Wage per week)

	(i) Who works ordinary hours Monday to Friday	(ii) Who works ordinary hours between Monday and 1.00 pm Saturday	(iii) Who works ordinary hours between Monday and Saturday with the completion of ordinary hours after 1.00 pm Saturday
	\$	\$	\$
Grade V			
Base Rate	447.70	461.98	477.10
Arbitrated Safety Net Adjustment	8.00	8.00	8.00
Award Rate	455.70	469.98	485.10
Grade IV			
Base Rate	407.00	419.99	433.73
Arbitrated Safety Net Adjustment	8.00	8.00	8.00
Award Rate	415.00	427.99	441.73
Grade III			
Base Rate	390.70	403.17	416.36
Arbitrated Safety Net Adjustment	8.00	8.00	8.00
Award Rate	398.70	411.17	424.36
Grade II			
Base Rate	376.10	388.10	400.80
Arbitrated Safety Net Adjustment	8.00	8.00	8.00
Award Rate	384.10	396.10	408.80
Grade I			
Base Rate	358.20	369.63	381.72
Arbitrated Safety Net Adjustment	8.00	8.00	8.00
Award Rate	366.20	377.63	389.72

The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

4. Clause 45.—Additional Loading for Late Night Trading Establishments.

Delete this clause and insert in lieu thereof the following:

45.—ADDITIONAL LOADING FOR LATE NIGHT TRADING ESTABLISHMENTS

- (1) A full-time or part-time employee who works ordinary hours between 6.00 pm and 9.00 pm on the day of late night trading shall be paid a loading of \$2.34 per hour in addition to the ordinary hourly rate of a full-time or part-time employee.
- (2) A casual employee who works ordinary hours between 6.00 pm and 9.00 pm on the day of late night trading shall be paid the amount of \$2.34 per hour in addition to the ordinary casual rate as laid down in paragraph (a) of subclause (4) of Clause 7.—Casual Employees hereof.
- (3) Provided that junior employees shall be paid the appropriate percentage as laid down in Part II of Clause 28.—Wages hereof.
- (4) The loading referred to in subclauses (1), (2) and (3) above shall be paid for the purpose of superannuation calculations.

**SHEET METAL WORKERS' AWARD
No. 10 of 1973.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch

and

Arcus Australia Pty Ltd and Others.

No. 1314 of 1995.

Sheet Metal Workers' Award
No. 10 of 1973.

SENIOR COMMISSIONER G.G. HALLIWELL.

6 February 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Ms J. Dowling on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

- (1) THAT the Sheet Metal Workers' Award No. 10 of 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of January, 1996.
- (2) Upon application to the Commission any Company which is party to a current s41 agreement shall be granted an exemption from the variations contained in this Order, where that agreement contains no extra claims provisions relating to wages and/or allowances and/or working conditions except where the no extra claims provision is qualified by the claim being in accordance with the State Wage Case Decision.

(Sgd.) G. G. HALLIWELL,

[L.S]

Senior Commissioner.

Schedule.

1. Clause 6A.—Adult Minimum Wage: Delete this clause and insert in lieu thereof the following—

6A. MINIMUM WAGE

Notwithstanding the provisions of this award, no employee (including an apprentice) 21 years of age or over, shall be paid less than \$317.10 as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but the minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$317.10. Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave or any other leave prescribed by this award and for all purposes of this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

2. Clause 8.—Overtime: Delete paragraph (f) in subclause (3) of this clause and insert in lieu thereof the following—

- (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$6.60 for a meal and if, owing to the amount of overtime worked, a second or subsequent meal is required, the employee shall be supplied with such meal by the employer or be paid \$4.50 for each meal so required.

3. Clause 23.—Fares and Travelling Time: Delete subclause (2) of this clause and insert in lieu thereof the following—

- (2) An employee, to whom subclause (1) of this clause does not apply and who is engaged on construction work, shall be paid an allowance in accordance with the provisions of this subclause to compensate for excess fares and travelling from the employee's home to his/her place of work and return—
- (a) On places within a radius of 30 kilometres from GPO Perth—\$1.80 per day.
 - (b) For each additional kilometre up to 53 kilometres—seven cents per kilometre.
 - (c) Subject to the provisions of paragraph (d) hereof, work performed at places beyond 53 kilometres from the GPO Perth shall be deemed to be outside work unless the employer and the employees, with the consent of the Union, agree in any particular case that the travelling allowance for such work shall be paid under this clause, in which case an additional allowance of 10 cents per kilometre shall be paid for each kilometre in excess of 53 kilometres.
 - (d) In respect to work carried out from an employer's depot situated more than 53 kilometres from the GPO Perth, the main Post Office in the town in which such depot is situated is substituted as the centre for the purpose of calculating the allowance to be paid to employees as follows—
 - (i) On places of work within a radius of three kilometres from such Post Officer—Nil.
 - (ii) On places of work beyond a radius of three kilometres but within a radius of 21 kilometres from such Post Officer—\$1.80 per day.
 - (iii) For each additional kilometre up to 53 kilometres—seven cents per kilometre.

4. Clause 25.—Distant Work: Delete paragraph (a) in subclause (6) and subclause (7) of this clause and insert in lieu thereof the following:

- (6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of \$19.00 for any weekend that he/she returns to his/her home from the job, but only if—
 - (a) the employer or his/her agent is advised of the intention not later than the Tuesday immediately preceding the weekend in which the employee so returns;
- (7) Where an employee, supplied with board and lodging by his/her employer, is required to live more than 800 metres from the job, he/she shall be provided with suitable transport to and from that job or be paid an allowance of \$8.35 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess travelling time shall be paid for at ordinary rates, whether or not suitable transport is supplied by the employer.

5. Second Schedule—Named Parties to Award: Delete this Schedule—

SECOND SCHEDULE

NAMED PARTY TO THE AWARD

Union Party—

The Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch.

VEHICLE BUILDERS' AWARD 1971.

No. 9 of 1971.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Truline Smash Repairs and Others.

No. 1313 of 1995.

Vehicle Builders' Award 1971.

No. 9 of 1971.

SENIOR COMMISSIONER G.G. HALLIWELL.

6 February 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Ms J. Dowling on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

- (1) THAT the Vehicle Builders' Award 1971 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 31st day of January, 1996.
- (2) Upon application to the Commission any Company which is party to a current s41 agreement shall be granted an exemption from the variations contained in this Order, where that agreement contains no extra claims provisions relating to wages and/or allowances and/or working conditions except where the no extra claims provision is qualified by the claim being in accordance with the State Wage Case Decision.

(Sgd.) G. G. HALLIWELL,

[L.S.]

Senior Commissioner.

Schedule.

1. Clause 8.—Overtime: Delete paragraph (f) in subclause (3) of this clause and insert in lieu thereof the following:
 - (f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$6.60 for a meal and, if owing to the amount of overtime worked a second or subsequent meal is required, the employee shall be supplied with such meal by the employer or be paid \$4.50 for each meal so required.
2. Clause 9.—Wages: Delete subclause (7) of this clause and insert in lieu thereof the following:
 - (7) Minimum Wage:

Notwithstanding the provisions of this award, no employee (including an apprentice), 21 years of age or over, shall be paid less than \$317.10 per week as his/her ordinary rate of pay in respect of the ordinary hours of work prescribed by this Award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$317.10. Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this Award. Notwithstanding the foregoing, where in this Award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay it shall be calculated upon the rate prescribed in this Award for the classification in which the employee is employed.

3. Second Schedule—Named Parties to the Award: Delete this Schedule and insert in lieu thereof the following:

Second Schedule.

NAMED PARTY TO THE AWARD

Union:

The Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch.

AWARDS/AGREEMENTS— Interpretation of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
INDUSTRIAL RELATIONS ACT, 1979—Section 7F
Sirirak Chaona
and
Swantown Holdings Pty Ltd trading as The Thai House
Restaurant.
No. WAG 2 of 1995.
COMMISSIONER A R BEECH.
8 February 1996.

Order.

WHEREAS the Commission has before it a referral in relation to the meaning or effect of a workplace agreement;

AND WHEREAS the applicant wrote to the Commission on the 31st day of January 1996 requesting that the abovementioned referral be cancelled;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be withdrawn by leave.

[L.S] (Sgd.) A. R. BEECH,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
INDUSTRIAL RELATIONS ACT, 1979—Section 7F
Tanongsak Chaona
and
Swantown Holdings Pty Ltd trading as The Thai House
Restaurant.
No. WAG 1 of 1995.
COMMISSIONER A R BEECH.
8 February 1996.

Order.

WHEREAS the Commission has before it a referral in relation to the meaning or effect of a workplace agreement;

AND WHEREAS the applicant wrote to the Commission on the 31st day of January 1996 requesting that the abovementioned referral be cancelled;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be withdrawn by leave.

[L.S] (Sgd.) A. R. BEECH,
Commissioner.

CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

THE A.W.U.—GOVERNMENT HARBOUR
CONSTRUCTION AND MAINTENANCE
AWARD 1965.

No. 24A of 1965.

THE A.W.U.—(GOVERNMENT)
SURVEY AWARD 1965.

No. 24C of 1965.

THE A.W.U.—(GOVERNMENT)
FORESTRY AWARD 1965.

No. 24B of 1965.

THE A.W.U.—GOVERNMENT CONSTRUCTION
AND MAINTENANCE
AWARD 1965.

No. 24 of 1965.

THE A.W.U. GOVERNMENT FOREMAN
CONSTRUCTION AND MAINTENANCE
AWARD 1967.

No. 24F of 1965.

A.W.U.—VERMIN, PEST AND WEED
EXTERMINATION AND CONTROL
AWARD 1967.

No. 24E of 1965.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

s.47

Cancellation of Award

(No. 686 of 1977, Part 101-106)

The A.W.U.—Government Harbour Construction and
Maintenance Award 1965

The A.W.U.—(Government) Survey Award 1965

The A.W.U.—(Government) Forestry Award 1965

The A.W.U.—Government Construction and Maintenance
Award 1965

The A.W.U. Government Foreman Construction and
Maintenance Award 1967

A.W.U.—Vermin, Pest and Weed Extermination and
Control Award 1967.

CHIEF COMMISSIONER W.S. COLEMAN.

23 January, 1996.

Order.

WHEREAS the Commission, being of the opinion that there was no employee to whom the following awards applied, did give notice on the 20 day of December, 1995 of an intention to make an Order cancelling such awards;

AND WHEREAS at the 23 day of January, 1996 there were no objections to the making of such an Order;

NOW THEREFORE, I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred by the said Act, do hereby order that the following awards be cancelled.

The A.W.U.—Government Harbour Construction and
Maintenance Award 1965

The A.W.U.—(Government) Survey Award 1965

The A.W.U.—(Government) Forestry Award 1965

The A.W.U.—Government Construction and Maintenance
Award 1965

The A.W.U. Government Foreman Construction and
Maintenance Award 1967

A.W.U.—Vermin, Pest and Weed Extermination and Control
Award 1967

[L.S.] (Sgd.) W. S. COLEMAN,
Chief Commissioner.

PUBLIC SERVICE ARBITRATOR— Matters Dealt With—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Honourable Minister for Health and Others
and

The Western Australian Branch of the Australian Medical
Association Incorporated.
No. PSA AG 14 of 1995.

Western Australian Government Health Industry Medical
Officers and Medical Practitioners Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER P E SCOTT.

12 January 1996.

Order.

HAVING heard Mr E Dillon on behalf of the Applicants and Mr P Jennings on behalf of the Respondent, now therefore the Public Service Arbitrator, pursuant to the powers conferred by the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Western Australian Government Health Industry Medical Officers and Medical Practitioners Agreement 1996 in the terms of the following schedule be registered with effect on and from the 1st day of January 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

PART 1—PRELIMINARIES

1.1—TITLE

This Agreement shall be known as the Western Australian Government Health Industry Medical Officers and Medical Practitioners Agreement 1996.

1.2—NO FURTHER CLAIMS

It is a condition of this Agreement that the Association undertakes that for the period of this Agreement it will not pursue any extra claims with respect to salaries and conditions to have application within the period of this Agreement.

1.3—APPLICATION

(1) Subject to subclause (2), this Agreement shall operate throughout the State of Western Australia and shall apply to all medical practitioners employed in or by a hospital board established under the Hospitals and Health Services Act 1927.

(2) This Agreement shall not apply to:

- (a) Medical Superintendents.
- (b) Any medical practitioner who is a member of the Senior Executive Service.
- (c) Any medical practitioner engaged as an independent contractor.

1.4—TERM OF AGREEMENT

This Agreement shall operate as from 1 January 1996 and shall remain in force until 30 September 1997.

1.5—ARRANGEMENT

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- 1.2 No Further Claims
- 1.3 Application
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- 2.4 Part Time Medical Officers
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- 4.1 Annual Leave
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- | | | | |
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| B | Named Parties | | |
| C | Pay Scales— | Schedule C1 | Medical Officers |
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Full Time |
| | | Schedule C3 | Arrangement B—
Full Time |
| | | Schedule C4 | Arrangement C—
Modified Full Time |
| | | Schedule C5 | Arrangement D—
Modified Full Time |
| | | Schedule C6 | Sessional Practitioners |

PART 6—SIGNING OF AGREEMENT, COMMON SEAL

1.6—BACKGROUND

(a) The parties acknowledge that improvements in productivity are being achieved in the Health System and agree that appropriate remuneration increases for Medical Officers and Medical Practitioners should occur in return for continuing productivity improvements.

(b) The parties seek to achieve excellence in the provision of health services through efficient and effective health care. Paramount to this are the requirements for a clear patient/customer focus to ensure patient/customer satisfaction through the most appropriate and effective delivery of services, increasing quality of services to improve health outcomes, and increasing where practicable cost efficiency to ensure the maximum benefits to the community within budgeting constraints.

1.7—COMMITMENTS

(a) The parties agree to work together to develop further a committed, flexible and highly skilled workforce of Medical Practitioners that are focused on customer service, productivity and on a working environment which is mutually rewarding to the Employer and the Medical Practitioners employed by it.

(b) The parties acknowledge and accept the need to further develop an "enterprise focus". The parties are committed to working co-operatively so that all levels of management and all Medical Practitioners come to understand and accept the workplace bargaining processes so that they will participate in it willingly and fully to maximise the achievement of the goals referred to in sub-clause (a) above.

(c) The parties agree that to create a new organisational culture all Medical Practitioners need to have an understanding of the process and principles involved in improving efficiency and increasing productivity.

(d) The Australian Medical Association and Employers agree to educate Medical Practitioners and managers, on workplace reforms and workplace bargaining, and the provision of medical services.

(e) The parties are committed to the concept of continuous quality improvement and to the delivery of a high standard of service to patients/customers of the Government Health Industry.

(f) Performance agreements may be entered into which may include (without being limited to):

- General job description.
- Expectations in respect of:
 - management responsibilities
 - quality activities
 - post graduate and undergraduate activities
 - continuing education
- Any proposed variations from "routine duties" eg college activities.
- Leave proposals that would be outside the entitlements under the agreement.
- Approved modification of hospital/non hospital duties eg community or other Health Service.
- Delineation of clinical privileges.
- Where appropriate, any financial, activity or health targets.
- The parties agree to examine by 30 June 1996 sessional specialists private practice arrangements and if necessary make appropriate adjustments.

The parties agree to develop performance indicators and targets and measure performance against these indicators. It is agreed that the final 2% increase 1 January 1997 will be payable only upon achievement of the necessary level of performance.

The parties also agree to develop a subsidisation scheme for clinicians whose medical defence costs exceed the average to be funded from excess private practice earnings/facility charges.

1.8—BROAD OBJECTIVES OF THE AGREEMENT

The Industry has limited capacity to increase remuneration for medical practitioners in the current economic and operational environment. Accordingly, it has been necessary to prioritise the allocation of resources and rationalise some aspects of the current remuneration package.

The proposal contains a range of elements, targeting key issues and balancing the various competing requirements. The proposal comprises:

- restructuring of the salary scale to provide a more equitable and consistent structure for all medical practitioners and one which assists with attraction and retention of a highly skilled and motivated medical workforce.
- modifications to existing remuneration which simplify and modernise a range of entitlements.

- provision of pay increases through a range of mechanisms including some measures designed to offset rationalisation of existing conditions.

The result is a more balanced suite of rewards which should yield improved results for the Industry.

Highlights of the proposal include:

- emphasis on attraction and retention of full time salaried medical practitioners.
- 8% pay increase for all medical practitioners phased in over the life of the agreement.
- improved pay structure which appropriately aligns remuneration for hospital and psychiatric medical practitioners.
- capacity to modify sessional/part time arrangements.
- agreement to review and by agreement, modify on-call and recall payments with the aim of providing a more equitable, simple and viable system.
- agreement to review and by agreement, modify overtime and penalties for junior doctors to provide fair and reasonable rewards within a system which is administratively efficient and viable and which provides an independent review mechanism to correctly categorise individual doctors.
- significant modification of rights to private practice, providing major improvements for senior medical practitioners.
- modification of conditions relating to:
 - public holidays;
 - long service leave;
 - sick leave;
 - short leave;
 - higher duties; and
 - annual leave loading

These measures, combined with the commitments outlined in clauses (1.6), (1.7) and (1.9) are expected to significantly improve productivity and efficiency whilst providing appropriate rewards to medical practitioners.

1.9—SPECIFIC COMMITMENTS OF MEDICAL OFFICERS AND MEDICAL PRACTITIONERS

Consistent with the broad commitments and objectives of this Agreement and:

- without limiting the general application of customary professional and common law obligations; and
- without limiting the issues to those specified in this clause;

it is agreed that medical officers and medical practitioners will subject to this Agreement:

- (a) devote the whole of their working time, attention and skill in performing all duties faithfully and diligently, within the limits of their skill, training and competence;
- (b) attend the Hospital/Health Service during the normal hours of business of the relevant Department and at such other times as may reasonably be necessary.
- (c) be available for consultation and recall to the Hospital/Health Service outside the normal hours of business of the relevant Department, in accordance with the on call roster developed from time to time, after consultation with them, by the Head of Department.
- (d) support and contribute to the achievement of the clinical, teaching, research and organisational goals of the Hospital/Health Service as an active member of the Hospital/Health Service community.
- (e) actively support and contribute to continuous quality improvement and customer and patient focus initiatives including but not confined to:
 - development and implementation of critical path and process re-engineering; and
 - development and implementation of international best practice standards.

- (f) comply with such clinical practices, protocols and standing orders as the Heads of Department may from time to time determine after consultation with them and where appropriate the Medical Advisory Committee.
 - (g) comply with any Hospital/Health Service Policy, administrative and management practices, and other requirements, the Hospital/Health Service may from time to time determine after consultation with the Medical Advisory Committee where appropriate.
 - (h) actively assist the hospital/health service to meet budget targets
 - (i) actively commit to a multidisciplinary approach to in-patient care.
 - (j) co-operate and participate in College re-certification and ACHS accreditation.
 - (k) actively be involved in the development and implementation of clinical audits.
 - (l) comply with Health Department defined waiting list priorities.
 - (m) increase day surgery by agreed targets.
 - (n) co-operate with the development and implementation of strategies to achieve length of stay targets.
 - (o) assist with the joint development and implementation of performance management systems and non-performance management systems at all levels within target time frames.
- and;
- (p) Each Specialist will be responsible for ensuring that he/she achieve:
 - accurate completion of patient documentation within five (5) working days of patient discharge; and,
 - that the appropriate discharge summary is forwarded to the referring doctor within five (5) working days of patient discharge.

The parties are agreed that the payment of the 3% salary increase on 1 July 1996 and 2% on 1 January 1997 are contingent upon continuous satisfactory progress with the matters detailed in this clause.

1.10—AGREEMENT FLEXIBILITY

In recognition of the need for maximum flexibility within this agreement, where the Association and Employers agree, mutually acceptable alternative terms and conditions may be implemented in substitution of those specified in this Agreement.

1.11—RENEGOTIATION OF AGREEMENT

Negotiations for a new agreement will commence at least six months prior to the date of expiration of this Agreement.

If at the date of expiration no new agreement has been concluded then this Agreement shall continue until such time as a new agreement is entered into.

1.12—TRANSITION

Medical officers and medical practitioners shall retain accrued and pro rata entitlements to sick leave, long service leave, conference and overseas study leave where applicable, and other accrued and pro rata benefits as agreed to between employers and the Association, as at the date of effect of this Agreement.

PART 2—MEDICAL OFFICERS—SUPERVISED SERVICE POSITIONS AND TRAINEES

2.1 —DEFINITIONS

“Association” means the Western Australian Branch of the Australian Medical Association Incorporated.

“Employer” means a public hospital board, established under the Hospitals and Health Services Act 1927 as amended and by proclamation declared to be a teaching hospital pursuant to the provisions of the University Medical School, Teaching Hospitals Act 1955 as amended.

“Health Department” means the Health Department of Western Australia.

“Intern” means a medical officer employed as such by a teaching hospital during the first year of relevant experience following graduation, prior to full registration by the Medical Board of WA.

“Medical Officer Supervised” means a registered non-specialist medical practitioner employed within the public sector, not being in a recognised training programme and requiring supervision by a specialist/consultant.

“Medical Officer—Service Position” means either a Medical Officer Supervised or Medical Officer Unsupervised as defined in this clause.

“Medical Officer—Training Position” includes Interns, Resident Medical Officers, Registrars and Senior Registrars.

“Medical Officer Unsupervised” means a registered non-specialist medical practitioner not being in a recognised training programme or a general practitioner and authorised to perform their duties without requiring specialist/consultant supervision.

“Registrar” means a registered medical practitioner employed as a registrar and working towards a specialist qualification. A registrar may be appointed by a teaching hospital with or without the Part 1 Examination of an appropriate specialist qualification acceptable to the National Specialist Qualification Advisory Committee established under the Health Insurance Act 1973.

“Resident Medical Officer” means a registered medical practitioner employed as a resident medical officer by a teaching hospital and in the second or subsequent years of relevant experience following graduation.

“Senior Registrar” means a registered medical practitioner employed as a senior registrar by a teaching hospital, Health Department or Health Service and who has obtained an appropriate specialist qualification acceptable to the National Specialist Qualification Advisory Committee established under the Health Insurance Act 1973.

“Trainee Medical Administrator” means a medical officer appointed to a recognised Medical Administration training position and enrolled in the Royal Australian College of Medical Administrators training programme.

“Trainee Psychiatrist” means a registrar or senior registrar appointed to a training position recognised by the Royal Australian and New Zealand College of Psychiatrists.

2.2 —TERMS OF APPOINTMENT

(1) Appointment to the position of medical officer (Training Position) shall be between the medical officer and the Employer. The period of engagement shall be as agreed in writing between the medical officer and the Employer and shall normally be for 52 continuous weeks.

(2) The Employer appoints the medical officer on the basis that the whole of the medical officer’s working time shall be devoted to the duties of the appointment.

(3) Service may be terminated by either the employer or the medical officer giving notice in accordance with the following—

- (a) For contracts of less than 52 weeks or for contracts of an indefinite period—4 weeks’ notice.
- (b) For contracts of 52 weeks and up to but not including 104 weeks—6 weeks’ notice.
- (c) For contracts of 104 weeks and up to but not including 156 weeks—8 weeks’ notice.
- (d) For contracts of 156 weeks’ duration or longer—12 weeks’ notice.

In lieu of the giving of the required notice the employer or the medical officer may pay or forfeit as the case may be salary commensurate with the residual period of notice otherwise required. Provided that the employer and the medical officer may agree to a lesser period of notice.

(4) In the event of the employer deciding that a medical officer should be dismissed, the medical officer may appeal to a Board of Reference.

(5) Where a medical officer has been dismissed or has given or who has been given notice of termination of service in accordance with the provisions of subclause (3) of this Clause or whose appointment had expired in accordance with the pro-

visions of subclause (1) of this Clause the medical officer shall be paid all monies due to such medical officer on the last day of service, except where unusual circumstances prevent this in which case payment shall be made as soon as possible thereafter but in any case not more than three working days thereafter.

(6) Medical officers (training and service positions) may be seconded on the approval of, and after consultation between the relevant employing authorities, to any Government recognised hospital or agency. In this subclause "employing authority" is as defined in the Public Sector Management Act 1994.

Medical officers in their intern year may be seconded in accordance with this subclause as appropriate to the medical officer's training.

(7) (a) A medical officer (service position) who currently has a permanent appointment at the time this Agreement becomes operative shall continue to have permanent tenure.

(b) Provided that all new appointments to service positions shall be on 5 year fixed term contracts. Provided that the employer and employee may, by mutual agreement, elect in writing to vary the employee's right to a five (5) year contract for a shorter or longer period.

There shall be no automatic right of reappointment upon expiry of a contract. If upon expiry of the contract a medical officer is not reappointed and where failure to gain reappointment is not due to misconduct then a payment shall be made to the medical officer as follows:

Ten Percent (10%) of the cumulative base annual salary of the medical officer over the life of the contract, to a maximum of 5 years.

No other termination, redundancy or severance payment shall be made except as provided for in this Agreement.

(c) Medical officers who are currently employed on a permanent basis shall not be required to convert to a fixed term contract in their current employment but may by agreement with the Employer choose to do so. Where such agreement is reached, the medical officer shall become subject to 7(b) and shall, if not reappointed at the end of that fixed term contract in accordance with the conditions specified in (7)(b), be eligible to be paid pro rata long service leave after 5 years of continuous service.

2.3 —CONDITIONS OF SERVICE

(1) A medical officer shall not be bound, without the consent of the patient, to divulge any information which the medical officer has learned in attending the patient, and which was necessary to enable the medical officer to prescribe or act for the said patient, to any person other than the Medical Superintendent, Deputy Medical Superintendent or senior medical staff of the hospital, or to the Commissioner, Health Department of Western Australia or the Commissioner's delegate when the medical officer is employed on secondment to a hospital for which the Commissioner or the Commissioner's delegate acts as Medical Superintendent.

(2) Where installation of a telephone is approved by the employer, the cost of installation and rental shall be borne by the employer. Provided however that where the medical officer's contract of employment is for 52 weeks, the employer shall not be liable for the cost of more than one installation during that contract period.

(3) Reasonable costs of travel will be provided for calls to the hospital out of normal working hours.

(4) Any medical officer required by the employer to visit another centre in the course of official duties shall have reasonable costs of travel provided.

2.4 —PART TIME MEDICAL OFFICERS

(1) Medical officers in training positions above Level 5 may be employed to be regularly rostered to work for less than the ordinary weekly hours of duty provided that—

(a) The medical officer occupies a recognised post approved by the appropriate College and the Employer for the purposes of obtaining a postgraduate qualification and for the appointment of a medical officer/s on a part time basis in accordance with the College's training requirements.

(b) A medical officer employed on a part time basis is employed in accordance with the appropriate College's requirements and in any event for a minimum of 50 per cent of the ordinary weekly hours of a full time medical officer.

(c) Payment is made on a pro rata basis to the rate prescribed for the level at which the medical officer is employed in proportion to which the part time medical officer's ordinary hours bear to normal hours prescribed in subclause (1) of Clause 2.8—Hours of Duty.

(2) Notwithstanding the provisions of Clause 2.8—Hours of Duty and subclause (1) above, a medical officer may be regularly employed on any day, to work less hours than prescribed by Clause 2.8—Hours of Duty, subclause (1). A medical officer's minimum weekly hours shall be specified at the commencement of the medical officer's employment and be worked in minimum continuous periods of three hours. The medical officer's normal hours shall only be varied in accordance with the provisions of this clause. The hourly rate shall be calculated on the same basis as prescribed in subclause (1)(c) above subject to any penalties provided for within this Agreement.

Where the employer wishes to increase the normal hours worked by a part time medical officer for a period of two or more weeks and the medical officer so agrees in writing, the increased hours shall be deemed to be the medical officer's normal hours for that period. Hours worked in excess of the medical officer's normal hours in any roster period shall be paid in accordance with subclause (3)(a) hereunder and Clause 2.11—Payment for Excess Hours.

(3) (a) When a medical officer is employed under the provisions of this clause, there shall be an entitlement to the same leave as prescribed in this Agreement for full time medical officers, payment being on a pro rata basis in the same proportion that the medical officer's normal hours bear to the hours prescribed in subclause (1) of Clause 2.8—Hours of Duty.

Provided that the ordinary rate for a medical officer who is employed in accordance with the provisions of subclause (2), may be increased by an additional 20% in lieu of leave entitlements.

(b) Where during any qualifying period the ordinary hours of a part time medical officer vary as a proportion of the hours prescribed in subclause (1) of Clause 2.8—Hours of Duty the ordinary hours worked shall be averaged over the qualifying period.

(4) The employer shall advise the Executive Director of the Association within 28 days of the date of this Agreement coming into operation as to the number of positions occupied, the days on which and number of hours worked by those medical officers employed in a part time capacity.

(5) The employer shall advise the Executive Director of the Association within seven days of any part time office created or altered after this Agreement comes into operation as to the number of positions occupied, the days on which and number of hours worked by those medical officers employed in a part time capacity.

(6) Any dispute as to whether a part time position is necessary shall be referred to the Board of Reference.

2.5 —CASUAL MEDICAL OFFICERS

(1) Medical Officers above Level 4 may be employed by the hour for a period of up to four consecutive weeks in any period of engagement.

(2) Medical Officers so employed shall be engaged for minimum periods of three hours with their ordinary rate of pay being at the appropriate salary rate prescribed in Schedule C1—Salaries with the addition of a 20% loading in lieu of leave entitlements.

(3) At the beginning of each month the employer shall supply to the Association the following information with respect to casual medical officers employed during the preceding month—

(a) The name of the casual medical officer/s so employed.

(b) The address of such medical officer/s.

- (c) The classification in which such a medical officer/s was engaged and the number of hours so engaged.
- (d) The rate of salary paid to such medical officer/s.

2.6 —SALARIES

(1) (a) Salaries or salary ranges applicable to medical officers covered by this Agreement calculated on the basis of the ordinary hours of duty specified in Clause 2.8.—Hours of Duty of rostered duty in any period of one week shall be in accordance with Schedule C1 of this Agreement, provided that:

(b) The salary of an Intern shall be at Level 1.

(c) The salary of a Resident Medical Officer (training) shall be within the range of Levels 2 to 4 inclusive, based on years of relevant experience after graduation. Level 4 shall apply to 4th and subsequent years of experience after graduation.

(d) The salary of a Registrar (training) shall be within the range of Levels 5 to 8 inclusive based on years of relevant experience in that capacity.

(e) The salary of a Senior Registrar (training) shall be within the range of Levels 9 to 10, based on years of relevant experience in that capacity.

(f) The salary of a trainee psychiatrist shall substantively be within the range of levels 5 to 10 inclusive based on years of relevant experience in that capacity with level 12 available only to those undertaking their elective year. However, in recognition of the shortage of training psychiatrists, the range payable will be increased by 2 increments to 7 to 12 inclusive as an attraction and retention strategy. The parties to this agreement shall review the need to continue this arrangement by 1 July 1997 and annually thereafter.

(g) The salary of a trainee medical administrator shall be within the range of levels 6 to 9 inclusive based on years of relevant experience in that capacity.

(h) The salary of a Medical Officer employed in a service position and supervised by a qualified specialist shall be within the range of levels 7 to 12 inclusive, based on years of relevant experience in that capacity.

(i) Subject to the provisions of this Agreement, a medical officer shall be employed in accordance with the level of work performed.

(2) Subject to good conduct, satisfactory performance, diligence and efficiency, a medical officer shall proceed from the point of entry in the salary range to the maximum of the range for the particular class of employment according to the increments in such salary range.

(3) Salaries shall be paid at least fortnightly.

2.7 —HIGHER QUALIFICATIONS

(1) A medical officer, other than a senior registrar, who has obtained an appropriate specialist qualification (acceptable to the National Specialist Qualification Advisory Committee of Australia established under the Health Insurance Act 1973) shall be paid an allowance of \$1066.00 per annum.

(2) The above allowance shall be adjusted at the same time and the same proportion as any adjustment to the minimum weekly salary rate prescribed from time to time for a medical officer Level 8.

2.8 —HOURS OF DUTY

This clause shall continue to operate unless displaced by an alternative system agreed to between the employers and the Association.

The parties are committed to developing an alternative system of remunerating rostered overtime and if possible afternoon/night/weekend and public holiday penalties which annualises medical officers' entitlements and properly categorises the medical officer according to his/her entitlements with an independent review mechanism to validate/determine the correct band.

Accordingly, negotiations and consultation will commence forthwith to develop an annualised payment system. The parties agree to consider and negotiate in good faith on alternatives to the present system.

Any mutually acceptable system shall be implemented by 1st July 1996. In the event that this does not occur, the Commissioner of Health will confer with the President of the AMA

to determine if the parties have negotiated in good faith and whether the 3% increase in base salaries due on 1st July 1996 shall be withheld or advanced.

(1) A medical officer's ordinary hours of duty shall consist of 38 hours per week to be rostered in accordance with the provisions of Clause 2.9—Rosters. The 38 ordinary hours of duty and any required extra duty (other than on call and/or recall) shall be worked in rostered periods as prescribed in Clause 2.9—Rosters.

(2) Medical officers' hours of duty shall be worked so as to provide the following time off duty:

(a) Eight days free from ordinary hours of duty in each 28 day cycle.

(b) Where practicable, at least two consecutive days off duty shall be granted and shall not be preceded by a night shift unless the medical officer is rostered to work on evening or night shift immediately following rostered days off.

(c) Twelve evenings off, Monday to Friday inclusive between the hours of 6.00 pm and 8.00 am, in each 28 day cycle, provided that, by agreement between the Association and the Employer, designated positions shall be exempted from the provisions of this subclause.

(3) (a) Where a medical officer is required to resume duty before having had eight consecutive hours off duty the subsequent hours worked until released from duty for eight consecutive hours, shall be included in excess hours and paid for in accordance with Clause 2.10—Payment for Excess Hours. A medical officer released from duty shall be entitled to be absent for eight consecutive hours without loss of pay for ordinary working hours occurring during such absence.

(b) Where necessary, Employers have the right to require medical officers to work during their time off periods provided the rostered hours of work of any medical officer shall not exceed 75 hours in any period of seven consecutive days nor more than 140 hours in any 14 days or 280 hours in any period of 28 consecutive days.

(4) (a) Medical officers shall not be rostered to work more than four consecutive nights.

(b) Medical officers shall not be rostered for duty for more than 18 consecutive hours except by agreement between the Employer and medical officer. Where a medical officer works beyond 18 consecutive hours, the additional hours shall be included in excess hours and paid for in accordance with Clause 2.11—Payment for Excess Hours.

(c) Medical officers shall be rostered for duty for minimum periods of at least three (3) hours.

(5) Meal breaks shall be a minimum of 30 minutes and shall not be counted as time worked, provided that where a medical officer is held on call within the hospital, the period on call shall be counted as part of the medical officers' ordinary working hours.

(6) A medical officer shall not be compelled to work for more than five hours without a break for a meal, provided that a medical officer who commences work at or before 7.00 am may be required to work for six hours before having a meal break. Provided further that where rostered duty exceeds nine consecutive hours, an additional meal break shall be provided at the completion of each further period of five hours after the completion of the first meal break.

2.9 —ROSTERS

(1) Medical officers' hours of duty shall be worked according to a roster or rosters which shall operate over either a 14 day or 28 day period and be exhibited at some reasonably convenient place accessible to the medical officers to whom it applies.

(2) The roster or rosters shall set out the medical officer's times of commencing and ending each period of duty for a period of not less than 14 consecutive days and such rosters shall be posted at least seven days in advance of their commencement of operation.

(3) Except in cases of emergency or where the medical officer concerned so agrees, rosters shall not be amended during their currency. Provided, however, that by agreement amongst themselves and where appropriate clinically, medical officers may replace one another for periods of rostered duty provide that the medical officers notify the appropriate personnel of the Employer of the change.

(4) Rosters shall be drawn up so as to provide at least eight hours off between successive periods of duty and allow adequate time for rest and sleep.

(5) Notwithstanding the provisions of the foregoing and Clause 2.8—Hours of Duty:

- (a) Where the Employer and the medical officer agree to a roster that has provisions for hours of duty not in conformity with the foregoing paragraph such roster system shall apply.
- (b) Special arrangements may be made by agreement between the Employer and the medical officer should an officer need to remain on call or to work during off duty periods specified in the preceding subclauses in order to gain sufficient postgraduate medical training and experience to meet the requirements for a higher qualification.

2.10 —PAYMENT FOR ROSTERED DUTIES

(1) A loading of 12.5% of the ordinary salary shall, subject to subclause (2) hereunder, be paid for time worked on afternoon or night duty as defined hereunder:

- (a) afternoon duty—commencing or continuing between 12 noon and 6.00 pm.
- (b) night duty—commencing or continuing between 6.00 pm and 4.00 am.

(2) The provisions of subclause (1) of this clause do not apply to a medical officer who having commenced duty after 4.00 am completes duty at or before 6.00 pm on the same day.

(3) Where a period of duty up to a maximum of 18 hours, is worked as part of the normal roster, the first eight hours are to be paid at the ordinary rate, unless those hours commenced after 12.00 noon or before 4.00 am, in which case the loading as prescribed in subclause (1) or the weekend rates as prescribed in subclause (5), as the case may be, shall be paid for such additional time worked.

(4) Where a medical officer works ordinary rostered hours of duty such that the medical officer continues to work after 4.00 am the following day, the loading as prescribed in subclause (1) shall continue to apply.

(5) The loading on the ordinary rates of pay for all work performed during ordinary hours on a Saturday and Sunday shall be 50%. The rates prescribed in this subclause shall be in substitution for and not cumulative on the rates prescribed in subclause (1) of this clause.

(6) Work performed on a holiday referred to in Clause 4.2—Public Holidays, shall be paid for at the rate of 250% or if the Employer and medical officer mutually agree, the employee shall be paid for time worked at the rate of 150% and in addition, be allowed to observe the holiday on a day mutually acceptable to the Employer and the medical officer, provided that no more than five days may be accumulated at any one time.

2.11 —PAYMENT FOR EXCESS HOURS

(1) (a) Payment for hours of duty worked in excess of 152 hours in any four week cycle shall be paid at the rate of 150% of the equivalent hourly rate applicable to the medical officer calculated according to the following formula.

$$\frac{\text{Fortnightly salary}}{76} \times \text{No. of excess hours of duty} \times \frac{3}{2}$$

(b) Provided that payment for hours of duty worked in excess of 232 hours in any four week cycle shall be paid at the rate of 200% of the equivalent hourly rate applicable to the medical officer calculated according to the following formula.

$$\frac{\text{Fortnightly salary} \times \text{No. of hours of duty in excess of 232} \times 2}{76}$$

(2) In lieu of payment for excess hours a medical officer, on written request, may at the discretion of the employer, be allowed time off proportional to the payment to which the medical officer is entitled up to a maximum of five days in each twelve month period to be taken at a time convenient to the employer.

2.12 .—ON CALL AND CALL BACK

The parties to this Agreement are committed to reviewing the mechanisms for remunerating on call and recall.

Accordingly the Employer will propose to the AMA, a demonstrably cost neutral proposal (based on the aggregate cost of current entitlements) by 15 December 1995. The parties agree to consider and negotiate in good faith on alternatives to the present system. Any mutually acceptable changes shall become operative prior to 1st January 1997. In the event that this does not occur, the Commissioner of Health shall confer with the President of the AMA to determine whether the parties have negotiated in good faith and whether the 2% increase to base salaries due on 1 January 1997 shall be withheld or advanced.

(1) On Call

- (a) Medical officers shall be rostered on call in accordance with clinical need by the Medical Superintendent in consultation with the Head of the Department.
- (b) A medical officer rostered on call shall be paid an hourly allowance equal to \$4.24. Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this clause when the medical officer is recalled to work. For the purposes of this subclause, the ordinary hourly divisor shall be 38:
- (c) For the purposes of this Agreement a medical officer is on call when the medical officer is directed by the Employer to remain readily contactable and available to return to work outside of the medical officer's normal hours of duty.

(2) Call Back

- (a)
 - (i) When a medical officer is recalled to work, the medical officer shall be paid at the rate of time and a half of the medical officer's salary prescribed under Schedule C1—Salaries with a minimum payment of three hours.
 - (ii) The medical officer shall not be obliged to work for three hours if the work for which the medical officer was recalled is completed in less time, provided that if the medical officer is called out within three hours of starting work on a previous recall the medical officer shall not be entitled to any further payment for the time worked within that period of three hours.
- (b) Where a medical officer is recalled to work, payment for the call back shall commence from:
 - (i) In the case of a medical officer who is on call, the time the medical officer starts work;
 - (ii) In the case of a medical officer who is not on call, the time the medical officer embarks on the journey to attend the call. Provided that where a medical officer is recalled within two hours prior to commencing normal duty, any time spent in travelling to work shall not be included with actual duty performed for the purpose of determining payment under this paragraph.
- (c) A medical officer who is required to use the medical officer's motor vehicle when recalled to work shall be reimbursed all expenses

incurred in accordance with the provisions of Schedule F of the Public Service Award 1992.

2.13—CLAIMS FOR PAYMENT OF OVERTIME, PENALTIES AND OTHER ENTITLEMENTS

Medical officers shall submit claims for payment of overtime, penalties and other entitlements within three (3) months of an entitlement being established.

2.14 —BOARD AND LODGING

(1) Medical officers who purchase a meal from the Employer shall pay the rate prescribed staff rate for one meal per rostered period of duty. Where the rostered period of duty necessitates the medical officer taking a second or subsequent meal those meals shall be supplied by the Employer, or the medical officer will be reimbursed for each meal purchased at the following rates—

Breakfast	\$5.70
Lunch	\$7.05
Evening	\$8.45

These rates shall be automatically adjusted in accordance with adjustments to the rates prescribed in Schedule H of the Public Service Award 1992. Such reimbursement shall be in addition to any payment for overtime to which the medical officer is entitled.

(2) A medical officer required to work hours in excess of his rostered period of duty on any day, shall, when such additional hours necessitate the taking of a meal away from the medical officer's usual place of residence, be supplied by the Employer with any meal required or be reimbursed for each meal purchased at the following rates—

Breakfast	\$5.70
Lunch	\$7.05
Evening	\$8.45

These rates shall be automatically adjusted in accordance with adjustments to the rates prescribed in Schedule H—Overtime of the Public Service Award 1992.

Such reimbursement shall be in addition to any payment for overtime to which the medical officer is entitled.

2.15 —UNIFORMS AND LAUNDRY

White coats shall be supplied free of charge to each medical officer and these shall be laundered at the expense of the Employer. The white coats remain the property of the Employer concerned and must be returned to the Employer at the completion of the medical officer's period of service.

2.16 —EXAMINATION LEAVE

(1) Upon application medical officers shall be granted leave with pay in order to attend examinations within Australia and New Zealand for higher qualifications which have been approved by the employer.

(2) Leave granted shall be such as to allow the medical officer to travel to and from the centre at which the examination is to be held by the fastest means possible. The medical officer will be free from duties on a working day for a study day, immediately preceding the examination.

(3) Any leave granted under the provisions of this Clause shall be exempt from and in addition to the provisions of Clause 4.1—Annual Leave, of this Agreement.

(4) Where a medical officer has been granted leave under this Clause, notification of the results of the examination shall be forwarded to the employer on receipt by the medical officer or as soon as is practicable thereafter.

2.17.—STUDY/PROFESSIONAL DEVELOPMENT

(1) Upon application a medical officer shall be granted up to two weeks study leave per annum, to be taken within one month of the date of the approved examination for which such medical officer is studying. Such leave shall form part of the medical officer's annual leave entitlement.

(2) Applications for leave under this Clause shall be made to the employer at least 2 months prior to the commencement of the leave and shall include evidence of registration for the examination.

(3) Special leave for additional study may be granted at the discretion of the employer.

(4) Special leave without pay for additional study leave, conferences or other purposes, including interstate or overseas professional development, may be granted to junior medical officers for periods of up to twelve (12) months or more at the discretion of the employer.

PART 3—SENIOR AND SPECIALIST MEDICAL PRACTITIONERS

3.1 —DEFINITIONS

“Appointments Committee” means—

the Committee established by the Employer for the purpose of making recommendations to the Employer on the eligibility for appointment of medical practitioners.

“Association” means—

the Western Australian Branch of the Australian Medical Association Incorporated.

“Eligible Person” means—

a person defined as such by the Health Insurance Act 1973 as amended.

“Employer” means—

any public hospital board established under the Hospitals and Health Services Act 1927 as amended.

“General Practitioner” means—

a registered medical practitioner engaged in the provision of primary, continuing whole—patient care to individuals, families and their community not being a vocationally registered general practitioner.

“Honorary Medical Practitioner” means—

a medical practitioner who has elected in writing to provide services to public patients on an unremunerated basis and who has the same rights and privileges as apply to medical practitioners generally.

“Medical Advisory Committee” means—

the Committee established by the Employer in Teaching and Non Teaching Hospitals to advise on all medical matters affecting patient care and on any other matters referred to it for advice.

“Medical Officer Unsupervised” means—

a registered non-specialist medical practitioner not being in a recognised training program or a general practitioner and authorised to perform their duties without requiring specialist/consultant supervision.

“Medical Practitioner” means—

a medical practitioner as defined under the Medical Act 1894 as amended from time to time.

“Minister” means—

the Minister for Health in the State of Western Australia.

“Non Teaching Hospital” means—

a public hospital other than a declared Teaching Hospital.

“Private Patient” means—

in relation to a hospital, an inpatient of the hospital who is not a patient for whom the hospital has accepted responsibility to provide medical services. A private patient elects to accept responsibility to pay for medical care and the provision of hospital services.

“Public Patient” means—

in relation to a hospital, an eligible person who is an inpatient in respect of whom the hospital provides comprehensive care, including medical, nursing and diagnostic services and, if they are available at the hospital, dental and paramedical services, by means of its own staff or by other agreed arrangements.

“Outpatient Service” means—

in relation to a hospital, a health service or procedure provided by the hospital to an eligible person other than an inpatient of the hospital.

“Specialist” means—

a registered medical practitioner who holds the appropriate higher qualification of a University or College in a specialty approved by the Employer.

“Teaching Hospital” means—

any hospital declared by the Governor to be a Teaching Hospital pursuant to the provisions of subsection of Section 3 of the University Medical School Teaching Hospital's Act 1955 as amended. This includes:

Royal Perth Hospital
Sir Charles Gairdner Hospital
Fremantle Hospital
Princess Margaret Hospital
King Edward Memorial Hospital

“Vocationally Registered GP” means—

a medical practitioner who has been granted Vocationally Registered status under the Health Insurance Act.

3.2. —APPOINTMENT OF MEDICAL PRACTITIONERS AND ANNUAL INCREMENTS

(1) (a) Medical practitioners may be employed on the following basis:

(i) Full time with rights to private practice in accordance with arrangements A and B as detailed in Clause 3.5, provided that rights to private practice shall not be awarded to employees below level 13 of the relevant pay scale.

Hours of work for full time medical practitioners are to be consistent with professional practice. These hours are determined by consultation between the Hospital/Health Service and the medical practitioner. Solely for administrative purposes, when calculating entitlements to leave and other benefits which are expressed in days and weeks in this Agreement, a full time medical practitioner's hours of work will nominally be 37.5 per week.

(ii) Modified full time with rights to private practice in accordance with arrangements C and D as detailed in Clause 3.5, provided that rights to private practice shall not be awarded to employees below level 13 of the relevant pay scale. Modified full time means employment at 80% of the full time pay rate with all entitlements pro rata accordingly.

(iii) Sessional, as defined in Clause 3.6.

(b) All appointments of medical practitioners shall be made by the Employer on the recommendation of the properly constituted appointments committee of that hospital after vacancies have been advertised.

(c) Provided that in respect of Teaching Hospitals:

(i) appointments for short term periods not exceeding six months to relieving or casual vacancies may be made by the Employer without advertisement;

(ii) appointments for periods not exceeding two years for specific purposes may be made by the Employer on the recommendation of the Medical Advisory Committee or other appropriate committee. Specific purposes would include relief for medical practitioners on extended leave, engagement for special research projects of limited duration and the establishment of new units which may not become permanent features, and for any other purposes deemed prudent by the Employer and approved by the Minister.

(d) Provided that in respect of Non Teaching Hospitals:

(i) appointments for short term periods not exceeding six months for specific purposes may be made by the Employer. Specific purposes would include relief for medical practitioners on extended leave, engagement for research projects of limited duration, the establishment of new units which may not become permanent features and clinical work of a limited duration. The Medical Advisory Committee will be informed of such appointments.

(e) Provided that in respect to all hospitals and health services, all new appointments will be 5 year fixed term contracts for full time, modified full time and sessional medical practitioners. Provided that the employer and employee may, by mutual agreement, elect in writing to vary the employee's right to a five (5) year contract for a shorter or longer period.

There shall be no automatic right of reappointment upon expiry of a contract. If upon expiry of the contract a medical practitioner is not reappointed and where failure to gain reappointment is not due to misconduct then a payment shall be made to the medical practitioner as follows:

Ten Percentum (10%) of the cumulative base annual salary or base sessional payments of the medical practitioner over the life of the contract, to a maximum of 5 years. Provided that this payment shall not apply to fixed term contracts entered into prior to the commencement of this Agreement.

Except as otherwise provided by this Agreement, no other termination, redundancy or severance payment shall be made.

(f) Medical practitioners who are currently employed on a permanent basis shall not be required to convert to a fixed term contract in their current employment but may by agreement with the Employer choose to do so. Where such agreement is reached, the medical practitioner shall become subject to 1(e) and shall, (if not reappointed at the end of that fixed term contract in accordance with the conditions specified in 1 (e)) be eligible to be paid pro rata long service leave after 5 years of continuous service. Such pro rata payment shall be payable for completed years of service only and shall not be payable where the medical practitioner declines an offer of reappointment.

(2) A specialist medical practitioner shall be appointed by the Employer at a salary within the range for Specialists on the basis of years of experience gained in a recognised specialist appointment in Western Australia or in a specialist appointment elsewhere which is recognised by the Employer.

(3) Subject to subclause (1) of Clause 7 and to good conduct, satisfactory annual performance appraisal, diligence and efficiency, a medical practitioner shall proceed from the point of entry in the salary range to the maximum of the salary range by annual increments according to the increments of such salary range.

(4) Provided that a medical practitioner shall not be appointed at or proceed by incremental progression to salary level (23) unless the following is satisfied:

(i) the medical practitioner must apply to the Employer for progression or appointment to this level; and

(ii) the medical practitioner has been employed on level (22) (or its equivalent under the WA State Public Hospitals Medical Practitioners' Award 1987) continuously for 4 years or has 14 years of experience gained in a recognised specialist appointment in Western Australia or in a relevant specialist appointment elsewhere which is recognised by the Employer. Provided that medical practitioners who, prior to the commencement of this Agreement, were employed at specialist level 2 point 2 for at least four years shall, subject to satisfying the criteria hereunder, be eligible to appointment on point 23 on and from 1 July 1996.

(iii) the relevant medical college must certify that the applicant has successfully complied with the maintenance of professional standards (MOPS) or equivalent and satisfied the electoral committee; and

(iv) the Employer, having given due consideration to the application, the evidence of the medical college and all aspects of the performance of the medical practitioner, agrees to the payment of this increment.

(v) Payment of salary point 23 is subject to annual review and shall be discontinued by the Employer if professional standards are not maintained in accordance with medical college requirements or the performance of the medical practitioner is not maintained to the standard required at this level. In determining this it shall be required that specific commitments under Clause 1.9 of this Agreement and principally paragraphs (e), (i), (j), (k), (l), (m), (n), (o) and (p) have been adhered to. Any decision to cease payment of salary point 23 shall only be made after appropriate consultation with a peer review panel convened by the Employer.

(5) A medical practitioner may at any time be concurrently appointed as a head of department for a term not exceeding the medical practitioner's term of employment. Where such appointment occurs payment shall be as prescribed by Clause 3.4(2).

(6) Notwithstanding the provisions of subclauses (2), (3) and (4) of this clause medical practitioners employed north of 26 degrees South Latitude shall be appointed by the Employer at a salary within the ranges set out under subclause (1) of Clause 3.4—Salaries and Salary Ranges in accordance with Schedule A to this Agreement. Progression through the ranges shall also be in accordance with Schedule 1 to this Agreement.

(7) Notwithstanding the provisions of this Agreement, an Employer may appoint a medical practitioner who elects in writing to be appointed as an honorary medical practitioner.

3.3 —CONTRACT OF SERVICE

(1) The contract of service shall be between the medical practitioner and the Employer and may be terminated by not less than three months' notice on either side given in writing on any day or by the payment or forfeiture as the case may be of three months' salary. Provided that a lesser period of notice may be given subject to agreement between the medical practitioner and the Employer.

Provided further that a medical practitioner shall be appointed subject to a probationary period of six months. In the case of a full time medical practitioner the Employer may extend the period of probation for a further period of up to six months. During the period of probation either party may give four weeks notice or such lesser period as is agreed between the medical practitioner and the Employer.

(2) A medical practitioner appointed on a sessional basis shall be appointed for a fixed term of 5 years. Any subsequent re-appointment will be made by the employer taking into account the recommendation of the properly constituted appointments committee and shall, subject to clause 3.2(1)(e), be for a term of 5 years. Where the medical practitioner is appointed for a consecutive term the probationary period referred to in subclause (1) of this clause shall not apply. Provided that this subclause shall not apply to any medical practitioner appointed prior to the date of this Agreement who had permanent tenure at that time unless the medical practitioner agrees to convert to a fixed term contract in accordance with clause 3.2(1)(f).

(3) A medical practitioner having attained the age of fifty five years shall be entitled to retire from the employ of the hospital.

(4) Notwithstanding the provisions of subclauses (1) and (2) of this Clause, the Employer may at any time, without prior notice, dismiss the medical practitioner for refusal or neglect to obey lawful orders or for serious misconduct.

(5) A termination or dismissal made in accordance with subclause (1) or subclause (4) shall be subject to inquiry by the Board of Reference provided the medical practitioner makes application for such inquiry within one month of the operative date of the termination or dismissal.

3.4 —SALARIES AND SALARY RANGES

(1) Salaries or salary ranges applicable to medical practitioners covered by Part (3) of this Agreement shall be:

(a) Full Time Medical Practitioners

Full time medical practitioners shall be paid in accordance with the following:

- (i) Employees under arrangement A—Schedule C2 attached to this Agreement.
- (ii) Employees under arrangement B—Schedule C3 attached to this Agreement.

(b) Modified Full Time Medical Practitioners

Modified full time medical practitioners shall be paid in accordance with the following:

- (i) Employees under arrangement C—Schedule C4 attached to this Agreement.
- (ii) Employees under arrangement D—Schedule C5 attached to this Agreement.

(c) Sessional Medical Practitioners

Sessional medical practitioners shall be paid in accordance with Schedule C6 of this Agreement.

Provided that the salary/payment levels apply as follows:

	Levels
(a) Medical Officer who is supervised other than by a qualified specialist/consultant.	13-15 inclusive
(b) Senior Medical Officer who: <ul style="list-style-type: none"> • does not have a specialist qualification but practices in a specialty. and/or • supervises other medical officers. and/or • has significant medical administration duties 	15-17 inclusive
(c) Specialist Medical Officer with recognised specialist qualifications and practicing in that specialty.	15-23 inclusive
(d) General Practitioner (not vocationally registered).	13-15 inclusive
(e) Vocationally Registered General Practitioner.	13-17 inclusive
(f) Specialist with recognised qualifications and practicing in that specialty (employed within the WA Government Health Industry immediately prior to this Agreement being implemented).	13-23 inclusive
(g) Specialist as for (f) but not employed within the WA Government Health Industry immediately prior to this Agreement being implemented.	15-23 inclusive

And provided that all medical practitioners are placed within the relevant range according to years of relevant experience.

(2) A Medical Practitioner, other than a Radiologist who is remunerated in accordance with Clause 3.6(10) who is required to perform administrative duties appropriate to a Head of Department in a hospital, shall be paid an allowance calculated in accordance with the following formula:

No. of Staff Under Direct Supervision and control	\$ per annum
0-4	nil
5-9	3,000
10-20	6,000
Over 20	10,000

or in accordance with terms mutually agreed in writing between the medical practitioner and the Employer.

3.5 —PRIVATE PRACTICE—FULL TIME AND MODIFIED FULL TIME MEDICAL PRACTITIONERS

(1) (a) The Employer, with the approval of the Minister, shall have the authority to grant or withdraw the right of private practice to a medical practitioner employed at or above point 13 in Clause 3.4(1); it being understood that an appointment made by the Employer shall normally include the right of private practice.

(b) Notwithstanding the provisions of this subclause the granting or withdrawal of a right of private practice to Deputy Medical Superintendents and Assistant Medical Superintendents shall be determined by the Employer. Deputy Medical Superintendents and Assistant Medical Superintendents shall not normally be granted the right of private practice. Where private practice is denied, the medical practitioner shall be paid in accordance with arrangement B (Schedule C3) or arrangement D (Schedule C5).

(c) In the event of a disagreement relating to a decision of an Employer not to grant the right, or to withdraw the right of private practice, the matter may be referred to the Board of Reference for determination.

(d) Advertisements for positions covered by this Agreement shall clearly indicate if the appointee shall have the right of private practice.

(e) The right of private practice shall be exercised to the fullest extent available.

(f) Private practice within the hospital must not interfere with a medical practitioner's responsibility to carry out all the necessary duties of the medical practitioner's hospital appoint-

ment and shall be relevant to the medical practitioner's specialty.

(g) In lieu of the provisions of subclauses (2) to (8) of this clause, medical practitioners employed north of 26 degrees South Latitude shall be granted private practice arrangements in accordance with Schedule A.

(h) Salary where referred to in this clause shall mean the annual salary payable to the medical practitioner pursuant to Clause 3.4—Salaries and Salary Ranges and shall, where applicable, include the relevant Head of Department Allowance prescribed under Schedule C.

(i) "Private Practice" where referred to in this clause shall mean those services provided in or using the hospital's facilities and for which fees are charged by or on behalf of the Medical Practitioner.

(2) (a) A medical practitioner employed on a full time basis who has been granted the right of private practice within the hospital, may retain from nett earnings from private practice within the hospital up to an amount equal to twenty five per cent (25%) of the medical practitioner's salary.

(b) Nett earnings means the total amount received by the medical practitioner from private practice within the hospital after deducting actual expenses for such costs as secretarial and audit costs and accounting assistance, stationery and postage incurred in the collection of private practice fees which shall not exceed seventeen and one half per cent (17½%) of private practice receipts.

(c) Fees received by medical practitioners employed on a full time basis from private practice within the hospital, in excess of the amounts authorised under this subclause, shall be paid to the Employer and credited to a Trust Fund approved by the Employer as provided for in subclause (3)(b)(1)(c) of this clause.

(d) A medical practitioner may render accounts directly to private patients within the hospital.

In so doing, a medical practitioner shall provide to the hospital within three months after June 30 each year an audited statement in the following form together with a cheque for the amount payable to the hospital. The audited statement must state that all monies due to the hospital have been accounted for and the statement must be signed and dated by the medical practitioner.

- | | |
|--|----------|
| (i) Total amount of accounts rendered during the year | \$ _____ |
| (ii) Total amount of accounts collected | \$ _____ |
| Less collection expenses in accordance with paragraph (b) of this subclause | \$ _____ |
| NETT amount for distribution | |
| (iii) The NETT amount shown above to be allocated in order: | |
| (a) To approved Trust Fund for departmental/ hospital purposes—payment for the use of hospital facilities in accordance with sub-clause (8) of this clause | \$ _____ |
| Balance | |
| (b) To the medical practitioner—up to 25% of annual salary in accordance with this subclause | \$ _____ |
| Balance | |
| (c) To approved Trust Fund for departmental/ hospital purposes—to be credited to an approved trust fund in accordance with paragraph (c) of this subclause | \$ _____ |
| (iv) Amount payable to approved Trust Fund for departmental/hospital purposes being the total of items (a) and (c) above | \$ _____ |

Provided that where the medical practitioner and Employer agree, the amount payable to the hospital may be paid on a quarterly basis in which case unaudited statements in the above general form shall be provided. Any end-of-year adjustment shall be made by payment accompanying the audited statement.

A medical practitioner who does not comply with the provisions of this paragraph, may have the right to render accounts directly to private patients withdrawn and the Employer may direct that the hospital shall act as the agent in the rendering of accounts.

(e) A medical practitioner may request the hospital to act as agent for the rendering of accounts to private patients after the medical practitioner has assessed the fee for services.

In so doing, the hospital shall provide to the medical practitioner within three months after June 30 each year a statement in the following form together with a cheque for the amount payable to the medical practitioner:

- | | |
|--|----------|
| (i) Total amount of accounts rendered during the year | \$ _____ |
| (ii) Total amount of accounts collected | \$ _____ |
| Less collection expenses in accordance with paragraph (b) of this subclause | \$ _____ |
| NETT amount for distribution | |
| (iii) The NETT amount shown above to be allocated in order: | |
| (a) To approved Trust Fund for hospital/ departmental purposes—payment for the use of hospital facilities in accordance with subclause (8) of this clause | \$ _____ |
| Balance | |
| (b) To the medical practitioner—paid with fortnightly salary or payable as an annual amount or as agreed between the Employer and the medical practitioner | \$ _____ |
| (c) Balance payable to an approved Trust Fund for hospital/departmental purposes in accordance with paragraph (c) of this subclause | \$ _____ |

(3) Notwithstanding the provisions of subclause (2) hereof, a medical practitioner employed on a full time or modified full time basis may elect on an annual basis to be employed under one of the arrangements set out as Arrangement A or B, provided that an employer may, with the agreement of the medical practitioner, employ the medical practitioner under arrangements C or D of this subclause.

(a) Arrangement A

A medical practitioner, upon electing Arrangement A, shall give to the hospital written authority to render accounts in the medical practitioner's name on private patients seen in the course of duty.

Provided that a medical practitioner who operates under Arrangement A, shall not be eligible for the private practice expenses allowance specified in subclause (2)(b) of this clause. Provided further that where the medical practitioner resigns or whose services are terminated by one of the hospitals respondent to this Agreement and commences employment within a period of one week with another respondent to this Agreement, the practitioner shall continue to operate under this arrangement up until the next annual election unless that Employer and the medical practitioner otherwise agree to vary this arrangement.

(b) Arrangement B

- (1) (a) A medical practitioner shall upon electing and commencing under Arrangement B render accounts directly to private patients within the hospital.

A medical practitioner operating under this arrangement may retain from nett earnings from private practice within the hospital up to an amount equal to 25% of the medical practitioner's salary.

- (b) Nett earnings means the total amount received by the medical practitioner from private practice within the hospital after the medical practitioner de-

ducts an allowance of 17½% of private practice receipts and the medical practitioner's medical defence premium for the financial year in question.

- (c) (i) In the case of full-time medical practitioners, who are not Pathologists, or Nuclear Physicians, fifty percent of fees received from private practice within the hospital, in excess of the amount authorised under paragraph (a) of this subclause, shall be paid into a Trust Fund acceptable to the Employer.

The remaining 50% shall be retained by the medical practitioner.

- (ii) In the case of full-time Pathologists and Nuclear Physicians, fees received from private practice within the hospital, in excess of the amount authorised under paragraph (a) of this subclause, shall be distributed as follows:
 - 65% to approved Trust Fund for hospital/departmental purposes; and,
 - the residue equally among the Pathologists and Nuclear Physicians.

- (iii) Notwithstanding paragraph (ii) of this subclause, a Teaching Hospital may, by agreement with the full-time Pathologists or Nuclear Physicians, make other arrangements for the distribution of funds received from private practice in excess of the amount authorised under paragraph (a).

- (d) A medical practitioner shall provide to the hospital within three months after June 30 each year a statement in the following form together with cheques for the amounts to be paid to the hospital and into the Trust Fund respectively:

- (i) Total amount of accounts rendered during the year \$_____
- (ii) Total amount of accounts collected \$_____
- (iii) Less expenses in accordance with paragraph (b) of this subclause namely: \$_____
 - (1) 17½% for administration and collection costs
 - (2) Medical defence premium for the year in question
- (iv) NETT amount for distribution in the following order: \$_____
 - (a) To approved Trust Fund—payment for the use of hospital facilities in accordance with subclause (8) of this clause based upon the services included in the nett amount for

distribution in (iv) above as a percentage of the total amount of accounts collected in (ii) above \$_____

- Balance
- (b) To the medical practitioner being up to an amount equal to 25% of the medical practitioner's salary \$_____
- (c) To approved Trust Fund for hospital/departmental purposes in accordance with paragraph (c) of this subclause \$_____
 - Balance
- (d) To the medical practitioners in accordance with paragraph(c) of this subclause \$_____
 - Balance

The medical practitioner shall include the following certification at the end of the statement:

"I certify that all monies due to the hospital have been accounted for."

..... Signature
 Date

- (2) Provided that where the medical practitioner and Employer agree, the amount payable to an approved Trust Fund for hospital/departmental and the Trust Fund purposes may be paid on a quarterly basis in which case unaudited quarterly statements in the above general form shall be provided. Any end-of-year adjustment shall be made by payment accompanying the annual statement.

- (3) (a) Where, under Arrangement B(1) or (2), individual or agreed group contributions are not sufficient to permit drawings of 16% of the medical practitioner's salary payment shall be made up to 16% of the salary rate prescribed in Clause 3.4—Salaries and Salary Ranges from that proportion of the annual pool of charges which would otherwise have been appropriated as facility charges. In such circumstances payment to the 16% of salary level shall be made once each year for the year ended June 30 following receipt of a certified statement from the practitioner to the hospital in accordance with subclause (3)(b)(1)(d) of this clause.
- (b) Where, under Arrangement B(1) or (2), individual or agreed group contributions are sufficient to permit drawings of 16% but less than 25% of the medical practitioner's salary rate prescribed in Clause 3.4—Salaries and Salary Ranges, payment shall be made up to 25% of salary from that proportion of the annual pool of charges which would otherwise have been appropriated as facility charges. In such circumstances payment to the 25% of salary level shall be made once each year for the year ended June 30 following receipt of a certified statement from the practitioner to the hospital in accordance with subclause (3)(b)(1)(d) of this clause.

- (c) Amounts paid to medical practitioners under this Arrangement shall not be regarded as salary for the purpose of calculating superannuation entitlement nor for the purpose of any other entitlement under this Agreement.

(c) Arrangement C (Modified Full Time)

The hospital/health service may offer Arrangement C to a medical practitioner. Arrangement C provides for:

- (i) all pay, conditions and entitlements to be applied at the rate of 80% of the entitlement for a full time medical practitioner under Arrangement A. Hours of work are 80% of the full time requirement.
- (ii) rights to private practice in accordance with Arrangement A. Accordingly all private practice income shall be retained by the hospital/health service.

This arrangement shall apply for the life of the contract between the medical practitioner and the hospital unless otherwise agreed by the medical practitioner and the employer, provided that this arrangement may cease if this Agreement is terminated by either party upon or after its expiry.

(d) Arrangement D (Modified Full Time)

The hospital/health service may offer Arrangement D to a medical practitioner. Arrangement D provides for:

- (i) all pay conditions and entitlements to be applied at the rate of 80% of the entitlement or a full time medical practitioner under arrangement B. Hours of work are 80% of the full time requirement.
- (ii) rights to private practice in accordance with Arrangement B except that for the purposes of deductions only 80% of the cost of medical defence insurance premiums is allowable.

This arrangement shall apply for the life of the contract between the medical practitioner and the hospital unless otherwise agreed by the medical practitioner and the employer, provided that this arrangement may cease if this Agreement is terminated by either party upon or after its expiry.

(4) Conference and Overseas Study Leave—The following conditions shall apply with respect to conference leave and overseas study leave for those medical practitioners participating in Arrangement A, B, C or D.

- (a) Conference Leave—Leave, of up to two weeks, on full pay shall be allowed to each medical practitioner participating in Arrangement A, B, C or D provided for in this subclause during each year of continuous service, provided that where, in any year of continuous service, the whole or any part of such leave is not taken by the medical practitioner nor granted by the Employer, any leave not so taken shall be granted during the following year; provided further that the maximum amount of such leave that may be allowed to any medical practitioner shall not exceed four (4) weeks in any year of continuous service.

A medical practitioner electing Arrangement A shall be paid a conference, travel and accommodation allowance of \$3,000 per year payable for conference leave and professional development purposes. This payment shall, unless otherwise agreed between the medical practitioner and Employer, be \$2400 for medical practitioners electing Arrangement C.

Payment shall be on a fortnightly basis with capacity for adjustment subject to the agreement of the Association and the Employers, provided that no adjustment shall occur before 1 July 1996. The medical practitioner shall have capacity to apply to the trust funds referred to in paragraph (c) of this subclause for supplementary travel/accommodation assistance and the application will be considered on merit.

In respect of each period of conference leave, a medical practitioner operating under Arrangement B or D shall be granted—

- (i) the actual cost of air fares up to a maximum cost of Business Class rates (in the case of Arrangement A or C medical practitioners air fares are also limited to a maximum of the cost of a Business Class Perth/Brisbane return fare), or where air travel is not available, First-Class return rail fares; and
- (ii) A travelling allowance determined by the managers of the trust fund as being:
 - at the rate prescribed under Schedule I of the Public Service Award which shall not exceed the highest daily allowance payable for an Australian city.

or

 - the actual cost of reasonable accommodation and expenses upon production of receipts.

or

 - an alternative system of payment agreed between the employer, medical practitioner and the trustee.

Provided that medical practitioners exercising rights of private practice under Arrangement D shall, unless the trustee decides in exceptional circumstances to grant a greater amount, be entitled to receive the travelling allowance at the rate of 80% of the rate that would apply to a medical practitioner under arrangement B.

- (iii) All such travel and accommodation expenses are to be met out of any travel grant from the Trust Fund.
- (b) Overseas Study Leave—Each medical practitioner participating in Arrangement A, B, C or D shall be allowed 5 weeks leave on full pay after five (5) years' continuous service for the purpose of overseas training, education and study and shall be allowed a further period of 5 weeks leave on full pay for each completed period of five (5) years' continuous service thereafter with such leave being allowed to be deferred by mutual agreement, provided that no medical practitioner shall be allowed to take accumulated leave in excess of 10 weeks in any one period; provided further that a medical practitioner who has served for a minimum of five (5) years may, subject to hospital agreement take his/her overseas study leave in broken periods of not less than two weeks.

Medical practitioners must give reasonable notice when requesting overseas study leave, which is to be taken at a mutually convenient time and such leave must be used for professional development and reflect hospital/health service needs. The hospital/health service may stipulate certain reasonable outcomes such as reports, information sharing etc which may be required from the medical practitioner upon return from such leave.

A medical practitioner may make application to take overseas study leave in advance. If the services of a medical practitioner who has been granted such leave in advance are terminated prior to the expiration of the qualifying period the medical practitioner shall be liable to repay the funding source the whole amount received provided that the funding source retains the discretion to waive all or part of the amount repayable. The Employer may deduct the amount determined by the funding source as repayable and repay the funding source from money due to the medical practitioner by reason of the other provisions of this Agreement at the time of termination.

The actual cost of air fares up to a maximum of Business Class rates and reasonable expenses shall also be granted to a medical practitioner. In all cases a maximum of two air fares shall be paid in respect of

each completed five years' continuous service where leave is taken in broken periods with hospital permission. Provided that in respect of each period of overseas study leave a medical practitioner on Arrangement A shall be granted a travelling and subsistence allowance as follows with the agreement of the Employer:

- at the rate prescribed in (4)(a)(ii) hereof, being that prescribed in schedule I of the Public Service Award 1992 provided that the maximum payable shall be the highest rate for an Australian city or;
- the actual cost of reasonable accommodation and subsistence expenses upon production of receipts or;
- an alternative system of payment agreed by the employer and the medical practitioner.

Provided that medical practitioners exercising rights of private practice under arrangement C or D shall, unless the trustee decides in exceptional circumstances to grant a greater amount, be entitled to receive the travelling allowance at the rate of 80% of the rate that would apply to a medical practitioner under Arrangement A or B.

The source of funding for fares and expenses associated with overseas study leave is as follows:

- Arrangement A or C—hospital/health service.
- Arrangement B or D—trust fund.

Where the medical practitioner and the Employer agree, overseas study leave may be taken wholly or partly within Australia.

- (c) Nothing in this clause shall preclude any full time medical practitioner employed under this Agreement from making application to the Employer or to the Trust Fund pursuant to and/or complementary to the provisions of Clause 4.8—Special Leave for additional assistance and the payment or reimbursement of conference registration fees or for other assistance.
- (d) Subject to the provisions of this subclause conference and overseas study leave benefits provided under this subclause are not available as monetary payments in lieu.

(5) Fees shall only be raised for services rendered personally or personally supervised by the medical practitioner and for all laboratory services. Accounts will be submitted on account forms which show the name of the medical practitioner providing the service. Where a hospital acts as agent for a medical practitioner in laboratory service, the hospital shall ensure that no account may be rendered to a patient which could place the medical practitioner in breach of the undertaking he has given in terms of the Health Insurance Act.

For unreferral insured patients, the fee shall not exceed the Commonwealth Medicare Benefits Schedule fee. A medical practitioner shall assess the fee to be charged on a referred insured patient and shall inform the patient if the fee to be charged is to exceed the Commonwealth Medicare Benefits Schedule fee and shall on request, provide the hospital with a certificate that the above procedure has been followed. Provided that in the case of all patients covered by the Workers' Compensation and Rehabilitation Act 1981, accounts shall be rendered to such patients in accordance with the schedule of fees agreed between the Association and approved insurers.

(6) A person who is insured for hospital benefits or a person who is not insured for hospital benefits but who specifically requests to be admitted as a private patient, and statute patients, shall be admitted as private patients for the purpose of treatment.

(7) The hospital shall provide to the medical practitioner a copy of the Patient Election form for those private patients admitted under the care of the medical practitioner.

(8) Payment will be made by medical practitioners from earnings from private practice fees for the use of hospital facilities in accordance with the schedule of payments agreed from time to time between the Association and the Minister

for Health. Payment shall be to an approved Trust Fund for hospital/departmental purposes.

As at the date of the issue of this Agreement, the following payments shall apply:

Pathology	50%
Nuclear Medicine	50%
Ultrasound	50%
(except when performed in a Radiology Department)	
Pulmonary Physiology	50%
EEG	50%
Audiology	50%
EMG	50%
ECG	50%

(9) Notwithstanding the provisions of this clause, where the Employer and the Association agree in writing, other arrangements may be made governing the exercise of rights of private practice.

3.6 —SESSIONAL MEDICAL PRACTITIONERS

(1) (a) A medical practitioner, other than a Radiologist employed in a teaching hospital, whose conditions are specified in subclause (10) of this clause, who is employed on a sessional basis shall be paid fortnightly at the sessional rate appropriate to the medical practitioner's appointment set out under Schedule C6 to this Agreement.

(b) In addition to the sessional payment a medical practitioner, including a Radiologist employed in a teaching hospital, shall be paid a loading of 10% to compensate for the lack of entitlement to superannuation. The medical practitioner receiving the 10% superannuation loading must designate a superannuation fund which complies with the Superannuation Guarantee Act as amended into which the employer will pay the loading. This will satisfy the employer's obligations in relation to statutory superannuation guarantee payments. Provided that this loading shall not be payable where the practitioner is a contributing member to the State Government Superannuation Scheme.

(c) Where a medical practitioner, including a Radiologist employed in a teaching hospital, has demonstrated the incurrence of private practice costs outside the hospital, a further loading shall be paid at the rate of 14% of the sessional payment exclusive of the loading in lieu of superannuation on each session allocated up to and including 5 sessions. The medical practitioner must demonstrate the incurrence of private practice costs annually.

Where a medical practitioner by agreement with the hospital/health service works sessions in excess of 5 per week, the private practice loading on the 6th session shall be reduced to 10% and for the 7th session the loading shall be 5%. No private practice loading is payable for sessions worked in excess of 7 per week.

(2) (a) A session is a notional half day of approximately three and a half hours spent by the medical practitioner in attending public inpatients and outpatients. A session can be a continuous working period or be made up of any combinations of part sessions. Sessions shall usually be worked on Monday to Friday between the hours of 8.00am and 6.00pm provided that, subject to the convenience of the medical practitioner and with the approval of the Medical Superintendent or appointed senior medical practitioner, a session or part of a session may be worked outside those hours without shift or weekend penalties applying. However, where a sessional medical practitioner agrees to the Employer's request to work sessions outside of those specified in this sub clause, shift or weekend penalties, as detailed in Clause 3.8, shall apply.

(b) Services performed by sessional medical practitioners at the direction of the hospital, other than in attending "hospital patients" and outpatients, shall be remunerated by fees as agreed from time to time between the Association, the Minister and the Employers respondent to this Agreement.

(c) Where a medical practitioner is rostered on call for a specified period outside the agreed hours, payment shall be made in accordance with Clause 3.7.

(d) Where a medical practitioner is called back to the hospital to provide a service to a "public patient" the medical practitioner shall be remunerated in accordance with Clause 3.7.

(3) To meet short term exigencies within the hospital the Employer may approve additional sessions for a medical practitioner for a period not exceeding three months. This shall not preclude the Employer from agreeing with the medical practitioner to pay for extra sessions or extended sessions where operational efficiencies can be achieved and where the total number of sessions in any year does not exceed an average of 7 sessions per week.

Where the medical practitioner is employed at more than one hospital covered by this Agreement, the aggregate of the sessions allocated in all hospitals shall be limited by the provisions of this subclause.

(4) Sessions shall count as qualifying service for annual leave and sick leave on the following basis:

(a) Annual Leave

Normal entitlement as prescribed by Clause 4.1 of this Agreement. A medical practitioner's salary during the period of such leave shall be calculated in accordance with the number of sessions allocated pursuant to subclause 2(a) of this Clause.

A pro rata annual leave loading shall be paid to a sessional medical practitioner at the rate applicable.

(b) Sick Leave

Normal credits prescribed by Clause 4.3 shall accrue to a medical practitioner. Payment made for sick leave granted in respect of sessional service shall be at the salary rate prescribed pursuant to subclause (1) of this Clause.

(5) A medical practitioner employed on a sessional basis shall be given the benefit of public holidays provided by Clause 4.2 without variation to the medical practitioner's sessional rate of payment provided the public holidays occur on a day on which a session is normally worked.

Provided that where a medical practitioner is required to work on a public holiday the provisions of Clause 3.8—Shift and Weekend Work shall apply.

(6) Sessional medical practitioners shall accrue long service leave according to the number of sessions worked. The rate of accrual shall be as prescribed by Clause 4.4 (1) of this Agreement. Payment made for long service leave granted to a medical practitioner in respect of sessional service shall be adjusted according to the sessions worked by the medical practitioner subject to the following:

(a) If a medical practitioner consistently worked on a sessional basis for a regular number of sessions during the whole of qualifying service, the medical practitioner shall continue to be paid the salary determined on that basis during the long service leave.

(b) If a medical practitioner has worked a varying number of weekly sessions during qualifying service, the payment for long service leave granted in respect of sessional service shall be calculated at the salary rate applicable to the medical practitioner at the time of taking the long service leave with the number of sessions for which payment is to be made being calculated by averaging the number of sessions for which the medical practitioner is employed over the qualifying period.

Example:

Payment for long service leave granted for ten years' service consisting of six years working four sessions a week and four years working two sessions a week shall be calculated as follows:

(a) 6/10 of leave paid at the rate applicable for four sessions; and

(b) 4/10 of leave paid at the rate applicable for two sessions.

This provision also applies in respect of that portion of service of a full time medical practitioner who has been employed on a sessional basis for part of the period of qualifying service.

(7) Allotment of sessions shall:

(a) Teaching Hospitals—be the responsibility of the Employer after receiving the advice of the Medical

Superintendent after consultation with the Executive of the Clinical Association.

(b) Non-Teaching Hospitals—be the responsibility of the Employer, after receiving the advice of the Medical Superintendent or appointed Senior Medical Practitioner or Chairman of the Medical Advisory Committee.

(8) A medical practitioner employed on a sessional basis who attends private patients in the hospital shall provide to the hospital within three months after June 30 each year an audited statement of all services in respect of which a payment for use of hospital facilities is due to the hospital in the following form together with a cheque for the amount payable to the approved fund for departmental/hospital purposes:

- | | |
|--|----------|
| (i) Total amount of all such accounts rendered during the year | \$ _____ |
| (ii) Total amount of all such accounts collected | \$ _____ |
| (iii) Total amount due to the hospital in accordance with subclause (9) of Clause 3.5. | \$ _____ |

Provided that where the medical practitioner and the employer agree, payment of facility charges may be made on a quarterly basis in which case unaudited statements in the above general form shall be provided. Any end of year adjustment shall be made by payment accompanying the audited statement.

(9) Sessional medical practitioners shall not be entitled to paid annual conference leave; or paid sabbatical leave upon the completion of 5 years continuous service.

This does not preclude the Employer from granting discretionary paid or unpaid leave in accordance with clause 4.8—Special Leave.

(10) (a) Radiologists shall be appointed by teaching hospitals in accordance with the provisions of the Agreement, and their sessions allotted and remunerated in accordance with the provisions of this subclause. Radiologists appointed under the provisions of this Agreement, will undertake all radiological services to patients referred to them in teaching hospitals.

(b) For the purpose of this subclause a radiological service is a radiological service as described in the Schedule to the Health Insurance Act, 1973.

(c) The number of sessions for service radiology in each teaching hospital shall be based on the number of radiological services performed in the previous year ending June 30 divided by one thousand (1,000).

(d) Each radiologist shall be remunerated by sessional payment for one half (50%) of the number of sessions for which the individual radiologist is appointed. The sessional payment shall be made in accordance with the provisions of Clause 3.6 and shall be paid to each radiologist in post in each hospital by the Employer.

(e) The Head of the Department of Radiology will be paid a management fee equivalent to two (2) additional sessions every week, and the deputy head of the department, where appointed, will be paid a fee equivalent to one additional session every week provided that the total number of sessions for which payment is made shall not exceed ten sessions every week. Provided that this allowance may be reduced by agreement between the Association and the employer.

(f) The provisions of subclauses (2)(a), (2)(b), (4), (5), (6) and (7) shall apply in respect of Radiologists covered under this subclause.

(g) Notwithstanding the provisions of this subclause, where the employer and the Association agree in writing, other arrangements may be made for compensation for radiological services. Provided further that a Radiologist may elect to accept an appointment under this Agreement on a full time basis and be remunerated in accordance with the provisions of Clause 3.4—Salaries and Salary Ranges, relating to Full Time Medical Practitioners, provided that such a Radiologist shall not be eligible for any additional payment prescribed by this subclause.

(11) Radiotherapists shall be employed on a sessional basis in accordance with the provisions of this Clause except for those provisions set out in subclause (10).

3.7 —ON CALL AND CALL BACK

The parties to this Agreement are committed to reviewing the mechanisms for remunerating on call and recall. Accordingly the Employer will propose to the AMA, a demonstrably cost neutral proposal (based on the aggregate costs of current entitlements) by 15 December 1995. The parties agree to consider and negotiate in good faith on alternatives to the present system. Any mutually acceptable changes shall become operative prior to 1st January 1997. In the event that this does not occur, the Commissioner of Health will confer with the President of the AMA to determine whether the parties have negotiated in good faith and whether the 2% increase to base salaries due on 1 January 1997 shall be withheld or advanced.

(1) On Call

- (a) Medical practitioners shall be rostered on call in accordance with clinical need by the Medical Superintendent or appointed Senior Medical Practitioner in consultation with the Head of the Department or where there is no Head of Department, with the Chairman of the Medical Advisory Committee.
- (b) A medical practitioner employed at or above salary point 13 as detailed in Schedule C, rostered on call shall be paid an hourly allowance equal to \$8.22. Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this Clause when the medical practitioner is recalled to work.
- (c) For the purposes of this Agreement a medical practitioner is on call when the medical practitioner is directed by the Employer to remain readily contactable and available to return to work outside of the medical practitioner's normal hours of duty.
- (d) Notwithstanding the provisions of this subclause, where the Employer and the Association agree in writing, other arrangements may be made for compensation of on call work.

(2) Call Back

- (a)
 - (i) When a full time, modified full time, or a sessional medical practitioner is recalled to work the practitioner shall be paid a minimum of two hours at the rate of time and a half of the relevant salary prescribed for Arrangement B in Schedule C3 to this Agreement. For this purpose, payment to a sessional medical practitioner shall be calculated on the basis of the salary prescribed for a full time medical practitioner at the same salary point.
 - (ii) The medical practitioner shall not be obliged to work for two hours if the work for which the medical practitioner was recalled is completed in less time, provided that if the medical practitioner is called out within two hours of starting work on a previous recall the medical practitioner shall not be entitled to any further payment for the time worked within that period of two hours.
- (b) Time worked in excess of the two hour call back period shall be remunerated at the rate of time and one half for the following hour and double time thereafter.
- (c) Where a medical practitioner is recalled to work, payment for the call back shall commence from:
 - (i) In the case of a medical practitioner who is on call, from the time the medical practitioner starts work;
 - (ii) In the case of a medical practitioner who is not on call, the time the medical practitioner embarks on the journey to attend the call. Provided that

where a medical practitioner is recalled within two hours prior to commencing normal duty, any time spent in travelling to work shall not be included with actual duty performed for the purpose of determining payment under this paragraph.

- (d) A medical practitioner who is required to use the medical practitioner's motor vehicle when recalled to work shall be reimbursed all expenses incurred in accordance with the provisions of Schedule F of the Public Service Award 1992.
 - (e) Where the Employer determines that there is a need for a medical practitioner to be on call or to provide a consultative service and the means of contact is to be by telephone, the Employer shall where the telephone is not already installed bear the cost of such installation. Where as a usual feature of the work a medical practitioner is regularly required to be on call or to provide a consultative service the Employer shall pay the full amount of the telephone rental.
- (3) Notwithstanding the above provisions of this clause, where an employer and the Association agree, other arrangements may be made for compensation of on call and call back.
 - (a) A medical practitioner employed on a full time basis north of 26 degrees South Latitude who is required to participate in an on-call roster shall in lieu of the on call and call back payments provided for in this clause, receive an allowance of 25% of that medical practitioner's annual base salary.
 - (b) A medical practitioner employed on a sessional basis north of 26 degrees South Latitude who is required to participate on the same basis as a full time medical practitioner, in an on call roster shall in lieu of the on call and call back payments provided for in this clause, receive an allowance calculated at the rate of 25% of the annual base salary that would apply to the medical practitioner had the practitioner been employed on a full time basis under rights to private practice Arrangement B.

3.8 —SHIFT AND WEEKEND WORK—FULL TIME, MODIFIED FULL TIME AND SESSIONAL MEDICAL PRACTITIONERS

(1) Where there is a demonstrated clinical need determined by the Medical Superintendent or appointed Senior Medical Practitioner in consultation with the Head of Department or where there is no Head of Department, with the Chairman of the Medical Advisory Committee, the Employer may require a medical practitioner to work ordinary hours between the hours referred to hereunder. A medical practitioner so required shall be subject to the following provisions.

- (a) Where a medical practitioner commences ordinary hours of work at or after 12.00 noon and before 4.00am, the medical practitioner shall be paid, with respect to those ordinary hours, a loading of 12 1/2% in addition to the rate of salary prescribed under Schedule C.
- (b) The provisions of paragraph (a) of this clause do not apply to a medical practitioner who on any day commences work at or after 12.00 noon and completes those hours at or before 6.00pm.
- (c) Where a medical practitioner works a broken shift each portion of that shift shall be considered a separate shift for the purposes of this subclause. This subclause shall not apply to a sessional medical practitioner unless the practitioner agrees to a request by the hospital/health service to work a session in more than one continuous period.
- (d) Work performed during the medical practitioner's ordinary hours on a Saturday or a Sunday shall be paid for at the rate of time and one half.

- (e) Work performed during the medical practitioner's ordinary hours on a holiday referred to in Clause 4.2—Public Holidays shall be paid for at the rate of double time and one half or, if the Employer agrees, be paid for time worked at the rate of time and one half and in addition be allowed to observe the holiday on a day mutually acceptable to the Employer and the medical practitioner, provided that no more than five days may be accumulated at any one time. Provided further that a medical practitioner employed north of 26 degrees South Latitude who is in receipt of the allowance prescribed in subclause (4) of Clause 3.7—On Call and Call Back, shall be paid at the rate to which the medical practitioner would ordinarily be entitled had the day not been a public holiday and shall be entitled to observe the holiday on a day mutually acceptable to the Employer and the medical practitioner.
- (f) The rates prescribed in paragraphs (d) and (e) of this clause shall be in substitution for and not cumulative on the rate prescribed in paragraph (a) of this clause.
- (g) Provided that a sessional medical practitioner shall not be entitled to claim the 14% private practice loading for sessions which attract any shift or weekend penalty payment specified in this clause.

3.9—LEAVE FOR COLLEGE OFFICE BEARERS

National Office Bearers of Medical Colleges shall be allowed up to 5 days of paid leave each year to attend to functions required of their office.

Provided that this shall, unless otherwise agreed between the Employers and the association, only apply to the offices of President, Vice President, Treasurer, Secretary for Colleges and Faculties which are formally recognised by the National Specialist Qualifications Advisory Committee of Australia.

3.10—CLAIMS FOR PAYMENT OF ENTITLEMENTS

Medical practitioners shall submit claims for payment of all entitlements within three (3) months of an entitlement being established.

PART 4—COMMON CLAUSES

4.1—ANNUAL LEAVE

(1) (a) Except as provided in paragraph (b), employees employed on a full-time basis shall be entitled to four weeks' annual leave on full pay at the completion of 52 weeks' continuous service.

(b) Employees who are rostered to work their ordinary hours on Sundays and/or public holidays during a qualifying period of employment for annual leave shall be entitled to receive additional annual leave as follows—

- (i) If 35 ordinary shifts on such days have been worked—one week.
- (ii) If less than 35 ordinary shifts on such days have been worked the employee shall be entitled to have one additional day's leave for each seven ordinary shifts so worked, provided that the maximum additional leave shall not exceed five working days.

(c) An employee who during a qualifying period towards an entitlement of annual leave was employed continuously on both a full-time and sessional basis or a sessional basis only may elect to take a lesser period of annual leave calculated by converting the sessional service to equivalent full-time service.

(2) An employee may take annual leave during the period in which it accrues, but the time during which the leave may be taken is subject to the approval of the employer. All annual leave taken shall be at the rate of salary applicable at the time of taking such leave.

(3) When the convenience of the hospital is served the employer may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for one year.

The employer may renew the approval referred to immediately above for a further period of a year or further periods of

a year but so that an employee does not at any time accumulate more than three years' entitlement.

Where the convenience of the employer is served the employer may approve the deferment of the commencement date for taking annual leave so that an employee accumulates more than three years' entitlement, subject to any condition which the employer may determine.

When an employee who has received approval to defer the commencement date for taking annual leave under this subclause next proceeds on annual leave, the annual leave first accrued shall be the first leave taken.

(4) Notwithstanding the provisions of this clause, the employer may direct an employee to take accrued annual leave and may determine the date on which such leave shall commence.

(5) Employees upon request shall receive their ordinary pay and any allowances due to them for the period of their annual leave prior to going on such annual leave.

(6) (a) If after four weeks' continuous service in any qualifying 52 week period, an employee lawfully terminates service, or employment is terminated by the employer through no fault of the employee, the employee shall be paid one-fifty-second of the entitlement to annual leave in respect of each completed week of continuous service in that qualifying period.

(b) If the services of an employee terminate and the employee has taken a period of annual leave in accordance with subclause (2) of this clause, and if the period of leave so taken exceeds that which would become due pursuant to paragraph (a) of this subclause, the employee shall be liable to pay the amount representing the difference between the amount received for the period of annual leave taken and the amount which would have accrued in accordance with subclause (1) of this clause. The employer may deduct this amount from money due to the employee by reason of the other provisions of this Agreement at the time of termination. Provided that no refund is required in the event of the death of the employee.

(c) In addition to any payment to which an employee may be entitled under this clause, where an employee's employment is terminated after the completion of 52 weeks' continuous service and the employee has not been allowed the annual leave prescribed under this Agreement, the employee shall be given payment in lieu of that leave.

(7) For the purposes of commencing this Agreement, annual leave loading has been annualised into the base salary.

(8) A medical practitioner who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue such leave must refund the value for the unearned pro rata portion, but no refund is required in the event of the death of a medical practitioner.

(9) In the case of any medical practitioner transferring from one employer to another and who is covered by this Agreement the annual leave entitlement may be transferred.

(10) Payment in lieu of annual leave shall be made on the death, resignation or retirement of an employee.

(11) An employee employed on a sessional basis shall receive payment for annual leave in accordance with Clause 3.6 of this Agreement.

4.2—PUBLIC HOLIDAYS

(1) An employee employed on a full time basis is entitled to—

- (a) (i) The following public holidays in accordance with the Public and Bank Holidays Act, 1972—
- New Year's Day
 - Australia Day
 - Labour Day
 - Good Friday
 - Easter Monday
 - Anzac Day
 - Foundation Day
 - Sovereign's Birthday
 - Christmas Day
 - Boxing Day

- (ii) When any of the days mentioned in placitum (i) of paragraph (a) hereof falls on a Saturday or Sunday the holiday shall be observed on the next succeeding Monday, provided that when Boxing Day falls on a Saturday, Sunday or Monday the holiday shall be observed on the next succeeding Tuesday.
- (b) Two additional days of paid leave per calendar year which may be taken at a time mutually agreed between the employer and employee provided that;
- (i) these days are not cumulative and may only be taken in the year in which they fall due
- (ii) not more than one day may be taken before Easter Monday
- (iii) the employer and employees may agree alternative arrangements for the taking of these days or payment in lieu thereof.

(2) (a) When any of the days observed as a holiday in this clause fall during a period of annual leave the holiday or holidays shall be observed on the next succeeding work day or days as the case may be after completion of that annual leave.

(b) When any of the days observed as a holiday as prescribed in this clause fall on a day when an employee is rostered off duty and the employee has not been required to work on that day the employee shall be paid as if the day was an ordinary working day or if the employer agrees be allowed to take a day's holiday in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who is required to be on call in accordance with the provisions of Clause 2.12 or 3.7 —On Call and Call Back of this Agreement on a day observed as a public holiday during what would normally have been the employee's ordinary hours shall be allowed to observe that holiday on a day mutually acceptable to the hospital and the employee.

(4) An employee employed on a sessional basis shall be entitled to public holidays and in accordance with subclause (6) of Clause 3.6—Sessional Medical Practitioners of this Agreement.

4.3 —SICK LEAVE

(1) An employee who is incapacitated for duty in consequence of illness or injury shall, as soon as possible, notify the Employer of the fact and shall also advise the likely date of resuming duty.

(2) No sick leave with pay exceeding two consecutive working days shall be granted without an adequate medical certificate or other evidence satisfactory to the Employer. Provided that the number of days sick leave which may be granted without the production of a medical certificate shall not exceed, in the aggregate, five working days in any one calendar year.

(3) An employee who is unable to resume duty on the expiration of the period shown in the first certificate, shall produce a further certificate and shall continue to do so upon the expiration of the period respectively covered by such certificates.

(4) Where an employee is ill during a period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that the employee is or was as a result of the illness confined to the employee's place of residence or a hospital for a period of at least seven consecutive calendar days, the Employer may grant the employee sick leave for the period during which the employee was so confined and reinstate the employee annual leave equivalent to the period of confinement.

(5) Where an employee is ill during the period of long service leave and produces at the time or as soon as practicable thereafter medical evidence to the satisfaction of the Employer that the employee is or was confined to the employee's place of residence or a hospital for a period of at least fourteen consecutive calendar days, the Employer may grant sick leave for the period during which the employee was so confined and reinstate the employee long service leave equivalent to the period of confinement.

(6) The basis for determining the leave of absence on the grounds of illness that may be granted shall be ascertained by

crediting the employee concerned with the following periods, but the leave shall be cumulative:

Leave on Full Pay	Working Days
(a) On day of employment of the employee	5
(b) On completion by the medical practitioner of six months service	5
(c) On completion by the medical practitioner of twelve months service and on completion of each additional twelve months service by the medical practitioner	10

(7) No leave on account of illness or injury shall be granted with pay if the illness or injury has been caused by misconduct of the employee or in any case of absence from duty without sufficient cause.

(8) Where an employee suffers a disability within the meaning of Section 5 of the Workers' Compensation and Rehabilitation Act 1981, which necessitates that employee being absent from duty, sick leave with pay shall be granted to the extent of sick leave credits. In accordance with Section 80(2) of the Workers' Compensation and Rehabilitation Act 1981 where the claim for workers' compensation is decided in favour of the employee, sick leave credit is to be reinstated and the period of absence shall be granted as sick leave without pay.

(9) Where an employee resigns or is terminated by the Employer through no fault of the employee and is engaged by another respondent to this Agreement within seven days of the expiration of any period for which payment in lieu of annual leave or public holidays has been made, the period of sick leave that has accrued to the employee's credit shall remain to such employee's credit and the provision of subclause (6) shall continue to apply to such employee.

Where an employee was, immediately prior to being employed by a respondent to this Agreement, employed in the service of the Public Service of Western Australia or by other state government employer, and the period between the date when the employee ceased the previous employment and the date of commencing employment with a respondent does not exceed one week, or such further period as the Employer determines, the Employer may credit that employee additional sick leave credits up to those held at the date the employee ceased the previous employment.

Where an employee was, immediately prior to being employed by a respondent to this Agreement, employed by the Commonwealth or any other State of Australia and the period between the date when the employee ceased previous employment and the date of the employee commencing employment with a respondent does not exceed one week, or such further period as the employer determines, the employer may credit that employee additional sick leave credits up to those held at the date the employee ceased the previous employment.

(10) A pregnant employee shall not be refused sick leave by reason only that the "illness or injury" encountered by the employee is associated with the pregnancy.

4.4 —LONG SERVICE LEAVE

(1) (a) An employee employed on a full time basis is entitled to thirteen weeks long service leave at their ordinary rate of pay on the completion of a period of ten years of continuous service and an additional thirteen weeks of long service leave on full pay for each subsequent period of ten years of continuous service completed by the employee.

(b) Provided that an employee, in employment with a respondent to this Agreement at the date of its inception, accruing long service leave at the rate of thirteen weeks after seven years continuous service shall retain the proportion accrued at that rate and accrue the balance at the ten year rate.

(c) An employee employed on a sessional basis shall be entitled to long service leave in accordance with this clause, payment for which shall be calculated in accordance with Clause 3.6(6) of this Agreement.

(2) Notwithstanding the provisions of subclause (1) above an employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full-time and sessional basis or a sessional basis only may elect to take a lesser period of long service leave calcu-

lated by converting the sessional service to equivalent full-time service; based on ten sessions per week.

An employee who has elected to compact an accrued entitlement to long service leave in accordance with this subclause shall only take such leave in one period. In such circumstances the period exercised as "continuous service" in subclause (1) shall be thirteen weeks.

(3) An employee shall take the long service leave to which an entitlement has accrued at the convenience of the Employer.

(4) Subject to the approval of the Employer an employee shall take long service leave at any time within three (3) years of the leave becoming due. Provided that the employer may approve the deferment of taking long service leave beyond three (3) years in "exceptional circumstances".

"Exceptional circumstances" shall include retirement within five (5) years of the date of entitlement.

Approval to defer the taking of long service leave may be withdrawn or varied at any time by the Employer giving the employee notice in writing of the withdrawal or variation.

Employees having more than one entitlement to long service leave at 1 November 1988 shall be required to clear one full entitlement of long service leave by 1 November 1991 and a further full entitlement within each 3 years thereafter until the employee's entitlement to long service leave has been cleared.

(5) Upon the application of an employee, the Employer may approve the taking by the employee:

- (a) of double the period of long service leave entitlement on half pay instead of the period of long service leave entitlement on full pay; or
- (b) of any portion of long service leave entitlement on full pay or double the portion on half pay, provided that the minimum portion of long service leave entitlement taken shall be one complete month's entitlement or a multiple thereof.

(6) Continuous service shall not include:

- (a) any period during which an employee is absent on a long service leave entitlement or any portion thereof;
- (b) any period exceeding two weeks during which the employee is absent on leave without pay, unless the Employer determines otherwise;
- (c) any service by an employee who resigns, is dismissed or whose services are otherwise terminated other than service prior to such resignation, dismissal or termination when that prior service had actually entitled the employee to long service leave.

(7) A lump sum payment for long service leave accrued in accordance with this Clause and for pro-rata long service leave shall be made in the following cases:

- (a) As a retiring allowance, to an employee who retires at or over the age of fifty five years or who is retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.
- (b) To an employee who, not having resigned, is retired for any other cause; provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than three years' continuous service before the date of retirement.
- (c) To the estate of an employee in the event of death, unless the employee is survived by a spouse legally dependent on him/her or some other person legally so dependent who is approved by the Employer for the purpose. Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of death.

(8) (a) An employee may, prior to commencing long service leave, request approval for the substitution of another date for the commencement of long service leave and the employer may approve such substitution.

(b) Subject to the provisions of subclause (6) the service of an employee shall not be deemed to have been broken if the

employee's employment is ended by the employer for any reason other than misconduct or unsatisfactory service but only if—

- (i) the employee resumes employment under this Agreement not later than six months from the day on which the employment ended; and
- (ii) payment pursuant to subclause (7) of this clause has not been made.

(9) (a) Where an employee was, immediately prior to being employed by a respondent to this Agreement, employed by any other respondent to this Agreement, employed in the service of the Public Service of Western Australia or by other state government employer, and the period between the date when that employee ceased the previous employment and the date of commencing employment with the new Employer does not exceed one week, or such further period as the Employer determines, that employee shall be entitled to thirteen weeks of long service leave on full pay on the date determined by:

- (i) calculating the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment by the Employer in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this Clause; and
- (ii) by calculating the balance of the long service leave entitlement of the employee upon appointment by the Employer in accordance with the provisions of subclause (1) of this Clause.

(b) In addition to any entitlement arising from the application of paragraph (a) of this subclause, an employee previously employed by any other respondent to this Agreement, employed in the service of the Public Service of Western Australia or by other state government employer may, on approval of the Employer be credited with any period of long service leave to which the employee became entitled during the former employment but had not taken at the date of appointment with the Employer provided the former Employer had given approval for the employee to accumulate the entitlement.

(10) (a) Where an employee was, immediately prior to being employed under this Agreement, employed in the service of the Commonwealth or of any other State of Australia, and the period between the date when the employee ceased the previous employment and the date of commencing employment under this Agreement does not exceed one week, or such further period as the employer determines, that employee shall be entitled to long service leave determined in the following manner—

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of the appointment under this Agreement, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this Agreement; and
- (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment under this Agreement in accordance with the provisions of this clause.

(b) A employee previously employed by the Commonwealth or by any other State of Australia shall not proceed on any period of long service leave without the express approval of the employer until the employee has served a period of not less than three years' continuous service under this Agreement and becomes entitled to long service leave on full pay.

(c) Nothing in this Agreement confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the

employee's favour prior to the date on which the employee commenced employment under this Agreement.

(11) An employee who has elected to retire at or over the age of 55 years and who will complete not less than twelve months' continuous service before the date of retirement may make application to the employer to take pro rata long service leave before the date of retirement, based on continuous service of a lesser period than that prescribed by subclause (1) for a long service leave entitlement.

(12) Long service leave accrued prior to the introduction of this Agreement shall remain to the credit of the employee.

4.5—FAMILY LEAVE

(a) An employee is entitled to paid family leave of up to [2] days in a calendar year to care for an ill family member provided the days used are sick leave entitlements accrued from the previous years of service and are not the Employee's entitlements for the current year.

(b) In this subclause "family member" means the employee's spouse, de facto spouse, child, stepchild, parent, step parent or another person who lives with the employee as a member of the Employee's family.

(c) Family leave is not cumulative from year to year.

(d) An absence on family leave must, if required by the Hospital/ Health Service, be supported by a certificate, dated at the time of the absence, from a registered medical practitioner, stating that the family member was ill.

4.6—BEREAVEMENT LEAVE

(a) An employee is entitled to paid bereavement leave for up to [2] days on the death of a spouse, de factor spouse, child, stepchild, parent, step parent or another person who, immediately before that person's death, lived with the employee as a member of the employee's family.

(b) Bereavement leave must be supported by evidence that would satisfy a reasonable person as to:

- (1) the death that is the subject of the leave sought; and
- (2) the relationship of the employee to the deceased person if the employer requires this.

4.7—PARENTAL LEAVE

An employee shall be entitled to Parental Leave in accordance with Division 6—Parental Leave of the Minimum Conditions of Employment Act 1993.

4.8—SPECIAL LEAVE

Special leave for conferences and other purposes including study leave may be granted at the discretion of the Employer.

4.9—HIGHER DUTIES

An employee who is directed by the Employer or a duly authorised senior officer to act in an office which is classified higher than the medical officer and who performs the full duties and accepts the full responsibility of the higher office for more than ten consecutive working days, shall subject to the provisions of this Agreement be paid an allowance equal to the difference between the employee's own salary and the salary the employee would receive if permanently appointed to the office in which the employee is so directed to act.

4.10—DISTRICT ALLOWANCE

Subject to provisions of this Agreement the provisions of Schedule D of the Public Service Award 1992 shall apply mutatis mutandis to employees employed under this Agreement.

4.11—INTRODUCTION OF CHANGE

(1) (a) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the Association.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportuni-

ties or job tenure; the alteration of hours of work; the need for retraining or transfer of medical practitioners to other work or locations and restructuring of jobs.

Provided that where the Agreement makes provisions for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(2) (a) The employer shall discuss with the employee affected and the Association, inter alia, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the Association in relation to the changes.

(b) The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause (1) hereof.

(c) For the purposes of such discussion, the employer shall provide to the medical practitioners concerned and the Association, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on medical practitioners and any other matters likely to affect medical practitioners provided that the employer shall not be required to disclose confidential information the disclosure of which would be inimical to his/her interests.

4.12—DISPUTE SETTLING PROCEDURES

(1) Subject to the provisions of the Industrial Relations Act, 1979 and Clause 4.11—Introduction of Change any grievance, complaint or dispute, or any matter raised by the Association or a respondent employer and employees engaged under this Agreement, shall be settled in accordance with the procedures set out herein.

The parties agree that no bans, stoppages or limitations will be imposed prior to, or during the time this procedure is being followed.

This clause in no way limits the rights of employers, employees and the Association under the Occupational Health, Safety and Welfare Act, 1984 or other related legislation.

(2) Where the matter is raised by a medical practitioner, or a group of medical practitioners, the following steps shall be observed—

- (a) The employee(s) concerned shall discuss the matter with the Head of Department. If the matter cannot be resolved at this level the Head of Department shall, within three (3) working days, refer the matter to the Medical Superintendent and the medical practitioner(s) shall be advised accordingly.
- (b) The Medical Superintendent shall, if so able, answer the matter raised within one (1) week of it being referred and, if the Medical Superintendent is not able, refer the matter to the Hospital Executive for its attention, and the medical practitioner(s) shall be advised accordingly.
- (c) (i) If the matter has been referred in accordance with paragraph (b) above the medical practitioner(s) or the appropriate AMA Hospital Medical practitioner Representative shall notify the Association, to enable the opportunity of discussing the matter with the employer.
- (ii) The employer shall, as soon as practicable after considering the matter before it, advise the medical practitioner(s) or, where necessary, the Association of its decision. Provided that such advice shall be given within one(1) month of the matter being referred to the employer.
- (d) (i) Should the matter remain in dispute after the above processes have been exhausted and be an industrial matter either party may refer the matter to the Western Australian Industrial Relations Commission.
- (ii) Provided that with the consent of both parties the matter may be referred to an independent arbitrator mutually acceptable to the parties and with whose determination the parties will comply.

- (iii) Where the parties jointly agree that the matters are of a non-industrial nature, then by agreement between the parties the matters may be referred to other appropriate bodies, e.g. relevant Royal Colleges for advice and/or assistance.
- (e) Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the periods specified above.
- (3) Where the employer seeks to discipline a medical practitioner, or terminate a medical practitioner the following steps shall be observed—
- (a) (i) In the event that a medical practitioner commits a misdemeanour, the medical practitioner's immediate supervisor or any other practitioner so authorised may in accordance with that authority exercise the employer's right to reprimand the medical practitioner so that the medical practitioner understands the nature and implications of his/her conduct.
- (ii) The first two reprimands shall take the form of warnings and, if given verbally, shall be confirmed in writing as soon as practicable after the giving of the reprimand.
- (iii) Should it be necessary, for any reason, to reprimand a medical practitioner three (3) times in a period not exceeding twelve (12) months' continuous service, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this Agreement. The medical practitioner shall have the right to be represented when being reprimanded.
- (iv) The above procedure is meant to preserve the rights of the individual medical practitioner, but it shall not, in any way, limit the right of the employer to summarily dismiss a medical practitioner for misconduct.

(4) The settlement of procedures provided by this clause shall be applied to all manner of disputes referred to in subclause (1) hereof, and no party, or individual, or group of individuals shall take any other action, of whatever kind, which may frustrate a settlement in accordance with its procedures. Observance of these procedures shall in no way prejudice the right of any party in dispute to refer, where appropriate, the matter for resolution in the Western Australian Industrial Relations Commission.

The status quo (i.e. the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedure outlined above.

(5) The Association recognises that the employers have a statutory and public responsibility to provide health care services without any avoidable interruptions.

This grievance procedure has been developed between the parties to provide an effective means by which medical practitioners may reasonably expect problems will be dealt with as expeditiously as possible by hospital management.

Accordingly the Association hereby agrees that during any period of industrial action, sufficient labour will be made available to carry out work essential for life support within hospitals.

(6) In resolving issues of an industry wide nature discussions will commence at the level specified in (2)(c)(i) above between the appropriate Association officials and representatives of the respondents. For the purpose of this clause industry wide issues mean those issues affecting more than one site or involving claim(s) seeking variation(s) to the Agreement.

(7) The parties acknowledge that this procedure formed part of the package which justified the payment of the increases available under the Structural Efficiency Principle.

Accordingly, the parties agree that if either party is of the view that the other party is in breach of this procedure, the matter will be referred to the Western Australian Industrial Relations Commission for it to determine—

- (a) whether a breach of the procedure has occurred; and

- (b) subject to (a) above, the appropriateness of the continued provision of the benefits provided under the Structural Efficiency Principle or any other action considered appropriate by the Commission.

SCHEDULE A—NW AGREEMENT

CONDITIONS OF APPOINTMENT AND EMPLOYMENT FOR MEDICAL PRACTITIONERS EMPLOYED IN PUBLIC HOSPITALS NORTH OF 26 DEGREES SOUTH LATITUDE.

(1) INTRODUCTION

The following conditions are specific to medical practitioners employed in public hospitals north of 26 degrees South Latitude.

(2) SCOPE

These Conditions shall apply to all medical practitioners employed in public hospitals north of 26 degrees south latitude with the exception of Interns, Resident Medical Officers, Registrars, Senior Registrars, Trainee Psychiatrists and Trainee Medical Administrators.

(3) SALARIES, APPOINTMENT AND PROGRESSION CRITERIA

The salaries or salary ranges applicable to medical practitioners shall be those contained in Schedule C2 to C6 to this Agreement.

The appointment of a medical practitioner and the progression of the practitioner through the salary scales shall be in accordance with the following criteria—

- 3.1 A General Practitioner (non Vocationally Registered) may be appointed to classifications within the range of levels 13 to 15, provided that a general practitioner with more than 5 years post graduate experience shall be appointed at Level 16. Such General Practitioners may then proceed subject to good conduct, satisfactory performance, diligence and efficiency by annual increments to Level 18.

A Vocationally Registered GP shall be appointed at a classification not less than Level 16 and may then proceed subject to good conduct, satisfactory performance, diligence and efficiency by annual increments to Level 20.

- 3.2 A Specialist practitioner shall be appointed at a classification of not less than Level 17 and subject to good conduct, satisfactory performance, diligence and efficiency proceed to Level 23.

- 3.3 A General Practitioner appointed as a Senior Medical Officer shall advance two salary points provided that this does not exceed Level 18. After 12 months at Level 18, a Senior Medical Officer may proceed subject to good conduct, satisfactory performance, diligence and efficiency by annual increments to Level 23 subject to the conditions applying to Level 23.

- 3.4 A specialist appointed as a Senior Medical Officer shall advance two salary points and then proceed subject to good conduct, satisfactory performance, diligence and efficiency by annual increments to the maximum of Level 23 subject to the conditions applying to Level 23. After 12 months at Level 23 a specialist appointed as a Senior Medical Officer shall be paid an allowance at the maximum level prescribed by Clause 3.4(2) of this Agreement in addition to the prescribed salary.

(4) PRIVATE PRACTICE

A medical practitioner shall exercise a right of private practice in accordance with the provisions of the North West Private Practice Trust Fund. Provided that the employer may on agreement with the medical practitioner, remunerate the medical practitioner in accordance with Clause 3.5(3)(a), Arrangement A, or Clause 3.5(3)(b) Arrangement C of this Agreement.

(5) GRATUITY PAYMENTS

Medical practitioners in addition to the entitlements specified in this Agreement, shall accrue an entitlement to four weeks' salary for each completed year of continuous service, subject to a minimum term of three years' continuous service.

The payment may be drawn in whole or in part at any time after completion of the qualifying period or will be paid upon retirement or resignation. The quantum of the payment is determined on the basis of the substantive base salary applicable at the time of payment being made.

(6) CHARGES ASSOCIATED WITH HOUSING

A medical practitioner occupying housing supplied by the Health Department of Western Australia or any other Government Agency shall pay 100% of the standard charges for rent, gas, water and power set by the Health Department or Government Agency responsible for establishing the charges.

(7) ANNUAL LEAVE TRAVEL CONCESSIONS

Annual leave travel concessions for medical practitioners shall be in accordance with Public Service Board Administrative Instruction No. 604 "Travel Concessions for Annual Leave".

(8) MOTOR VEHICLE

The medical practitioner will be provided with a fully maintained motor vehicle for official use. The vehicle will also be available for limited private use in accordance with the conditions laid down by the Commissioner of Health.

(9) RELOCATION EXPENSES

Where a medical practitioner is recruited from within Western Australia he/she shall be entitled to air travel for him/herself and immediate family members and the cost of freight of personal effects from the point of recruitment to the location of appointment, at the expense of the Employer.

Where a medical practitioner is recruited from interstate or overseas, the costs of air travel and freight on personal effects will only be met by the Employer where the appointee enters a bond to remain for a fixed period, not exceeding two years, in service in a hospital north of 26 degrees South Latitude in the case of interstate recruitment and three years in the case of overseas recruitment.

The cost of air travel to Perth, Western Australia for the employee and immediate family members will be met by the Employer on cessation of the contract of service. Financial assistance with transportation of personal effects may be provided on a discretionary basis.

The range of items included as personal effects will be in accordance with the schedule determined by the Commissioner of Health from time to time.

(10) OVERSEAS STUDY LEAVE

In recognition of the need for north west medical practitioners to update their skills, a period of 5 weeks paid overseas study, training and educational leave at an approved medical institution will be provided to medical practitioners after a period of 5 years' continuous service in the north west.

Conditions relating to the granting of leave, reporting requirements and source and nature of funding shall be those set out in clause 3.5 as they apply to Arrangement A.

(11) (a) A medical practitioner stationed north of 26° South Latitude shall receive an additional week's annual leave for each completed year of continuous service in the region on the basis of one-twelfth of a week for each completed month.

(b) Where payment in lieu of pro rata annual leave is made on the resignation or retirement of a medical practitioner, in addition to the payment calculated in accordance with Clause 4.1 subclause (6)(a) of this Agreement, the medical practitioner shall be paid one-twelfth of a week for each completed month of continuous service in the region. Payment for the additional leave shall also be included with the payment made for annual leave to the surviving spouse or estate of a deceased medical practitioner.

SCHEDULE B—NAMED PARTIES

The following parties are named parties to the Agreement—

The Minister for Health, Dumas House, 2 Havelock Street, WEST PERTH WA 6005

The Western Australian Branch of the Australian Medical Association, 14 Stirling Highway, NEDLANDS WA 6009

The Boards of Management of—

Royal Perth Hospital, Wellington Street, PERTH WA 6000

Sir Charles Gairdner Hospital, Verdun Street, NEDLANDS WA 6008

Fremantle Hospital, Alma Street, FREMANTLE WA 6160

Princess Margaret Hospital for Children, Thomas Street, SUBIACO WA 6008

King Edward Memorial Hospital for Women, Bagot Road, SUBIACO WA 6008

Beverley District Hospital, Sewell Street, BEVERLEY WA 6304

Black Range District Hospital, SANDSTONE WA 6639

Boddington District Hospital, Hotham Road, BODDINGTON WA 6390

Bridgetown District Hospital, Peninsula Road, BRIDGETOWN WA 6255

Bruce Rock Memorial Hospital, Dunstall Street, BRUCE ROCK WA 6418

Corrigin District Hospital, Kirwood Street, CORRIGIN WA 6375

Cunderdin District Hospital, Cubbine Road, CUNDERDIN WA 6407

Dalwallinu District Hospital, Myers Street, DALWALLINU WA 6609

Dumbleyung District Hospital, McIntire Road, DUMBLEYUNG WA 6350

Gnowangerup District Hospital, Yougenup Road, GNOWANGERUP WA 6335

Goomalling District Hospital, Forrest Street, GOOMALLING WA 6460

Harvey District Hospital, 45 Hayward Street, HARVEY WA 6220

Kalamunda District Community Hospital, Elizabeth Street, KALAMUNDA WA 6076

Kellerberrin Memorial Hospital, Moore Street, KELLERBERRIN WA 6410

Kojonup District Hospital, Spring Street, KOJONUP WA 6395

Kondinin District Hospital, Graham Street, KONDININ WA 6367

Kukerin District Hospital, KUKERIN WA 6352

Kununoppin District Hospital, Leake Street, KUNUNOPPIN WA 6489

Moora District Hospital, Dandaragan Road, MOORA WA 6510

Morawa District Hospital, Cauldfield Road, MORAWA WA 6623

Mukinbudin District Hospital, Cnr Ferguson and Maddock Streets, MUKINBUDIN WA 6479

Mullewa District Hospital, Elder Street, MULLEWA WA 6630

Murray District Hospital, McKay Street, PINJARRA WA 6208

Nannup District Hospital, Carey Street, NANNUP WA 6275

Narembeen District Hospital, Ada Street, NAREMBEEN WA 6369

Norseman District Hospital, Talbot Street, NORSEMAN WA 6443

North Midlands District Hospital, Station Street, THREE SPRINGS WA 6519

Northampton District Hospital, Stephen Street, NORTHAMPTON WA 6535

Northcliffe District Hospital, Wheatley Road, NORTHCLIFFE WA 6252

Pemberton District Hospital, Hospital Road, PEMBERTON WA 6260

Plantagenet District Hospital, Langton Road, MT BARKER WA 6324

Quairading District Hospital, Harris Street, QUAIRADING WA 6383

Ravensthorpe District Memorial Hospital, Martin Street, RAVENSTHORPE WA 6346

Rottnest Island Hospital, ROTTNEST WA 6161

Southern Cross District Hospital, Coolgardie Road, SOUTHERN CROSS WA 6426

Swan District Hospital, Eveline Road, VIVEASH WA 6056

Tambellup District Hospital, Taylor Street, TAMBELLUP WA 6320

Wanneroo District Hospital, Grand Boulevard, JOONDALUP WA 6027

Warren District Hospital, Hospital Avenue, MANJIMUP WA 6258

Williams District Hospital, Adam Street, WILLIAMS WA 6391

Wongan Hills District Hospital, Ackland Street, WONGAN HILLS WA 6603

Wyalkatchem-Koorda District Hospital, Honour Avenue, WYALKATCHEM WA 6485

Yalgoo District Hospital, Stanley Street, YALGOO WA 6218

Albany Regional Hospital, Hardie Road, ALBANY WA 6330

Armada-Kelmscott Memorial Hospital, Albany Highway, ARMADALE WA 6112

Augusta District Hospital, Blackwood Avenue, AUGUSTA WA 6290

Bentley Hospital, 33 Mills Street, BENTLEY WA 6102

Broome District Hospital, Robinson Road, BROOME WA 6725

Bunbury Regional Hospital, Blair Street, BUNBURY WA 6230

Busselton District Hospital, Mill Road, BUSSELTON WA 6280

Carnarvon Regional Hospital, Cleaver Street, CARNARVON WA 6701

Collie District Hospital, Steer Street, COLLIE WA 6225

Denmark District Hospital, Strickland Street, DENMARK WA 6333

Derby Regional Hospital, Loch Street, DERBY WA 6728

Donnybrook District Hospital, Bentley Street, DONNYBROOK WA 6239

Esperance District Hospital, Hicks Street, ESPERANCE WA 6450

Exmouth District Hospital, Lyons Street, EXMOUTH WA 6707

Geraldton Regional Hospital, Shenton Street, GERALDTON WA 6530

Kalgoorlie Regional Hospital, Piccadilly Street, KALGOORLIE WA 6430

Katanning District Hospital, Clive Street, KATANNING WA 6317

Kununurra District Hospital, 96 Coolibah Drive, KUNUNURRA WA 6743

Lake Grace District Hospital, Stubbs Terrace, LAKE GRACE WA 6353

Laverton District Hospital, Beria Road, LAVERTON WA 6440

Leonora District Hospital, Kalgoorlie Road, LEONORA WA 6438

Margaret River District Hospital, Farrelly Street, MARGARET RIVER WA 6285

Meekatharra District Hospital, High Street, MEEKATHARRA WA 6642

Merredin District Hospital, Kitchener Road, MERREDIN WA 6415

Mount Henry Hospital, Cloister Avenue, COMO WA 6152

Mount Magnet Nursing Post, Lot 4536 Criddle Street, MOUNT MAGNET WA 6638

Narrogin Regional Hospital, Williams Road, NARROGIN WA 6312

Newman District Hospital, Mindarra Drive, NEWMAN WA 6753

Northam Regional Hospital, Duke Street, NORTHAM WA 6401

Onslow District Hospital, Second Avenue, ONSLOW WA 6710

Osborne Park Hospital, Osborne Place, STIRLING WA 6021

Paraburdoo District Hospital, Rocklea Road, PARABURDOO WA 6754

Port Hedland Regional Hospital, Kingsmill Street, PORT HEDLAND WA 6721

Rockingham-Kwinana District Hospital, Elanora Drive, ROCKINGHAM WA 6168

Roebourne District Hospital, 42-44 Hampton Street, ROEBOURNE WA 6718

Tom Price District Hospital, Mine Road, TOM PRICE WA 6751

Wagin District Hospital, Vesper Street, WAGIN WA 6315

Wickham District Hospital, Mulga Way, WICKHAM WA 6720

Woodside Maternity Hospital, 18 Dalgety Street, EAST FREMANTLE WA 6158

Woorooloo District Hospital, Linley Valley, WOOROLOO WA 6558

Wyndham District Hospital, Lot 1270, Minderoo Street, WYNDHAM WA 6740

York District Hospital, Trew Road, YORK WA 6302

SCHEDULE C1—MEDICAL OFFICERS

TRAINEE MEDICAL OFFICERS, CONSULTANT SUPERVISED MEDICAL OFFICERS (IN SERVICE POSITIONS)

Classification	Level	New Base	New Base	New Base
		Annual Salary at 1 Jan 1996 ⁽¹⁾	Annual Salary at 1 July 1996	Annual Salary at 1 Jan 1997
INTERN	1	38342	39492	40282
RMO	2	41068	42300	43146
RMO	3	43853	45169	46072
RMO	4	45544	46910	47849
REGISTRAR (YR 1)	5	47306	48725	49700
REGISTRAR (YR 2)	6	50915	52442	53491
TRAINEE MEDICAL ADMIN REGISTRAR (YR 1)				
REGISTRAR (YR 3)	7	53956	55575	56686
TRAINEE MEDICAL ADMIN REGISTRAR (YR 2)				
TRAINEE PSYCHIATRIST (YR 1)				
SUPERVISED MEDICAL OFFICER (YR 1)				
REGISTRAR (YR 4)	8	57135	58849	60026
TRAINEE MEDICAL ADMIN REGISTRAR (YR 3)				
TRAINEE PSYCHIATRISTS (YR 2)				
SUPERVISED MEDICAL OFFICER (YR 2)				
SENIOR REGISTRAR (YR 1)	9	59376	61157	62380
TRAINEE MEDICAL ADMIN (YR 4)				
TRAINEE PSYCHIATRIST (YR 3)				
SUPERVISED MEDICAL OFFICER (YR 3)				
SENIOR REGISTRAR (YR 2)	10	62774	64657	65950
TRAINEE PSYCHIATRISTS (YR 4)				
SUPERVISED MEDICAL OFFICER (YR 4)				
TRAINEE PSYCHIATRIST (YR 5)	11	68862	70928	72346
SUPERVISED MEDICAL OFFICER (YR 5)				
TRAINEE PSYCHIATRIST (YR 6)—ELECTIVE YEAR ONLY	12	75170	77425	78974
SUPERVISED MEDICAL OFFICER				

⁽¹⁾ Includes base plus 1.2% for trade off for long service leave, the first 3% increase as of 1 January 1996 and \$645 for annual leave loading.

SCHEDULE C2—ARRANGEMENT A—FULL TIME
PAY RATES FOR FULL TIME MEDICAL
PRACTITIONERS

Classification	Level	Arrange-	Base	Base
		ment A Base Annual Salary at 1 Jan 1996 3%	Annual Salary at 1 July 1996 3%	Annual Salary at 1 Jan 1997 2%
MEDICAL OFFICER (NCS)(YR 1) GP (YR 1) VRGP (YR 1)	13	93508	96313	98240
MEDICAL OFFICER (NCS)(YR 2) GP (YR 2) VRGP (YR 2)	14	97749	100681	102695
MEDICAL OFFICER (NCS) (YR 3) GP (YR 3) SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) YR 1 SPECIALIST (YR 1) VRGP (YR 3)	15	101964	105023	107123
VRGP (YR 4) SNR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) SPECIALIST (YR 2)	16	106200	109386	111574
SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) (YR3) VRGP (YR 5) SPECIALIST (YR 3)	17	111560	114907	117205
SPECIALIST (YR 4) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 4)	18	114452	117886	120243
SPECIALIST (YR 5) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 5)	19	115636	119105	121487
SPECIALIST (YR 6) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 6)	20	117360	120881	123298
SPECIALIST (YR 7) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 7)	21	121213	124849	127346
SPECIALIST (YR 8) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 8)	22	123623	127332	129878
SPECIALIST SENIOR MEDICAL OFFICER (SPECIALIST QUALS)	23	128829	132694	135348

SCHEDULE C3—ARRANGEMENT B—FULL TIME
PAY RATES FOR FULL TIME MEDICAL
PRACTITIONERS

Classification	Level	Arrange-	Base	Base
		ment B Base Annual Salary at 1 Jan 1996 3%	Annual Salary at 1 July 1996 3%	Annual Salary at 1 Jan 1997 2%
MEDICAL OFFICER (NCS)(YR 1) GP (YR 1) VRGP (YR 1)	13	80610	83029	84689
MEDICAL OFFICER (NCS)(YR 2) GP (YR 2) VRGP (YR 2)	14	84266	86794	88530
MEDICAL OFFICER (NCS) (YR 3) GP (YR 3) SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) YR 1 SPECIALIST (YR 1) VRGP (YR 3)	15	87900	90537	92348
VRGP (YR 4) SNR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) SPECIALIST (YR 2)	16	91552	94298	96184
SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) (YR3) VRGP (YR 5) SPECIALIST (YR 3)	17	96172	99058	101039
SPECIALIST (YR 4) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 4)	18	98666	101625	103658
SPECIALIST (YR 5) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 5)	19	99686	102677	104730
SPECIALIST (YR 6) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 6)	20	101172	104208	106292
SPECIALIST (YR 7) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 7)	21	104494	107629	109781
SPECIALIST (YR 8) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 8)	22	106572	109769	111964
SPECIALIST SENIOR MEDICAL OFFICER (SPECIALIST QUALS)	23	111059	114391	116679

SCHEDULE C4—ARRANGEMENT C—MODIFIED
FULL TIME
PAY RATES FOR MODIFIED (.8) FULL TIME
MEDICAL PRACTITIONERS

Classification	Level	Arrange-	Base	Base
		ment C Base Annual Salary at 1 Jan 1996 3%	Annual Salary at 1 July 1996 3%	Annual Salary at 1 Jan 1997 2%
MEDICAL OFFICER (NCS)(YR 1) GP (YR 1) VRGP (YR 1)	13	74806	77051	78592
MEDICAL OFFICER (NCS)(YR 2) GP (YR 2) VRGP (YR 2)	14	78199	80545	82156
MEDICAL OFFICER (NCS) (YR 3) GP (YR 3) SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) YR 1 SPECIALIST (YR 1) VRGP (YR 3)	15	81571	84018	85699
VRGP (YR 4) SNR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) SPECIALIST (YR 2)	16	84960	87509	89259
SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) (YR3) VRGP (YR 5) SPECIALIST (YR 3)	17	89248	91925	93764
SPECIALIST (YR 4) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 4)	18	91562	94308	96195
SPECIALIST (YR 5) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 5)	19	92509	95284	97190
SPECIALIST (YR 6) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 6)	20	93888	96705	98639
SPECIALIST (YR 7) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 7)	21	96970	99880	101877
SPECIALIST (YR 8) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 8)	22	98898	101865	103903
SPECIALIST SENIOR MEDICAL OFFICER (SPECIALIST QUALS)	23	103063	106155	108278

SCHEDULE C5—ARRANGEMENT D—MODIFIED
FULL TIME
PAY RATES FOR MODIFIED (.8) FULL TIME
MEDICAL PRACTITIONERS

Classification	Level	Arrange-	Base	Base
		ment D Base Annual Salary at 1 Jan 1996 3%	Annual Salary at 1 July 1996 3%	Annual Salary at 1 Jan 1997 2%
MEDICAL OFFICER (NCS)(YR 1) GP (YR 1) VRGP (YR 1)	13	64488	66423	67751
MEDICAL OFFICER (NCS)(YR 2) GP (YR 2) VRGP (YR 2)	14	67413	69435	70824
MEDICAL OFFICER (NCS) (YR 3) GP (YR 3) SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) YR 1 SPECIALIST (YR 1) VRGP (YR 3)	15	70320	72430	73878
VRGP (YR 4) SNR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) SPECIALIST (YR 2)	16	73242	75439	76948
SNR MED OFFICER (NON SPECIALIST/ SPECIALIST) (YR3) VRGP (YR 5) SPECIALIST (YR 3)	17	76938	79246	80831
SPECIALIST (YR 4) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 4)	18	78933	81301	82927
SPECIALIST (YR 5) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 5)	19	79749	82141	83784
SPECIALIST (YR 6) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 6)	20	80938	83366	85033
SPECIALIST (YR 7) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 7)	21	83595	86103	87825
SPECIALIST (YR 8) SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 8)	22	85258	87815	89572
SPECIALIST SENIOR MEDICAL OFFICER (SPECIALIST QUALS)	23	88847	91513	93343

SCHEDULE C6—SESSIONAL PRACTITIONERS
SESSIONAL BASE RATES

Classification	Level	Base Session as at 1 Jan 1996	Base Session as at 1 July 1996	Base Session as at 1 Jan 1997
MEDICAL OFFICER (YR 1)(NCS) ⁽⁶⁾ GENERAL PRACTITIONER (YR 1) AMS (U/Q) (YR 1)	13	179.25	184.63	188.32
MEDICAL OFFICER (YR 2)(NCS) GENERAL PRACTITIONER (YR 2) AMS (U/Q) (YR 2)	14	187.38	193.00	196.86
MEDICAL OFFICER (YR 3)(NCS) GENERAL PRACTITIONER (YR 3) AMS (U/Q) (YR 3)	15	195.46	201.32	205.35
SENIOR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) (YR 1) SPECIALIST (YR 1)				
VRGP (YR 1) SENIOR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) (YR 2) SPECIALIST (YR 2)	16	203.58	209.68	213.87
VRGP (YR 2) SENIOR MEDICAL OFFICER (NON SPECIALIST/SPECIALIST) (YR 3) SPECIALIST (YR 3)	17 ⁽¹⁾	213.86	220.27	224.67
SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 4) SPECIALIST (YR 4)	18 ⁽¹⁾	219.40	225.98	230.50
SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 5) SPECIALIST (YR 5)	19	221.67	228.32	232.89
SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 6) SPECIALIST (YR 6)	20 ⁽²⁾	224.98	231.73	236.36
SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 7) SPECIALIST (YR 7)	21 ⁽³⁾	232.36	239.33	244.12
SENIOR MEDICAL OFFICER (SPECIALIST QUALS) (YR 8) SPECIALIST (YR 8)	22	236.98	244.09	248.97
SPECIALIST, SENIOR MEDICAL OFFICER (SPECIALIST QUALS), (BOTH AFTER 4 YEARS ON 22 OR L2.2 PH AWARD)	23 ⁽⁴⁾	246.96	254.37	259.46

(1) Restructuring of rate to realign increments.
 (2) As per (1) but slight increase.
 (3) New point.
 (4) New point based on \$5,000 per annum increase and eligibility criteria.
 (5) Rates include \$645 flat trade off of annual leave loading, 1.2% trade off of LSL and first 3% increase.
 (6) NCS—Not supervised by specialist.

PART 6—SIGNING OF AGREEMENT, COMMON SEAL

Dated this day 22nd December 1995.

(signed)

Signed by Eric John Dillon
Co-ordinator, Industrial Relations
Health Department of Western Australia

as agent for and on behalf of the applicants as listed in Schedule A of this Agreement, in the presence of:

.....(signed)
 PATRICKNORTHWAY

The Common Seal of the Western Australian Branch of the Australian Medical Association was hereunto affixed in the presence of:

.....(signed)
 P JENNINGS.....

LONG SERVICE LEAVE—
Boards of Reference—Special—

Mr Robert Comley
and

Adelia Nominees Pty Ltd Trading As Custom Rubber Company.

Board of Reference File No. 8 of 1995.

MR R C LOVEGROVE (Chairman).
 MR L BEECH (Employee's Representative).
 MR D M JONES (Employer's Representative).

PERTH.

19 January 1996.

Decision.

The application initiated by the applicant, Mr Robert Comley, has two components—the first is whether he has, as claimed, an entitlement to pro-rata long service leave with the respondent Adelia Nominees Pty Ltd trading as Custom Rubber Company, Geraldton Branch, based on 10 years continuous service and secondly, if that question is answered in the affirmative whether the deductions made by the respondent to the applicant's salary on termination and debited against the applicant's long service leave entitlement were unauthorised deductions and should therefore be paid to the applicant?

- The applicant commenced employment with Allied Conveyor Services Pty Ltd as a trainee conveyor belt repair man on 22 March 1984 under the auspicious of a Commonwealth Government training programme. The training programme concluded on 18 July 1984 and the applicant continued in the capacity of a belt splicer and rubber liner.
- Allied Conveyor Services Pty Ltd operated as a conveyor belt repair business at two branch locations. One at 2729 Eaton Place, Geraldton and the other at Port Hedland.
- Sometime between 7 January 1985 and 20 February 1985 (exact date not known) the Geraldton Branch of Allied Conveyor Services Pty Ltd ceased operation as a result of a mutual decision of its directors, Mr David Vaughan and Mr Albert James Morey, with each of the directors receiving a fifty percent share of the Geraldton Branch assets. The actual finalisation of that arrangement occurred approximately twelve months after the Branches closure. On or about 20 February 1985 the Geraldton Branch records of Allied Conveyor Services Pty Ltd were transferred to the Port Hedland Branch Office.
- On 7 January 1985 the business known as Geraldton Rubber Company commenced operation and had as its sole proprietor a Gail Vaughan. That business ceased on 20 February 1985.
- On 20 February 1985 Adelia Nominees Pty Ltd trading as Custom Rubber Company, Geraldton Branch commenced operation.
- During the period 7 January 1985 to 20 February 1985, when changes to the ownership of Custom Rubber Company occurred, the applicant continued working in the same capacity as a belt splicer and rubber liner and continued working with Custom Rubber Company until the date of termination of his employment on 19 September 1994. By which time he had progressed to an Acting Managers position.
- On 20 September 1994 the applicant received a final pay and advice slip from Custom Rubber Company which contained reference to an outstanding long service leave payment of 19 days amounting to \$1404.00 (Exhibit No 2) and a copy of his Long Service Leave Card (Exhibit No 1) which confirmed the date of his commencement of employment as being 22 March 1984 and details the days deducted from the applicant's long service leave entitlement as time off.

8. On 17 June 1994 the applicant and the respondent entered into a written agreement in the following terms:

"I Robert Comley authorise Custom Rubber Company to deduct Pro Rata Long Service Leave as and when I take time off as required"

The applicant claimed that both Exhibits No 1 and 2 clearly show that he was entitled to Long Service leave based on ten years and six months continuous service with the respondent and that during the period 22 March 1984 to 19 September 1994 he had continuity of employment with the respondent because there was a transmission of business between Allied Conveyor Service Pty Ltd and Custom Rubber Company (Gail Vaughan) and a further transmission of business later between Custom Rubber Company and Adelia Nominees Pty Ltd trading as Custom Rubber Company, Geraldton.

The applicant further claimed that the days deducted by the respondent from his long service leave pro-rata entitlements were unauthorised.

The respondent acknowledge that both Exhibits No 1 and 2 were accurate and were copies of company records provided to the applicant. At the time of the applicant's termination of employment the respondent firmly believed that they were liable for the applicant's long service leave pro rata entitlements. However, when the applicant queried the long service leave deductions the respondent sought further advice and was alerted to the fact that the applicant was not entitled to pro-rata long service leave because no transmission of business occurred between Allied Conveyor Service Pty Ltd and Custom Rubber Company and therefore the applicant failed to have ten years of continuous service with the respondent.

The applicant was not able to provide any documentary evidence to the Board to substantiate that a transmission of business as defined by Section 6(4) of the Long Service Leave Act 1958 had occurred. The applicant asserted that from his perspective nothing changed when the business changed its name from Allied Conveyor Services Pty Ltd to Custom Rubber Company. He continued to do the same work, with the same equipment at the same premises and usually for the same clients although most clients were serviced on site.

The respondent on the other hand through its witness Mr David Vaughan stated that there was no transmission of business between Allied Conveyor Services Pty Ltd and Custom Rubber Company, he stated that it was agreed between himself and Co-director Albert James Morey that the Geraldton operation of Allied Conveyor Services Pty Ltd was to cease operating on 20 February 1985 and that he would have no further involvement with the company. Mr Vaughan stated that when he commenced Custom Rubber Company it operated from the same premises previously occupied by Allied Conveyor Services Pty Ltd and that any equipment that was there and used was personally his resulting from the agreement he had with Mr Morey when the Geraldton operation closed.

Apart from the observations made by the applicant there was simply no evidence to support the view that a transmission of business occurred between Allied Conveyor Services Pty Ltd and Custom Rubber Company. There are ample examples where Boards of Reference are bound to make their decision based on the facts not assertions or assumptions. The task of satisfying the burden of proof placed upon the employee may be difficult, but nonetheless the burden of proof is borne by the applicant.

Having come to that conclusion it is not necessary for the Board to decide on the second component of the applicant's claim.

Accordingly the application is dismissed.

R. LOVEGROVE,
Chairman.

Filed in the Office of the Registrar 19/01/96.

J. CARRIGG,
Registrar.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Beaumaster

and

Capriplan Pty Ltd.

No. 1148 of 1995.

COMMISSIONER P E SCOTT.

30 January 1996.

Reasons for Decision.

THE COMMISSIONER: This is an application pursuant to section 29(1)(b)(ii) of the Industrial Relations Act, 1979, by Mr Beaumaster, who says that he was employed by the Respondent as a carpenter between 7 July and 21 August 1995, to work on two particular projects but was not paid moneys due under his contract of employment. The amount he seeks is for the period from Friday 11 August 1995 to Monday 21 August 1995, totalling \$2,200 gross. The Applicant says that he had previously worked with the site supervisor of the Respondent, a Mr Ogilby, who negotiated the work and payment arrangements with him.

The Applicant's evidence was that:

- when he first discussed the arrangement with Mr Ogilby they talked about \$200 per day and \$25 per hour as this was the arrangement that had existed between them in their previous working relationship;
- he kept a record of days and hours worked in a book titled "Invoice and Statement" (which was Exhibit C1) commencing with Folio 18. This records the following information—

" 385 0301 18

FAX 385 0302

7-7-95

Capriplan Pty Ltd
4/22 Salvado St. Cottesloe WA. 6011.

Brian Beaumaster
60 Brighton Rd Scarborough.

4 days to

6th thurs. 800.00

Less 20% tax. 160.00

640.00."

The following folios record hours and days as follows:

Folio 19 records "6 1/2 days = 52 hrs @ \$25", folio 20 records "6 days = 48 hrs @ \$25", folios 21 and 22 record a number of days and the hours, with folio 21 also noting "Total 6 full days @ \$200 = \$1200, folio 23 records days, and folio 24 records days and hours. These records indicate that the Applicant worked between 4.5 and 14 hours in any day. As noted, some folios record days only, some hours and days, some noting an hourly rate, others a daily rate. All provide a total amount less tax of 20%;

- he was paid up to and including the amounts specified in Folio 23 however he was not paid the amounts contained within Folio 24 totalling a gross amount of \$2,200;
- the Applicant prepared the documents within Exhibit C1 with a view to providing a copy to Mr Ogilby each week as a means of claiming payment however when he first offered them to Mr Ogilby, Mr Ogilby indicated that it was not necessary and so no such document was submitted to the Respondent by the

Applicant as a claim for payment. Rather, the Applicant advised Mr Ogilby verbally each week of the number of days or hours for which he was claiming payment;

- when he had not received payment for the last week of his work he queried this with Ms Halasz, a director of the Company who was in control of such matters. He says that she advised him that he would not be paid until the work was finished on the weekend but that he would be paid soon after. Mr Ogilby and Mr Beaumaster discussed work to be done to ensure completion of the job and arranged for him to work over the weekend;
- he undertook that additional work but did not receive payment for the preceding week or the work on the weekend or the Monday;
- he denies that he was engaged on the basis of being paid \$4,000 to do the job, or that he was a subcontractor;
- tax was deducted from payments to the Applicant at the rate of 20% in accordance with the Prescribed Payments system. Exhibit H1 is the “payers’ copy” of the “Prescribed Payments System (PPS) Payee Declaration”, a form of the Australian Taxation Office. This shows Mr Beaumaster as the payee and Capriplan Pty Ltd as the payer;
- he employed no other employees but introduced his brother to Mr Ogilby to undertake some work and his brother was paid directly by Mr Ogilby;
- he did not supply any materials associated with the work.

The Respondent’s evidence was that:

- Mr Beaumaster was never engaged as an employee but was a subcontractor. Ms Halasz gave evidence that the Respondent does not employ labour other than Mr Ogilby but engages subcontractors.
- There are a number of arrangements for engaging people to undertake work for the Respondent, by subcontract, being by using a standard form of agreement for subcontractors drawn up by the Housing Industry Association, or by arrangements by order book, or by verbal appointment.
- The final control of the appointment of any subcontractor is held by Ms Halasz and that Mr Ogilby acts according to her instructions. In this case, her instruction was to appoint Mr Beaumaster on the basis of the cost being similar to the cost contained within the Schedule which formed Exhibit H2, being \$4000.00. There was some brief discussion between her and Mr Ogilby about that being paid at the rate of \$200 per day.
- Ms Halasz recalls a discussion with Mr Beaumaster towards the end of the job that the work he was undertaking had taken far longer than anticipated but acknowledges that there was an undertaking to pay him monies owed at the conclusion of the job. She says, however, that the job was never completed.
- There is a strict procedure that unless an invoice is presented by the contractor then the supervisor, Mr Ogilby would pay the money claimed. However, Ms Halasz felt confident regarding the agreement reached between Mr Ogilby and Mr Beaumaster being in accordance with her instruction and Mr Beaumaster was paid according to his verbal claims. She says that the first time she heard of any claim that Mr Beaumaster was an employee was after the last claim for payment.
- If the Commission finds that there was an employer—employee relationship then the Respondent is happy to pay Mr Beaumaster according to his award entitlements.

The first issue to be resolved is whether there is an industrial matter before the Commission, requiring the determination of whether an employer/employee relationship existed between the parties. The onus rests with the Applicant to prove his case, and demonstrate that an employer/employee relationship existed between himself and the Respondent.

The authorities on this issue list a number of indicia which help to categorise such a relationship and differentiate it from an independent contract arrangement. The primary consideration is the right of the respondent to control the work of the applicant. There was no evidence that the Respondent reserved the right to direct or actually controlled when or how the work was to be done. There was evidence that the Applicant is a qualified carpenter and, therefore, whether employee or independent contractor, he should require no direction as to the application of his trade skills. There was no evidence that he was instructed as to when to work. The only reference in this regard was that he was to be paid outstanding moneys upon the completion of the work, and discussed this with Mr Ogilby. Otherwise, his hours of work varied, without the evidence providing any explanation as to the reason for, circumstances or arrangements of this variation.

There was no evidence of control being exercised in terms of disciplining the Applicant when work was not being completed according to schedule. There was evidence that the work was taking too long and that Ms Halasz talked to the Applicant about the time it was taking to do the job however this aspect is far from clear. Ms Halasz discussed with Mr Ogilby the possibility of terminating the arrangement with Mr Beaumaster due to the time being taken but chose not to because of “how difficult it is to discharge subcontractors” (Ms Halasz—Transcript page 38).

Mr Clohessy says that the transferring of the Applicant to do work at Rossmoyne school and his return to the Gilbertson Road job is an example of the exercise of control. However, the evidence about how the Applicant came to work on the Rossmoyne site was that he was asked to go there by Mr Ogilby (Transcript page 13). There was no other evidence of the circumstances or arrangements except that Ms Halasz says she “instructed Mr Ogilby to appoint Mr Beaumaster on the Rossmoyne job, or to complete it himself because he is a qualified carpenter” but left it up to Mr Ogilby. Once again, this does not provide evidence of the right to control, but merely indicates an agreement to undertake that work. I find no clear indication as to the ability or otherwise of the Respondent to control the Applicant in the way in which control normally resides with an employer.

Other indicia of an employer/employee relationship may include taxation arrangements. The parties entered into an arrangement normally applicable to an independent contract, being the Prescribed Payment System.

The payment arrangements, whilst not entirely clear one way or the other, appear to have been intended by the Applicant to be on an independent contract basis by the provision of an invoice as a means of claiming payment. However, Mr Ogilby did not require the invoice offered but accepted verbal claims for payment. This does not clearly indicate the nature of the relationship but inclines towards independent contract.

The payment entitlement, thought by Ms Halasz to be for a fixed amount payable in instalments, based on weekly amounts, but claimed by the Applicant to be a fixed hourly or weekly rate is, likewise, not a clear determinant one way or the other, although it inclines towards an employment relationship, as does the arrangement being for labour only.

It is to be noted that the Respondent says that the outstanding amount claimed has not been paid because the job has not been completed. Under an employment relationship, payment would be required for time worked, not for completion of the job. This, of course, is the major contention between the parties, but supports the Respondent’s view of the nature of the relationship.

Under an employment relationship, the employee would have no entitlement to have the contracted work undertaken by any other person. The issue of Mr Beaumaster introducing his brother to Mr Ogilby, and of his brother performing work and being paid by Mr Ogilby does not demonstrate that in the performance of his contract Mr Beaumaster was or was not entitled to engage labour. There was no evidence that the Applicant was either entitled to or precluded from having others undertake work. There was simply no reference to the matter.

The issue of whether the Applicant was included by the Respondent in its policy for workers’ compensation was not clearly resolved and because of the requirement of the Workers Compensation Act in relation to contracts for labour only,

does not help to resolve the matter.

As noted earlier, the Applicant bears the onus of demonstrating, on the balance of probabilities, that an employer/employee relationship existed between the parties. In his submissions, Mr Clohessy made a number of assertions about the relationship and some of its aspects but they were not pursued or substantiated in evidence. The lack of evidence put to the Commission to demonstrate this means that Applicant has failed to prove its case in this regard. This is not to say that I find that the relationship was of independent contract, but merely that it has not been demonstrated that an employer/employee relationship existed. The evidence was simply not adequate.

On this basis, the Applicant having failed to demonstrate that an industrial matter is before the Commission, the application will be dismissed.

Appearances: Mr R W Clohessy for the Applicant.
Ms M Halasz for the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Beaumaster

and

Capriplan Pty Ltd.

No. 1148 of 1995.

COMMISSIONER P E SCOTT.

30 January 1996.

Order.

HAVING heard Mr R W Clohessy on behalf of the Applicant and Ms M Halasz on behalf of the Respondent, now therefore the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT this application be and is hereby dismissed.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anne-Marie Boxhall

and

Prinsep Nursery and Bird Farm.

No. 974 of 1995.

COMMISSIONER P E SCOTT.

4 January 1995.

Order.

WHEREAS this is a claim of unfair dismissal pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979; and

WHEREAS a conference was held on Thursday, the 5th day of October 1995; and

WHEREAS the Applicant was requested by way of letter dated the 4th day of December 1995 to notify the Commission of the status of the application to which no reply was received;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders;

THAT this application be and is hereby dismissed.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anne-Marie Boxhall

and

Prinsep Nursery and Bird Farm.

No. 974 of 1995.

COMMISSIONER P E SCOTT.

11 January 1996.

Correcting Order.

WHEREAS an error occurred in the Order in Matter No. 974 of 1995 which issued on the 4th day of January 1996;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

DELETE the issue date of “4 January 1995” and insert “4 January 1996” in lieu thereof.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Julia Burton

and

Tiwest Pty Ltd.

No. 70 of 1994.

COMMISSIONER C.B. PARKS.

15 January 1996.

Reasons for Decision.

THE COMMISSIONER: On 20 January 1994, Ms Burton filed in the Commission an application, No. 69 of 1994, wherein she has referred a claim that she has been unfairly dismissed by Tiwest Pty Ltd and seeks reinstatement to the position of employment that she had occupied. On the same date a related application, No. 70 of 1994 was also filed in the Commission. This lastmentioned application seeks an Order that, in substance, although not in form, the statutory time within which “... this (sic) application (No. 69 of 1994) was required to be commenced be extended pursuant to Section 27(1)(n)”. By way of a further application made on behalf of Ms Burton, on 8 July 1994, leave was sought to amend the terms of application No. 70 of 1994 to allow the pursuit of, firstly, an Order that:

“(T)he time limitation period imposed by s29(2) of the Act does not apply to the Applicant’s application, No. 69 of 1994...”

or secondly, and therefore in the alternative, pursuit of an Order to validate the referral of No. 69 of 1994 on 20 January 1994, although differently framed to that in the original application.

On 12 July 1994, the Commission heard the application to amend application No. 70 of 1994. Leave to amend application No. 70 of 1994 was granted in the terms sought and, as a consequence, proceedings were then adjourned to allow the respondent the opportunity to prepare a response to the amended application.

Ms Burton first referred her complaint of unfair dismissal to the Commission on 14 January 1994, via application No. 51 of 1994, however, upon the advice of the solicitors then acting for her, and through that agency, that application was withdrawn and her complaint was again referred to the Commission through the extant application No. 69 of 1994, accompanied by application No. 70 of 1994.

This course was adopted in light of the opinion held that application No. 51 of 1994 had been filed in to the Commission outside the statutory time limited prescribed in s29(2) of the Industrial Relations Act 1979 (the Act), that is, the application had been referred to the Commission more than 28 days after

the day on which the employee's employment terminated. I note in passing that the contents of the withdrawn application are replicated in application No. 69 of 1994. Logic therefore leads to the conclusion that the intention had been to lodge the replacement application with application No. 70 of 1994 when filed, rather than it be filed in its own right. That follows because application No. 69 of 1994 was made to overcome a perceived fault in relation to the now withdrawn application, that is its filed status and the timing of that, otherwise, it had no different character to that of application No. 69 of 1994. Further, the purpose of application No. 70 of 1994, as originally filed, was to seek an extension of time to validly file an application that came to be identified as No. 69 of 1994. This appears to be the reason for following such course otherwise the previously filed application would not have been withdrawn and an extension of time pursued in relation to that application.

The contents of application No. 69 of 1994 are ambiguous regarding the date Ms Burton's contract of employment terminated and therefore it is unclear whether the claim made in January 1994 is that termination occurred on 15 November 1993, or that 30 days prior notice of the termination was given on that date and therefore the termination occurred on 15 December 1993. However, the related application No. 70 of 1994, filed at the same date, expressly states that "... the contract of employment was not terminated until 15th December 1993 ...". Statements in answer to both applications were also filed in January 1994. The material parts thereof also state that Ms Burton's contract of employment terminated on 15 December 1993 at the expiration of 30 days prior notice thereof, given on 15 November 1993, and that during the notice period she had not been required to work and she had also been free to seek other employment. Thus, according to counsel for the respondent, the statements filed by each party declare that the contract of employment terminated on 15 December 1993 and therefore it had not previously been a contentious matter. In my view that was the apt conclusion.

On 8 July 1994, following upon Ms Burton engaging a different firm of solicitors, the earlier mentioned application to amend application No. 70 of 1994 was filed on her behalf. Therein it is asserted that Ms Burton's contract of employment terminated on 15 November 1993 and, regarding the subject of notice, it is asserted that 30 days notice was not given but that a payment was made to her in lieu thereof on 16 November 1993. Simply put, counsel for the applicant submitted that the applications made by Ms Burton in January 1994, prepared by the Solicitors she had first engaged, did not accurately describe the circumstance of her dismissal and the effective date, thereof.

The most recent legal advice provided to Ms Burton is that the circumstances associated with her dismissal show that it was effected on 15 November 1993. That, it is said, coincides with the view held by the applicant throughout. Hence, Ms Burton seeks to pursue her applications on that premise, and if that be allowed, such raises a matter for consideration and determination regarding the status of the substantive application not raised originally within application No. 70 of 1994. Accordingly, leave has been sought to appropriately amend application No. 70 of 1994 to seek an Order declaring application No. 69 of 1994 to competent.

Essentially, the argument against the grant of leave to amend was that were such granted, it would be inequitable to the respondent for the actions to now proceed on a basis entirely different to that which has prevailed for many months.

It is trite to note that in this jurisdiction parties are not bound by the pleadings contained within their filed documents. A change to the facts alleged to exist in relation to a cause action is a matter to be considered by the Commission in the exercise of its discretion according to the requirements of s26 of the Act. Although the matter of the dismissal date was not pursued directly in relation to the substantive application, but directed at application No. 70 of 1994, the Commission was satisfied that such date is important to the determination of Ms Burton's applications. The Commission was not satisfied that should the applications be allowed to proceed on the basis the dismissal was effected on 15 November 1993, the respondent would suffer any inequity as a consequence. However, the Commission was satisfied that an injustice may be done Ms Burton if the competence of her applications was determined upon information given which is now denied as being factually

correct. Thus, it is that the Commission decided that Ms Burton ought be given the opportunity to address the effective date of her dismissal and granted her leave to amend application No. 70 of 1994. That amendment, together with the supporting grounds, identifies the issues to be considered regarding the competence of the applications and also continues a claim for an extension of time to validate the filing of application No. 69 of 1994 should it follow that such is a necessary requirement.

Immediately following upon the amendment to application No. 70 of 1994, the respondent sought, and was granted, an adjournment of the proceedings in order to give a considered response to the amended claim. Notice of the amended claim that Ms Burton had been dismissed on 15 November 1993, had been provided to the respondent only shortly prior to the matter being heard. An amended Notice of Answer and Counter Proposal was filed on 15 July 1994. Therein the essence of the original answer to application No. 70 of 1994, is reiterated but reference is there made to application No. 69 of 1994 being "null and void" and that such is the situation by the operation of s29(2) of the Act whether the employment of Ms Burton terminated on 15 November, or 15 December 1993.

At the subsequent continuation of the hearing, Counsel for Ms Burton set out to establish that she was in fact dismissed on 15 November and, therefore according to legal precedent, the time limitation in s29(2) of the Act for the making of application No. 69 of 1994 does not apply. The respondent contends that dismissal occurred on 15 December, 1993, and as foreshadowed by the amended answer, argued that the making of application No. 69 of 1994 is completely barred by the operation of s29(2) of the Act.

Having heard the argument for both parties which centred upon whether the introduction of the time limit in s29(2) from 1 December 1993, was procedural or substantive in character, and therefore according to legal precedent operated in a particular way, the Commission adjourned the proceedings and reserved its decision upon the matter. Subsequent thereto the Full Bench of this Commission, in the matter of an appeal *re Westrail v. Trevor Durham*, 74 WAIG 1882, ruled upon the operation of the time limit prescribed by s29(2) of the Act in relation to the dismissal of *Mr Durham* which had been effected prior to 1 December 1993. The Commission is obliged to follow the ratio of decisions published by the Full Bench and therefore the parties were invited to, and did, address the Commission further.

On 17 February 1994, *Mr Durham* lodged an application alleging, in effect, that he had been unfairly dismissed from his employment with Westrail on 8 July 1993, and seeking reinstatement. Westrail objected on the grounds that the Commission had no jurisdiction to hear the matter because the application had been instituted outside the time limit imposed by s29(2) of the Act which came into force on 1 December 1993. In short, the Commission at first instance held that the ex employee had a right, unqualified by time limits, to bring the application and the Act did not retrospectively interfere with that right.

The Full Bench dismissed the appeal by *Westrail*. Counsel for the respondent in this present matter argued that the import of the Full Bench decision is limited to the circumstances of that case where a substantive right existed because of the early date of *Mr Durham's* dismissal. It is submitted that the circumstances relating to Ms Burton, if it be that she was dismissed on 15 November 1993, as claimed, are different because her substantive rights would not have been affected as, at 1 December 1993, there remained at least 13 of the 28 days limitation in which she was able to refer her claim to the Commission.

The foregoing argument ignores the express opinion of the Acting President, also adopted by another member of the Full Bench, that—

"... section 29(2) of the Act can only be read as fixing the datum point for the 28 day limit at the date of dismissal. In the circumstances the section should be interpreted as only having prospective operation, that is, it does not apply to dismissals effected before 1 December last (1993). The section would otherwise operate to extinguish a substantive right which (*Mr Durham*) had under the Act prior to 1 December, namely the right not merely

to lodge a claim in respect of the alleged unfair dismissal on 8 July 1993, but to lodge it at any time thereafter.”

(@ p1884)

The third member of the Full Bench, in separate brief reasons, arrived at the same conclusion.

The Decision of the Full Bench re *Durham* (op cit) is not limited to the circumstances of Mr Durham. It is the opinion of that bench that the time limit imposed by s29(2) of the Act does not operate in relation to a dismissal made prior to 1 December 1993 and therefore an application alleging such a dismissal is unfair is able to be referred to the Commission at any time. Thus, if it be found that Ms Burton was dismissed on 15 November 1993, the time limit imposed by s29(2) of the Act has no application to her circumstance and application No. 69 of 1993 will therefore be a competent application. Equally however, if it be found that Ms Burton was dismissed on 15 December 1993, the 28 day limitation period applies to that circumstance and that period expired on 12 January 1994, 8 days before application No. 69 of 1994 was lodged in the Commission. If this be the situation, is it open for the Commission to consider an extension to the 28 day period and, if warranted, grant such an extension so as to validate the filing of the reference of application No. 69 of 1994 on 20 January 1994? In my opinion, this question must be answered in the negative. Authority for this opinion is contained in the Decision given in the matter of *E.J. Richardson v. Cecil Bros Pty Ltd*, 74 WAIG 1017 where, in this jurisdiction, it was held that—

“(T)he Commission is without jurisdiction to grant the extension of time sought. Moreover, the Notice of Application (the primary application), purportedly registered in the Commission outside the time limit imposed by section 29(2), is a nullity, it being contrary to the law.”

(@ p1018)

Testimony has been given to the Commission by Ms Burton, Mr D.F. Marshall and Mr M.J. Little regarding the manner and form of Ms Burton’s dismissal. Related documentary evidence has also been placed before the Commission. The uncontested facts, material to the limited matter to be decided at this time are these—

- During the afternoon of Ms Burton’s usual working day on 15 November 1993, Messrs D.F. Marshall and M.J. Little acting together, and following a break after earlier discussions with Ms Burton, informed her—
 - (a) of her dismissal from employment;
 - (b) that her services were not required by the respondent from that time onward;
 - (c) that thereafter she could seek alternative employment;
 - (d) that on 16 November 1993, she would be provided a written termination notice and would receive a payment which represented 30 days salary.
- Before the conclusion of Ms Burton’s usual working day on 15 November 1993 she—
 - (a) was required not to return to her work but to remove her personal belongings from in and about her workplace and depart the respondent’s premises;
 - (b) was escorted to a security controlled exit by Mr Little, and there, at his request, surrendered the pass held by her that authorised her to enter the premises;
 - (c) departed the premises of the employer and did not thereafter return.
- On 16 November 1993, Ms Burton received by courier, a letter from the respondent dated that day which—
 - (a) stated that its purpose was to confirm that she had been given 30 days notice of her employment being terminated effective 15 December 1993 and that during the period of notice she was not required to attend work but would be paid for the period;
 - (b) was accompanied by a remittance advice dated the previous day, for the amount \$3872.00, plus a cheque drawn in her favour for that amount.
- Salary payments to Ms Burton were usually made to her on or about the 23rd day of each month and the pay advice to her for the month of October 1993 states—“November pays will be available Tuesday 23rd”.
- An undated administrative document of the respondent titled, “Personnel Change Notice”, completed in relation to Ms Burton, at the heading “Effective Date” bears the handwritten date “15/11/93” and under the heading “Change Details” has been marked “Termination” in the selection of named options. Additionally the document is endorsed, by hand, “Company to payout 30 notice period as per letter of employment (to include shift \$s)”.
- The 1994 Group Certificate issued to Ms Burton regarding income tax assessment states that her employment with the respondent ended—“05/11/93”.
- An Employment Separation Certificate produced for Social Security purposes, dated “18/11/93”, and provided to Ms Burton by the respondent, declares in answer to the question “When did he/she last work for you?”, the date “15/11/93” in the space provided.
- A letter to Ms Burton from the National Mutual Life Association of Australasia Ltd, dated 10 February 1994, regarding her participation in the Tiwest Joint Venture Superannuation Fund states her “Leaving Service Date : 05/11/1993” and therein the benefits due are expressly shown to be calculated to that date.
- A document titled, “Certificate of Service”, issued to Ms Burton by the respondent on 8 February 1994, in response to her request that she be provided a reference, states that Ms Burton had been employed “to 15 December, 1993”.
- Terms and conditions of employment for Ms Burton are contained in a letter from the respondent dated 30 November 1990 such having been offered therein and accepted by her. That letter contains provisions numbered 1 to 15, two of which are—
 - “9. Your employment is subject to 30 days written notice by either party, apart from cases of misconduct.
 - 14. Whilst you are employed with the TJV you will not be able to undertake any other employment without the prior written consent of the TJV.”

It is the testimony of Ms Burton that on 15 November 1993, she was told by

Mr Little that “they had no other course but to dismiss me” and that Mr Marshall who was also present told her that “(her) dismissal was effective immediately. I could seek other work from that day”. Ms Burton says that no mention was made of her being given a period of notice but she was told “that I would receive pay the next day by courier with a termination notice and that my services were no longer required at all”.

Ms Burton says that to her mind she had been dismissed effective from 15 November 1993, that such had been unfair, and therefore she had immediately made contact with a firm of solicitors to take action on that basis. Notwithstanding she had signed the applications prepared by those solicitors, and the contents indicate differently, that had not been her intention.

Under cross examination, Ms Burton said she does not remember whether Mr Little and Mr Marshall indicated to her that her conduct leading to the dismissal had not been viewed by the respondent as misconduct. Additionally, Ms Burton said she did not remember whether, on 15 November 1993, Mr Marshall had said to her that she was being given 30 days notice. Ms Burton conceded that Mr Marshall did say “there was no requirement (for her) to come to work between 15 November and 15 December”. When asked had she listened to what Mr Little and Mr Marshall had said, her reply was “Most of it”.

The essence of the argument for Ms Burton is that the words said to her on 15 November 1993, were to the effect that she

was dismissed effective immediately. Notwithstanding that the statement to the contrary contained in the letter to her dated 16 November 1993 (exhibit G1), the fact that monies were paid to her on that date reflects a settlement upon the ending of the employment ie. a payment in lieu of notice, otherwise, had the employment relationship been continued, her salary for the month of November was not due to her until the end of that month, payable on 23 November 1993, as had been previously advised.

That the pass held by Ms Burton was confiscated, and therefore she could not gain future access to the employer's premises, is evidence that there was to be no ongoing relationship, it as asserted. Clearly there was no intention of her ever attending the employer's premises after 15 November 1993, because she had been required to remove all her personal belongings on that date.

The "Personnel Change Notice" and the "Employment Separation Certificate", both of which were prepared by employees of the respondent, each contain the date 15 November 1993, and it is referred to in such a way as to declare that Ms Burton's employment ended on that date, it was said. Further, the "Personnel Change Notice" is endorsed with the notation that the respondent was to "payout" the 30 days notice which according to normal parlance is to be interpreted to mean paid out instead of giving and observing the period of notice. Additionally the Group Certificate and the superannuation documentation provided to Ms Burton, contain references to her employment having ended 5 November 1993, which, although obviously wrong regarding the day of the month, correctly declare the relevant month to be November 1993, counsel contended.

Counsel contends that the respondent quite legitimately, but unfairly, adopted a common industrial practice and implied into the contract of employment a right to terminate the employment of Ms Burton by paying to her the salary equivalent to the notice period prescribed in her conditions of employment in lieu of observing that notice. The facts of the matter point to that being so. In addition, the contract of employment came to an end upon Ms Burton seeking alternative employment which repudiated the contract.

The testimony of Mr Little and Mr Marshall is that on 15 November 1993, Mr Marshall clearly conveyed to Ms Burton that she was being given 30 days notice of the termination of employment and the effective termination date would be 15 December 1993. Further, she would be paid through to 15 December 1993 but she was not required to attend work and during the notice period she was free to seek alternative employment. Notes to this effect were recorded by Mr Marshall and signed by Mr Little as being a correct record immediately following Ms Burton being so informed. Both Mr Little and Mr Marshall say care was taken to convey to Ms Burton that she was being given the 30 day period of notice to end the employment. That is so they say because the manner in which Ms Burton was able to be dismissed had been discussed in the office of the then Plant Manager, Mr D. Philp, during the break immediately prior to the material conversation with Ms Burton. A legal advisor also attended the office of Mr Philp at that time and had given the advice that Ms Burton's terms of employment, expressed in the letter dated 30 November, 1990 (exhibit G9), absent misconduct by her, required that she be given the prescribed period of notice and that that requirement could not be satisfied by an alternative in the form of a payment in lieu of observing the notice period.

Both say that the point was made to Ms Burton that the termination of her employment had not occurred on account of any misconduct. It was conceded that Ms Burton was required to leave the premises immediately and that action was taken on behalf of the respondent to prevent her gaining automatic access to the premises in future. That, it is said was done so as to avoid Ms Burton coming into further contact with the employees at her usual workplace whose complaints regarding conflict with her had been material to her dismissal.

Under cross examination Mr Marshall said that Ms Burton had been expressly informed to the effect that during the notice period she could seek alternative employment because she would breach a condition of her employment if she did so without permission. That he said was the reasonable thing to do and not make her wait until the expiration of the month,

meaning the notice period. When questioned regarding the date 15 November 1993 expressed on the Employment Separation Certificate (Exhibit G6), prepared by the respondent, Mr Marshall expressed his opinion that such was the correct answer to the question asked, because the question asked when did the employee last "work", meaning attend and perform duties.

Mr Little, in response to questioning by counsel for Ms Burton regarding the "Personnel Change Notice" (Exhibit L5) answered to the effect that its purpose was to notify that effective from 15 November 1993 Ms Burton would have no practical involvement in the business and the date quoted is not a reference to when the employment ended.

The case for the respondent is that the testimony of Messrs Little and Marshall is to be preferred to that of Ms Burton. When dismissing Ms Burton they acted upon legal advice, and in accordance with that advice, regarding the method by which her contract of service could be legally terminated. Both say they followed the advice received and therefore complied with the express terms of Ms Burton's contract of employment when dismissing her. Each is to be weighed against the recollection of Ms Burton who conceded that she did not listen to all that Messrs Little and Marshall had said to her and did not deny that she was told that she had been given 30 days notice. Her testimony is that she does not remember being told such.

It was legally open to the respondent to give Ms Burton the required notice then not require her to work during the period of notice, counsel submits, and to have so acted did not bring about the immediate end to the contract of employment at the date of notification ie 15 November 1993 Counsel directed the Commission to the matters of, *Lees v Arthur Greaves (Lees) Ltd (1974) ICR 150*, *Adams v GKN Sankey Ltd (1980) IRLR 416*, and *Leech v Preston Borough Council (1965) ICR 192*, in support of the contention that notice given by an employer operates accordingly notwithstanding work may not be required to be performed and wages are prepaid for the notice period.

It is submitted that upon the tests enunciated in the matter *Robe River Iron Associates v Amalgamated Metal Workers and Shipwrights Union of Western Australia 67 WAIG 1097*, there is nothing within the facts established before the Commission to warrant that payment in lieu of giving notice be implied as a term of Ms Burton's contract of employment. The contract does not lack efficacy and there is no evidence of any custom and practice observed contrary to the express provision that termination be affected by means of giving notice thereof, counsel argued.

Ms Burton's contract of employment is the only such contract in evidence before the Commission. There is no evidence whatsoever that the respondent is party to a custom and practice that employment contracts are terminated by means of a payment made in lieu of giving whatever period of notice may be required by a contract. Absent any evidence of custom and practice there is certainly no justification on that account to imply payment in lieu of notice to be a term of Ms Burton's contract of employment. There was no evidence that she reasonably presumed it to be. Ms Burton's contract of employment prescribes an express method by which either party may equally terminate the contract, and additionally, recognises there is an overriding common law right which may be exercised in relation to an act of misconduct. Thus, to that extent, the contract has efficacy according to its terms.

A consideration of the well settled case law makes it plain there is no justification to conclude that payment in lieu of giving notice is a term which should be implied into Ms Burton's contract of employment. Had it been shown that a practice of payment in lieu existed, on this occasion the respondent did not follow it as a matter of course but took legal advice as to its rights, and its obligations to Ms Burton regarding the correct method to effect her dismissal.

It was immediately following receipt of this advice that Messrs Little and Marshall met with Ms Burton and she was then informed of her dismissal. Both Mr Little and Mr Marshall say they heeded the legal advice and were very careful to follow

that advice and accordingly told Ms Burton she was being provided with 30 days notice but she would not be required to work that period. Ms Burton conceded that she had been told she would not be required to work between 15 November and 15 December 1993 and could seek alternative employment. Had there been ongoing employment relationship after 15 November 1993 such comments to her would have been totally unnecessary and most unlikely to be uttered because she would have automatically been free of any further control by the respondent. I am satisfied that Messrs Little and Marshall did convey to Ms Burton to the effect she was being given 30 days notice of her dismissal. It is my view that she either failed to give close attention to precisely what was said to her or alternatively she did not comprehend the full meaning and importance of all that was said.

Ms Burton recollected being told she would be provided with a written termination notice the following day, plus payment. The stated intention to provide written notice I view as a further indication of the intention of the respondent to comply with the contract of employment which required that such be done. Written advice was received by Ms Burton on 16 November and it expressly states she had been given notice of her dismissal which was to take effect 15 December.

The contents of that letter, rather than reflecting a change in position by the respondent as inferred on behalf of the applicant, in my view serves to reinforce that which had been conveyed to Ms Burton the previous day. Although there is documentation before the Commission which contains dates different to 15 December 1993, and which may be viewed as recording that employment ended at another date, they have been prepared subsequent to what was conveyed to Ms Burton on 15 November, and confirmed on 16 November 1993. Also, they were prepared by persons who had no direct involvement in what occurred on those dates.

The authorities cited by counsel for the respondent, and recorded earlier herein, clearly demonstrate that an employer may give an employee the period of notice required to terminate the contract of service but not require, or allow, an employee to work after the giving of the notice, and make prepayment of wages for the period of notice, or the remainder of it. The respondent, in my view, observed the contract of employment and acted lawfully in its dealings with Ms Burton, whose employment was, I find, terminated on 15 December 1993. That being so, and for the reasons expressed earlier herein, the application No. 69 of 1994 is a nullity having been lodged in the Commission more than 28 days after the dismissal of Ms Burton, and thus, application No. 70 of 1994 is not competent and will be dismissed.

Appearances: Ms P. Giles (of Counsel) appeared on behalf of the applicant.

Mr A.D. Lucev (of Counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Julia Burton

and

Tiwest Pty Ltd.

No. 70 of 1994.

COMMISSIONER C.B PARKS.

15 January 1996.

Order.

HAVING heard Ms P. Giles on behalf of the Applicant and Mr A.D. Lucev on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dianne Janet Dickinson

and

Bi-Lo Bunbury.

No. 981 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that she had been dismissed in a harsh, oppressive or unfair manner, by the Respondent company. The claim was denied by the company.

A Conference involving the parties, was conducted before the Commission in Bunbury on 10 October 1995, to consider the claim.

A settlement of the claim was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission on 25 October 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr C Di Risio

and

Ms Jill Hine, Manager, Caffe Piazza.

No. 1218 of 1995.

COMMISSIONER A.R. BEECH.

15 January 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings, as edited by the Commissioner.)

THE COMMISSIONER: The review of the authorities, to which I have been referred this morning, has shown me that the appointment of a receiver/manager will not always act to terminate contracts of employment in the business to which the receiver/manager is appointed. It will be necessary in each case to examine all of the facts. But I have considered that in relation to Mr Di Risio it is quite arguable that his employment as manager was wholly terminated by operation of law, whether from the winding up order made by Steytler J on the 25th July 1995 or by the order of Master Ng on the 17th October 1995 from that date. Regrettably I have not been able to read where the Supreme Court appointed the receiver/manager from the 1st November 1995 as she has claimed, but assuming that that did in fact occur, then a third possibility is that the date of termination was the 1st November 1995 by operation of law. This comment applies only to Mr Di Risio and not to any of the other three employees that were previously the subject of proceedings here.

What is significant is that the claim before the Commission is made, in reality, against Ms Hine as receiver/manager and the case has proceeded substantially against her based upon her reasons for dismissing Mr Di Risio in exhibit 1. If, in fact, Mr Di Risio was not an employee at the time Ms Hine purported to terminate him then these proceedings are wrongly directed and to allow them to continue would really be a waste of time. I am therefore satisfied that an adjournment should be granted but not wholly because of Mr Holler's submission this morning.

In order for the Commission to be able to determine whether it can deal with Mr Di Risio's claim it must be clear by whom Mr Di Risio was employed and what caused the termination of his employment. That has not been clear from the beginning and it is perhaps a matter of regret that the Commission did not require the parties to address that issue at the outset. This morning's submissions have made the position even less clear. The proceedings before the Supreme Court tomorrow may assist in providing an answer to the questions, then again they may not. Indeed, I suspect it is within the competence of this Commission to answer those questions but because they raise issues which have not been raised until this morning, because I do not wish to proceed with what may turn out to be a fruitless exercise with Ms Hine as the respondent, and because the Commission would be better assisted to answer those questions by having further submissions from Mr Di Risio and Ms Hine, I do consider it inappropriate to continue this morning.

This matter can be re-listed once the parties are firm in their view about the following questions.

Firstly, when in law was Mr Di Risio terminated? You will understand from what I have said that the question will not be answered merely by deciding whether the termination was by way of operation of law, or, in the alternative, by Ms Hine's letter of termination to him.

The second question, which is related to the first, is, by what act was Mr Di Risio terminated? If it was by operation of law then Mr Di Risio will have remedies open to him that would not be the case if the act that terminated his employment was Ms Hine's letter of termination to him.

The third question is, against whom can Mr Di Risio bring a claim in this jurisdiction? It seems to me that there are possibly two answers, there may be more, to that question. The first is Ms Hine. The second is that it may be that the only employer against whom Mr Di Risio can take any action is the partnership, and that is a matter for Mr Di Risio. However, the answer to the third question might cause Mr Di Risio to request the Commission to change the identity of the respondent to this application and the matter can be re-listed for that purpose.

For those reasons, which I will endeavour to get to you in writing today, if at all possible, I propose to adjourn the matter and await the advice, particularly of Mr Walshe, as to when the matter is to be restored to the lists.

Appearances: Mr JJ Walshe appeared on behalf of the applicant.

Mr M Holler (of counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christiaan Robert Dorant

and

JLV Industries.

No. 638 of 1995.

COMMISSIONER R.H. GIFFORD.

12 January 1996.

Reasons for Decision.

THE COMMISSIONER : By this application, the applicant, Christiaan Robert Dorant claims that he was dismissed in a harsh, oppressive or unfair manner by JLV Industries ("JLV") on 9 April 1995 and seeks compensation on account of that, in accordance with s.29(1)(b)(i) and s.23A(1)(ba) of the Industrial Relations Act, 1979 ("the Act").

The application was the subject of Conference proceedings, pursuant to s.32 of the Act on 15 August 1995. No resolution was forthcoming at that Conference, but it became clear that there was a preliminary matter in contention between the parties, relating to the nature of his employment as a casual.

The preliminary question, therefore concerned whether, by virtue of the nature of his employment as a casual, he was in

fact dismissed, as he alleges. In respect of this question, argument was put and evidence led, in formal proceedings which concluded on 7 November 1995, following which the decision was reserved.

The essence of the argument is that Mr Dorant claims that, even though his engagement was as a casual, he had an expectation of continuing employment; whereas the respondent company claims that Mr Dorant was a casual in the proper sense of the word, in that he was employed on individual and specific, and thus separate, contracts. The engagement on 9 April 1995, the company claims, was merely the last such contract.

Background

On the basis of the evidence led in these proceedings, it is clear that Mr Dorant was engaged as a casual tradesman's assistant on the contract held by JLV with Worsley Alumina Pty Ltd to maintain the wire rope on the overland conveyor system. He was involved in wire rope splicing work and other associated duties. His initial engagement was on 14 September 1991. After a 4 month gap, he was employed for a total of 281 days over the period to 9 April 1995.

The nature of the contract is such that Worsley Alumina Pty Ltd make the decision to shut down the conveyor at a time that suits their production requirements, and then notify JLV of the need for them to carry out the wire rope maintenance work. It is an entirely unpredictable event.

JLV, who over time have established a core group of thirty persons, would contact from that group the required number of employees depending upon their availability and the nature of the skills required. That contact would be made by either the Supervisor or the South West Manager.

A consideration of the number of shifts worked over the course of the applicant's engagements, as revealed by Exhibits S1 and P1 reveals an irregular pattern of work. By way of illustration, taking the months of February and October, over the course of his engagements, it can be seen that he worked on the following dates in those months:

February 1992:	14th, 15th, 22nd, 23rd, 28th and 29th (6 shifts)
October 1992:	2nd, 10th, 17th, 23rd, 24th, 30th and 31st (7 shifts)
February 1993:	2nd, 3rd, 5th, 6th, 13th, 20th, 21st, 22nd, 24th, 25th, 27th and 28th (12 shifts)
October 1993:	1st, 3rd, 9th, 10th, 16th, 17th and 31st (7 shifts)
February 1994:	12th, 18th, 19th and 26th (4 shifts)
October 1994:	2nd, 3rd, 5th, 22nd, 23rd, 25th, 26th and 29th (8 shifts)
February 1995:	4th, 5th, 10th, 11th, 24th, 25th, 26th, 27th and 28th (9 shifts)

The hours which he actually worked, when engaged, varied considerably; anywhere between 4 and 17.5, with about 10 hours appearing to be the average length of shift.

For instance, during February 1995, over the 9 shifts he worked, his hours were 15, 8, 10, 9.5, 7.5, 15, 8, 5 and 4 respectively. During October 1994, over the 8 shifts he worked, his hours were 10.5, 8.5, 16.5, 11.5, 6, 4 and 14 respectively.

There were many pay weeks where he only worked one or two shifts, whereas there were a few such pay weeks where he worked four or five. In a number of such weeks he did not work at all.

With respect to the basis of his engagement, it is necessary to review the evidence in more detail.

His final engagement was on Sunday, 9 April 1995, when he worked 12.5 hours. There was no formal advice from the company confirming termination or dismissal, on this occasion; or indeed, any previous occasion.

Mr Dorant stated that when, as a result of Worsley Alumina Pty Ltd shutting down the conveyor, and the maintenance work by JLV on the conveyor being able to be carried out, he was contacted on every occasion, by the Supervisor, Mr Brian Grigg, and advised that work was available and what the starting time was. Mr Dorant says that the Supervisor expected him to be available as a member of the "regular crew" of 6 men. He conceded though, that it was open to him to refuse

the offer of work. He believed he had established a relationship with the Supervisor which meant that he always got the work that was coming up. In that sense he felt his employment was continuing or ongoing.

Mr William Johnson, a Director of the company gave evidence explaining that the process involved with their contract begins with a phone call from Worsley Alumina Pty Ltd's Engineer in Charge to the effect that the conveyor is to be shut down. Upon that advice, JLV's Supervisor or the South West Manager makes contact with the people on the list (of thirty) which has been established. If a particular person is available and if that person hold the necessary skills for the maintenance work in question, he would be offered a position. The overriding consideration was that of availability.

He stated that there was no obligation upon a person to be available or even to give a reason for not being available. A person was engaged as a casual; a fact which was made clear to that person. Mr Dorant was engaged as such a casual. By the end of each of his engagements he had fulfilled the contract.

With respect to the "regular crew" of which Mr Dorant spoke, Mr Johnson indicated that such was not the practice followed, although certain work, such as running inspection work, required a group of 4—6 persons.

The Arguments

The essence of Mr Sturman's argument, put on behalf of the applicant, was that the requirements of s.29(1)(b)(i) were satisfied, in that Mr Dorant could properly have been described as an "employee" and that he on 9 April 1995, had been "dismissed" by the company. His claim was therefore within the jurisdiction of the Commission.

He acknowledged that the circumstances in which Mr Dorant secured work with JLV was entirely dependant upon the choice of Worsley Alumina Pty Limited itself and not JLV, and that as a result, his engagement was more piecemeal in nature than regular. However, as reflected by Exhibit S1, which set out the details of the 282 shifts he had worked since the end of 1991, he had performed a considerable amount of work for the company.

Then, having regard to the nature of his engagement by the Supervisor, Mr Dorant had developed an expectation that work would continue to be available for him. He believed, in other words, that the work with JLV was ongoing.

Heavy reliance was placed upon the authority of Ryde-Eastwood League's Club Ltd v. Taylor (56 IR 385), a decision of the Full Commission of the Industrial Relations Commission of New South Wales of 10 October 1994, to support his position.

Mr Pilgrim, on behalf of JLV, argued that the Commission did not have the jurisdiction to hear the matter, in that there had been no dismissal of Mr Dorant's employment, but merely the completion of a contract to work on 8 and 9 April 1995. At the end of that work, the parties were left at 'arm's length'. He stated that Mr Dorant was engaged as a true casual in the ordinary and proper sense of the term.

He pointed out that the nature of the contract was one in which Mr Dorant:

- was offered and completed work on a specific contract; but may not necessarily have been offered such work;
- was free to accept or refuse the offer of work for any reason or no reason at all;
- was free to accept any other work; and
- when he worked, did not follow any systematic pattern relating to days/number of hours or starting or finishing times.

A number of authorities were relied upon in which the distinction was drawn between casual employment which was strongly predictable and therefore ongoing, and employment on the other hand which was entirely unpredictable, which he argued was the circumstance facing JLV. In particular, reliance was placed upon a decision of the New South Wales Full Industrial Court of 30 September 1992, in Terrigal Memorial Country Club v. The Federated Liquor and Allied Industries Employees' Union of Australia, Union of Workers (1993 AILR para 61). Reference was also made to the "tests" relating to a case like the instant matter in the Licensed Clubs Association

of Victoria and the Victorian Employers Federation case (1988 AILR para 497).

Mr Pilgrim finally submitted that the authority relied upon by Mr Sturman did not support the latter's case.

Analysis and Conclusion

In this matter, it is necessary for the Commission to assess the evidence in the context of whether or not Mr Dorant was engaged on the basis that his employment as a trades assistant would be continuing and ongoing, albeit irregular.

There is no doubt that the applicant was engaged, on each of the 282 occasions of engagement with the company, as a casual. That engagement was under the terms of the Metal Trades (General) Award 1966, which at Clause 5.—Definitions and Classification Structure, defines a casual as being an employee who is "engaged and paid as such".

This definition provides no assistance in resolving the question posed. There may be the implication, however, that the term is intended to correspond with the common law meaning of the term, namely as a separate and distinct engagement that concludes at the end of the period of engagement, where such engagement may be intermittent rather than regular.

In a case such as this, it is necessary not simply to rely upon the common law meaning, but rather upon the context of the engagement. This is especially the case when account is taken of an authority relied upon in this jurisdiction, namely the decision of Fielding C. in Phillip Thomas Squirrell v. Bibra Lakes Adventure World Pty Limited trading as Adventure World (64 WAIG 1834). At page 1836 the following is stated:

"Whatever might have been meant by the label "casual" on this occasion, the true nature of the relationship between the parties is that which is evidenced by all the dealings between them. That they may choose to call it one of casual employment, as I am satisfied they did, is but one of the factors to be taken into account in the circumstances of the present claim. The parties cannot, by use of a label, make the nature of the relationship something different to what it in fact is. In this respect, it is helpful to record the observations of Haese, D.P., with whom Layton and Russell D.P.P. agreed, in Port Noarlunga Hotel v. Stewart (supra) at p.5-6—

'In attempting to define on the evidence of any case whether there was one contract of service or many such contracts, it is important to keep firmly in proper perspective the classifying name attached to any given worker and mutually accepted by the parties, whether the source of such name is a relevant award or otherwise. Such name may be of some assistance. So also may be the provisions of the relevant award. But they are only indicia of the nature of the contract along with all other relevant facts. They are not, taken alone, in any sense determinative of the nature of the contract.' "

Support was then drawn from that case, in particular in relation to identifying whether the employee in question, a barmaid, was engaged on a 'single ongoing contract'. In this respect, the following is stated:

"In Port Noarlunga Hotel v. Stewart (supra), an employee who was classified as a "casual barmaid", once rostered for work was expected to work, she consulted her employer before taking time off, her roster was rarely altered, and she normally worked out the full time of the roster. In those circumstances, she was thought by the Full Bench of the South Australian Industrial Court to be working under a single ongoing contract for the employee to work flexible hours as required by the employer."

The same approach as this was taken by the Full Commission of the Industrial Relations Commission of New South Wales, in the case relied upon by the applicant in these proceedings, namely in Ryde-Eastwood Leagues Club Limited v. Fayler of 10 October 1994 (56 IR 385). The casual employee in question who carried out bar work and poker machine supervision work was held by the Full Commission to have been on "an ongoing contractual relationship" with the club.

Considerable reliance was placed, in that decision, upon the decision in the Licensed Clubs Association of Victoria Case (cited above), which, significantly, was relied upon by the respondent in these proceedings.

That case did not actually form part of Commissioner Fielding's considerations in the Adventure World Case (cited above), but it may be said that the approach adopted, was quite consistent with that followed by him in that case.

In the Licensed Clubs Association of Victoria Case, a series of 'tests' were postulated for the purpose of reviewing whether the circumstances of the particular case led to the conclusion that the employees had a 'continuing' (meaning, ongoing) contract of service. Those 'tests' were:

- a) The number of hours worked per week.
- b) Whether the employee worked according to a roster system that was published in advance and whether the employment pattern was regular.
- c) Whether there was reasonable mutual expectation of continuity of employment.
- d) Whether notice was required by an employer prior to the employee being absent or on leave.
- e) Whether the worker reasonably expected that work would be available.
- f) Whether the worker had a consistent starting time and set finishing time.

If one is to apply these 'tests' to these proceedings, which the Commission considers it appropriate to do, it can be seen that the evidence reveals the following as a response to the 'tests':

- a) Variable. Using Exhibit P1, between 0 and 44.5.
- b) No roster system. No regular employment pattern.
- c) There was no mutual expectation of continuity.
- d) Notice of absence not required.
- e) The applicant reasonably expected work to be available; the Company did not.
- f) No consistent starting or finishing time.

The evidence makes it clear that there was not a mutual expectation of continuity of employment, between the parties in this case, namely the applicant himself and the company's Director, Mr Johnson.

The latter says that the company, because of the nature of the contract, could not offer continuity to persons who were not being required to make themselves available. It was a matter of choosing persons from a pool who elected to make themselves available.

In so concluding, there is a presumption that the position taken by Mr Johnson, was equivalently held by the person who was actually responsible for engaging the applicant on most of those 282 occasions, namely Mr Brian Griggs, the Supervisor. He was not able to give evidence in these proceedings because he had since resigned his position from the company. Significantly, however, there was no challenge made, on behalf of the applicant, to the effect that Mr Johnson's view of the matter was different from that of Mr Griggs. In the circumstances, the Commission considers that the presumption of an equivalence of approach to casual engagement by Mr Johnson and Mr Griggs, is one which is reasonable to conclude, having regard to the level of contact between the two.

But what of the reasonable expectation of the applicant himself? He says that his expectation was that there would always be work coming available and that he was seen as part of the 'regular crew'. Although Mr Johnson responded to the notion of 'regular crew', in terms of denying its existence, it appears to the Commission that more than that would be required to persuasively deny its existence, in light of the applicant's evidence, which while based upon conclusions he drew himself, may have been based upon subtle indications given to him by Mr Griggs, about which Mr Johnson had no knowledge, nor could expect to. In other words, it would be difficult to say that the expectation the applicant had in this respect, was an unreasonable one. This Commission accordingly reaches the view, on the evidence, that the applicant's expectation was a reasonable one.

The question now arises as to whether, given that one of the six 'tests' has been satisfied, it is open to conclude that there was a continuing or on-going contractual relationship between the parties. As with any 'tests' of this nature, one is not dealing in absolutes, but rather a case of attempting to bring some objectivity and consistency into the assessment process. In

this matter, it certainly is the case that all of the indicators such as hours, starting and finishing times, absence of roster arrangements and absence of notice arrangements for leave, suggest a form of casual engagement which is not ongoing. The focus of attention therefore, rests upon the existence of a reasonable mutual expectation of continuity. It is the mutual element of it that is critical.

The evidence led by the company certainly makes clear that there was no such expectation on their part. On the applicant's evidence, there clearly was such an expectation, and the Commission has already concluded that there was insufficient evidence to conclude that this was not a reasonable view. However, such a circumstance does not, in the Commission's view, negate the essential position taken by the Company that they had no expectation of continuity. Regularity of engagement is one thing; a commitment to an ongoing relationship is another. Certainly, there may have been an impression of future work or even ongoing work, given by the Supervisor concerned, but such an impression is not sufficient when it is a case of endeavouring to define a contractual arrangement. There would need to be some kind of acknowledgement of continuity of a relationship; and that was not clear from the evidence.

Considering the 'tests' as a whole therefore, the Commission concludes that there was no continuing or ongoing employment relationship between the applicant and the company.

It accordingly follows that the Commission is prepared to uphold the preliminary question put in these proceedings on behalf of the company. As a result, the Commission must inevitably reach the conclusion that the applicant was not dismissed by the company at the conclusion of the last occasion he was engaged by the company. He was a true casual and his contract to work on that day merely came to an end at the conclusion of the work performed.

The application can therefore proceed no further and an Order of Dismissal will issue.

Appearances: Mr G. Sturman appeared on behalf of the applicant

Mr L. Pilgrim appeared on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christiaan Robert Dorant

and

JLV Industries.

No. 638 of 1995.

COMMISSIONER R.H. GIFFORD.

12 January 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr L. Pilgrim on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

THAT the application be, and is hereby dismissed.

(Sgd.) R. H. GIFFORD,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Vanessa Erceg
and

Big Track Go Kart Hire.

No. 759 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that she had been dismissed in a harsh, oppressive or unfair manner and had been denied a contractual benefit by the Respondent company. The claims were denied by the company.

A Conference, involving the parties, was conducted before the Commission on 23 August 1995, to consider the claims.

The Conference was adjourned to enable both parties to review their respective positions in light of matters raised at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission on 14 September 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Adair Fay Gillan
and

Tarcoola Beach Resort.

No. 166 of 1995.

COMMISSIONER P E SCOTT.

26 July 1995.

Reasons for Decision.

(Given extemporaneously at the conclusion of proceedings on 12 July 1995 as edited by the Commissioner)

THE COMMISSIONER: This is an application made pursuant to section 29 of the Industrial Relations Act, 1979 that the Applicant, Mrs Gillan, has been unfairly dismissed by her employer on 13 February 1995.

This application was filed on 3 March 1995, and by answer dated 21 March 1995, the Respondent says, and it is not contested, that the Applicant was employed as a casual housemaid. It goes on to say that the Applicant was reprimanded on many occasions due to her low standard of cleaning "after we received complaints from house guests, and despite this her standard did not improve".

I point out that it is not stated in the Notice of Answer and Counter Proposal that that is the reason for dismissal. The reason for dismissal is stated as being that "her employment was terminated due to lack of work for two housemaids, and due to the above she was the obvious one to go".

The Act, by section 29, entitles an employee to make a claim of unfair dismissal, and for the Commission to deal with that application, and on this basis the issue raised by the Respondent that neither the contract of employment nor the award prohibit unfair dismissal is not a matter which I see as relevant on this occasion.

Further, the Act, in section 23AA, says:

"(1) On a claim of harsh, oppressive or unfair dismissal, the onus is on the employer to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified."

I will turn to that point first. In terms of the evidence before the Commission, I find that where there was a conflict in the evidence I prefer the evidence of Mrs Masotto as it was clear and was not in any way overturned in cross-examination, whereas the Applicant's evidence, being quite strong in evidence-in-chief, was quite severely undermined in cross-examination. In fact, where in evidence-in-chief the Applicant indicated certain beliefs, upon being taken through the evidence in cross-examination, acknowledged that some of those beliefs had been wrongly held.

I accept the evidence of the Respondents that the nature of their business is seasonal, that that means there is a changing requirement for cleaning work to be undertaken, and that that changing requirement is seasonal and in some cases predictable, and in other cases not predictable, in demand. The evidence was quite clear as to the turnover of the business being seasonal. The evidence from the time sheets showed quite clearly that the work available to the two employees, including the Applicant, in the weeks prior to the termination of her employment declined significantly, and I accept the evidence that further decline was imminent.

I find that this lack of sufficient work was a ground upon which the Respondent could rely, and did rely, to justify the dismissal.

The question then arises for the Respondent, and it is a question properly decided by the Respondent, as to which of a number of employees it will retain and the services of which will be dispensed with.

The Respondent took a deliberate action to terminate the arrangement between the parties. It did not merely rely on the expiration of the term of a casual contract, which is something which was put to the parties. It then made a choice based on appropriate criteria; that is, the performance of the employees concerned and its level of satisfaction with those employees.

I must say that I would not be satisfied that, on the ground of unsatisfactory performance alone, the termination would have been justified because it was quite clear from the evidence that the reason for dismissal was the lack of sufficient work, and there was nothing put to the Commission which would indicate that, were there sufficient work, the employee's employment would have been terminated at that time.

I am also not satisfied that the employee should have found her employment to have been in jeopardy other than because of the lack of sufficient work. However, as I have noted earlier, it is a legitimate exercise for the employer to determine, on the basis of the availability of work, which of its employees it believes it would be most appropriate for it to continue to employ, for the successful operation of its business.

In terms of the manner in which the employment was terminated, it is fair to say that there is no black or white in terms of what is absolutely fair or what is absolutely unfair in a circumstance such as this. It is arguable that the termination itself may have been undertaken differently. It may have been that the Respondent could have called both of the employees in and advised them that one of their positions were in jeopardy on account of a lack of work, and then required them to justify their continuation. However, ultimately that was a decision for the employer, and the employer was well able, based on day-to-day observation of the employees concerned, to determine which of the two would be retained.

It should also be noted that under circumstances where employees' positions are terminated on account of a lack of work, different programs or arrangements are put into place depending upon length of service, expectation of employment continuing, and a whole range of other issues. Employers put in place arrangements for providing employees with significant periods of notice, providing opportunities to seek alternate employment, with counselling and a variety of other different processes.

However, in considering whether the Applicant was provided with procedural fairness, one cannot ignore the evidence, which was clear, that the employment was of a casual nature and the hours depended upon the work available, that those hours varied significantly, and further, that the employment period could not be described as having been substantial, nor was there any guarantee of continuing employment. On that basis, weighed with the circumstances, I am not satisfied that there was procedural unfairness in respect of the termination.

There is one other point, and that is the question of whether or not the other employee should have been chosen for termination of employment rather than the Applicant, and as I have noted earlier, it is open to the employer to choose and to prefer. If the Applicant believed that the choice was unfair then the onus lay upon the Applicant to demonstrate why. This was not done.

In those circumstances, I find that the termination of employment has not been demonstrated to have been an unfair dismissal, and for that reason I will dismiss the application.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Adair Fay Gillan

and

Tarcoola Beach Resort.

No. 166 of 1995.

COMMISSIONER P E SCOTT.

26 July 1995.

Order.

HAVING heard Mr R W Clohessy on behalf of the Applicant and Mr D Armstrong (of Counsel) on behalf of the Respondent, now therefore the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT this application be and is hereby dismissed.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Adrienne Stephanie Graham

and

Don Bowman and Margaret Mathews (Byford Tavern).

No. 666 of 1995.

COMMISSIONER R.H. GIFFORD.

6 February 1996.

Order.

BY this application, the Applicant claimed that she was dismissed in a harsh, oppressive or unfair manner by the Respondents. The claim was denied by the Respondents.

A meeting was held on 20 July 1995 before the Deputy Registrar (Industrial) to investigate the claim. A report of that investigation was made to the Commission, as constituted by the Senior Commissioner, on 21 August 1995.

The application was allocated to the Commission as presently constituted on 25 August 1995.

A Conference involving the parties, was conducted before the Commission on 11 October 1995, to consider the claim.

The Conference was adjourned to enable the Applicant to review her position in light of matters raised at the Conference, and to then advise the Commission of her intentions.

By letter dated 23 October 1995, the Applicant sought to withdraw her application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be withdrawn by leave.

[L.S.] (Sgd.) R. H. GIFFORD,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Gorgone

and

Anderson Mountford Down and Company.

No. 739 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company.

A Conference, involving the parties, was conducted before the Commission in Bunbury on 15 August 1995, to consider the claim.

The Conference was adjourned to enable the Applicant to further review his position in light of matters raised at the Conference.

By letter dated 25 August 1995, the Applicant sought to discontinue his application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

[L.S.] (Sgd.) R. H. GIFFORD,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Duncan Jack

and

Amec Construction Pty Limited.

No. 736 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company. The claim was denied by the company.

A Conference, involving the parties, was conducted before the Commission on 23 August 1995, to consider the claim.

A settlement of the claim was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission on 18 September 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

[L.S.] (Sgd.) R. H. GIFFORD,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Nigel Karl
and

Universal Fasteners.

No. 671 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company. The claim was denied by the company.

A Conference was listed for 8 August 1995, to consider the claim.

Prior to this Conference, by facsimile dated 7 August 1995, the Applicant requested that the Conference be cancelled, as the matter had been resolved between the parties.

On or about 8 August 1995, advice was received verbally from the Applicant that he wished to discontinue his application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ariyana Kolovrat
and

Sam Benn's Pharmacy.

No. 652 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that she was dismissed in a harsh, oppressive or unfair manner by the Respondent.

The Commission commenced arrangements on 3 July 1995 to conduct a Conference to consider the claims, but was requested by the Applicant not to list such a Conference at that time.

The Applicant advised the Commission, by letter received on 18 August 1995, that she wished to withdraw her application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be withdrawn by leave.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Norman Leighton
and

Westralian Forest Industries—Wesply Division.

No. 740 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company. The claim was denied by the company.

A Conference was listed for 11 August 1995, to consider the claim.

Prior to the Conference, by facsimile received from the Applicant's solicitors dated 9 August 1995, the Commission was advised that the parties had reached agreement, and that the Applicant did not wish to pursue this application any further.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jane Leslie
and

Fremantle Plan Printing and Microfilm Centre.

No. 948 of 1995.

COMMISSIONER R.N. GEORGE.

25 January 1996.

Reasons for Decision.

THE COMMISSIONER: The Applicant in these proceedings filed an application in the Commission on 16 August 1995 claiming she had been unfairly dismissed and alleging that the Respondent treated its employees unfairly in a number of respects, including in relation to their conditions of service. The claim as filed sought the payment of benefits said to have been denied as follows.

- \$1300 overtime
- 15 days public holidays
- 6 days annual leave
- 15 days sick leave

In the course of proceedings before the Commission the claim was amended to one months pay in lieu of notice in place of the one week actually paid on termination. No objection was raised to the amending of the claim.

The Applicant in submissions from the bar table based her claim on her understanding that another employee, who was terminated about the same time, was given one months notice and had left at the conclusion of the notice period. The Applicant submitted that she was entitled to the same period of notice or payment in lieu thereof.

The submissions of the Respondent were put in the form of a written statement submitted as Exhibit 1 and read into the record under oath. Other supporting documents were also provided in evidence. The Respondent denied the Applicant's claim and argued that she had not been treated unfairly in being given one weeks pay in lieu of notice. According to the Respondent, the conditions of service under which employees are engaged require that only one hours' notice be given and

despite that, the Applicant had been given one weeks notice in the form of payment in lieu. This was said to have been in order to enable the Applicant to seek other employment during the notice period.

The Respondent also argued that the Applicant was not treated unfairly by comparison with the other employee referred to by the Applicant. According to the Respondent, he had held discussions with the other employee around the end of June 1995 about a serious downturn in business. In the course of those discussions the Respondent said he had informed the other employee that if business did not improve by the end of July she would have to leave. As things transpired the employee finished working with the Respondent on 28 July 1995 and was paid up to that date. There was no indication as to when or if formal notice was given.

The facts as they appear on the evidence and submissions before the Commission are as follows.

The Applicant was offered employment and commenced working for the Respondent on 2 March 1994 performing typing, plan printing and photocopying duties. The Applicant was introduced to the Respondent through an employment agency known as "Bridging the Gap". According to the Respondent the conditions of the Applicant's employment were explained to her by the employment agency and himself, although he was unable to confirm that the Applicant had actually been told about the one hour notice period.

It is common ground that the Applicant's employment was not subject to any award of the Commission. The employment was under a common law contract, the conditions of which were said by the Respondent to be set out in a document dated 30 March 1992 and headed "To the Staff of Fremantle Plan Printing and Microfilming Centre" (Exhibit 2). It was usual, according to the Respondent, for employees to sign in acceptance of the conditions set out in that document, but this had not occurred in the case of the Appellant. The Applicant did not see a copy of the document until after she had filed the Application now before the Commission. While the Applicant claimed that the conditions set out in Exhibit 2 were unfair, she did not say that she was not aware of them, except for the notice period, and had worked in accordance with them for a period of some 17 months. In respect of the notice period, the Applicant said that it was never a matter discussed with her by either the Respondent or the employment agency and given what was said by the Respondent and the lack of evidence to the contrary, I accept her submission in that regard.

Having found as a matter of fact that the issue of notice was never a matter discussed between the Applicant and the Respondent, the question arises as to what, if anything, can be implied into the employment contract in that regard.

The length of notice necessary to bring a contract to an end may be specified or implied. Where no notice is specified, its implication will be a matter of construction of the contract and possibly reference to custom and trade practice, if that exists. More commonly, however, the only implication available will be that reasonable notice must be given and this is the circumstance in the matter now before the Commission.

What is "reasonable" notice depends upon a range of factors which include the following.

- length of hiring
- industry practice or custom
- the level of appointment
- the importance of the position
- the level of salary
- the nature of the employment
- length of service
- age
- the professional standing of the employee
- the employee's qualifications and experience
- the employee's job mobility
- what the employee gave up to move to the present employer
- the employee's prospective pension or other rights.

In a general sense, where the job is regarded as important, is of a high level, carries a high salary, and the employee is long serving and close to retirement, a generous period of notice

would be required. Where the job is more routine in nature, does not attract a high salary and where the period employment is not lengthy, a much shorter period may be held to be reasonable (see James J. Macken, Greg McCarry and Caroline Sappideen—The Law of Employment, 3rd Edition).

On the limited facts available it is clear that the position from which the Applicant was terminated was not of a high level or highly paid. The Applicant had been in the employ of the Respondent for a period of approximately 17 months on what she described as a "full time casual" basis. This description of her status was based upon the fact that she was told by the Respondent that she was to be paid casual rates of pay to compensate for annual leave, sick leave and public holidays. In a statement signed 21 August 1995 and submitted to the Commission as Exhibit 3, however, the Applicant questions the classification of her employment as "casual". Clearly the Applicant was not a casual employee in the true sense, although the conditions under which she worked were those normally associated with casual employment. Except for the notice period, which on the evidence was never a matter discussed between the parties, the Applicant understood the conditions under which she was employed and accepted them because of her need to work.

The work performed by the Applicant involved relatively routine clerical functions and required no special qualifications or experience. Job mobility could therefore be regarded as being high. There is no evidence before the Commission of any industry custom or practice which would assist in the determination of what would constitute reasonable notice in this particular case and while the Applicant points to the circumstances of another employee of the Respondent also recently terminated, the evidence does not establish the actual notice given in that case or that it is indicative of any custom and practice.

The best guide as to what is reasonable in the circumstances of this particular case, in my view, is to be ascertained by reference to the notice of termination provisions set out in what is referred to as the Termination, Change and Redundancy test case (1985 AILR 1) and set out in Section 170DB of the Industrial Relations Act 1988 (Commonwealth). This indicates that a reasonable period of notice given the Applicant's circumstances and length of service would be two weeks. I would therefore determine the Applicant's claim by an order that the Respondent pay to the Applicant a further one weeks pay in lieu of notice to bring the total payment to two weeks.

Appearances: Ms J. Leslie appeared on her own behalf
Mr C. Gabriels appeared on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jane Leslie

and

Fremantle Plan Printing and Microfilm Centre.

No. 948 of 1995.

COMMISSIONER R.N. GEORGE.

7 February 1996.

Order.

HAVING heard Ms J. Leslie on her own behalf and Mr C. Gabriels on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Respondent pay to the Applicant within 7 days of the date of this Order an amount equivalent of one weeks pay calculated by reference to the Applicant's normal pay rate at the date of termination of her employment with the Respondent.

(Sgd.) R. N. GEORGE,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Maskrey

and

Finese Foods Pty Ltd.

No.1106 of 1995.

COMMISSIONER A R BEECH.

10 January 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the parties reached agreement at that conference and the Commission adjourned the proceedings to allow the parties to implement their agreement;

AND HAVING heard the Applicant in person and Mr M. Beros on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,

[L.S]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

L.M. McLean

and

T.D. Hoffman.

No. 1357 of 1995.

COMMISSIONER A R BEECH.

5 February 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS following a conference in this matter the applicant advised the Commission that she does not wish to proceed with this application;

AND HAVING heard Ms L.M. McLean on behalf of the Applicant and Mr T.D. Hoffman on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,

[L.S]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael Miles

and

Graystone WA Pty Ltd and Turnball/Weir Pty Ltd T/As
Carnegies.

No. 592 of 1995.

COMMISSIONER R.H. GIFFORD.

6 February 1996.

Reasons for Decision.

THE COMMISSIONER : The applicant, Mr Michael Miles, by this application, pursuant to s.29(1)(b) of the Industrial Relations Act, 1979 ("the Act"), claims that he was dismissed

in a harsh, oppressive or unfair manner from his employment as a Head Chef, with the respondent, who operate as a cafe, and further claims that he was denied a contractual benefit, namely salary and bonus.

The contractual benefit claim specifically relates to the alleged underpayment of salary, namely at the rate of \$30,000 per annum, in lieu of \$35,000 per annum and to the alleged failure to pay a bonus of 10% of profits.

The relief sought from the dismissal is compensation, equivalent to his earnings over the period of time he was unemployed following the dismissal, namely one month.

Conference proceedings, pursuant to s.32 of the Act, had been set down at a date prior to the hearing of this matter namely on 27 November 1995, but were of no effect, as the respondent company did not attend the Conference, having been duly summoned to attend, by letter of 13 November 1995.

The Hearing was ultimately set down on 5 January 1996, and the respondent was duly advised of such Hearing, by certified mail delivered on 12 December 1995. The respondent did not attend the Hearing.

The only evidence led in these proceedings therefore was that of Mr Michael Miles himself.

That evidence revealed that Mr Miles was engaged as the Head Chef at Carnegies, which operates as a cafe at 67 Rokeby Road, Subiaco, on 6 March 1995. He was engaged by a Mr Steven Weir, who was a partner in the business. It was the applicant's understanding that the remuneration which he was offered by Mr Weir and which he accepted was that of a salary of \$35,000 per annum together with a bonus of 10% of profits.

When he received his first pay, Mr Miles noticed that the actual salary paid was based on a salary of \$30,000, with no consideration of the bonus. After letting the matter rest for three weeks, he confronted the partner who was by then having a more detailed involvement in the business, namely Mr Clark Gray, over his pay.

Mr Gray responded to the effect that he had never mentioned anything over the \$35,000 salary or 10% bonus.

The following day, the partner who had engaged the applicant, Mr Weir, confirmed that he, Mr Miles, had been engaged on the above basis, but that the higher salary and the bonus payment would be payable after he had proven himself of doing the job up to the standard required. It would then be 're-negotiated'. That was accepted by the applicant.

After a further two week period the applicant confronted Mr Gray over the matter. Mr Gray indicated that the company was unable to pay the additional salary and the bonus, to which the applicant responded that he would resign.

Shortly afterwards Mr Gray agreed that the company would pay the higher salary and the bonus, on the condition that he, Mr Miles, secure another Chef, to replace the apprentice who was then also engaged.

In checking his pay following this discussion, the applicant noted that the higher salary had been paid but that the bonus had not been paid. Later, he confronted Mr Gray to this effect, and was told that it had not been paid as the company was not making enough money. The applicant responded to the effect that he was aware that the cafe was grossing over \$12,000 a week, to which Mr Gray responded by indicating that it was still insufficient. In light of this response, the applicant took the matter no further.

This figure is to be compared with the costs of operating the cafe, which costs the applicant was required to be vitally familiar with, of the order of \$7,000 per week. The profit component, on those figures, was of the order of \$5,000 per week.

Then, early in May, the Manageress of the cafe became incapacitated and was admitted to hospital. Immediately prior to this, she, together with Mr Miles, set about appointing a relief Manageress and attempted to make contact with the partners to so advise. They were unavailable, so she, together with the applicant, jointly appointed such a person.

The following day, Mr Gray attended at the cafe and expressed concern over this appointment. The next day, he appointed a replacement who in fact commenced the following Friday.

By this stage of events, the replacement Chef had been engaged and trained by Mr Miles.

Then, on Sunday 26 May 1995, Mr Miles worked on the day, being his rostered day off, as a result of the replacement Chef being ill. Soon after he returned home in the evening, the new Manageress telephoned him and advised him that his services were no longer required. When he responded by stating that she couldn't sack him because she did not employ him, she replied that she could do whatever she liked. No reason for her action was given.

The whole sequence of events outlined above, is as already indicated derived solely from the evidence of Mr Miles, the applicant. No evidence was led on behalf of the respondent, as they chose not to participate in proceedings. In such circumstances of course, the evidence of Mr Miles cannot be tested. On the other hand, as it is the only evidence, the Commission is obliged to accept it, unless there are grounds for not doing so.

There is always the possibility in these circumstances that evidence may be tailored, intentionally or un-intentionally, to put the best perspective on the facts. In this case, there is no indication that such has occurred. Indeed, the applicant was quite open, for instance, in admitting that his actions in participating in the appointment of a relieving Manageress without reference to one of the partners, drew the dissatisfaction later on of one of them, Mr Gray.

Viewing the evidence overall however, the Commission is satisfied that there is no basis upon which to doubt the evidence of Mr Miles. The Commission accordingly accepts his evidence as constituting an honest and accurate recounting of the sequence of events.

In relation to the dismissal, it is clear that no reason of any kind was given to Mr Miles by the new Manageress when the dismissal was effected, on Sunday, 28 May 1995. To avoid the prospect of the Commission finding in favour of an applicant, such a valid reason, in the context of s.23AA of the Act is required to be given.

It may be open, on the evidence, to speculate, as to the reason for Mr Miles' dismissal. It may have been because Mr Gray was displeased with the nature of Mr Miles' involvement in the appointment of a relieving Manageress, without recourse to him. The reasons causing that action to have been taken, may not have constituted a satisfactory explanation, in Mr Gray's mind.

In the alternative, it may have been that Mr Gray was displeased with Mr Miles' attempts to secure payment of the salary and bonus payments he believed he was legitimately due. Or perhaps he was displeased with Mr Miles' actions in suggesting that he may resign in the event of the payment of the bonus being declined. There could be other matters.

In the end, there is no point in speculating, as there is just insufficient evidence to provide any indication as to the reason for the dismissal. The Commission therefore must inevitably come to the conclusion that the company gave no valid reason to Mr Miles, relating to his 'capacity or conduct or based on the operational requirements' of the cafe, in dismissing him. Accordingly, the claim for harsh, oppressive or unfair dismissal of Mr Miles, has been made out.

Mr Miles does not seek reinstatement. He secured other employment, one month following his dismissal and is content in that other employment.

In terms of the evidence led as to the relationship between Mr Miles and the partner, Mr Gray, the Commission is satisfied that reinstatement would be impracticable.

Accordingly, the Commission believes that an award of compensation is appropriate. The applicant measures his own loss, arising from the dismissal, in terms of the loss of one month's income. The Commission is satisfied that in this case such is an appropriate measure of the extent of the loss incurred, and will order accordingly, in money terms.

With respect to Mr Miles' claim concerning underpayment of salary, the position is not as clear-cut.

There is clear evidence as to the original contractual basis at engagement, namely a salary of \$35,000. Although by the end of the first week of employment, Mr Miles was aware that he was being paid at the rate of \$30,000, the matter was not

challenged by him until three weeks later. Then, when he chose to speak with the partner who engaged him, he learnt that a condition applied to the granting of the contracted salary, namely that he had proven himself of doing the job up to the standard required. Although Mr Miles had not been aware of that condition, he indicated to the partner a preparedness to accept it as a condition.

In the Commission's view, that acquiescence on his part, however co-operative it may have been concerning the company's position, nevertheless prevents Mr Miles from claiming the higher salary, as a contractual benefit, up to that point.

Following this, it appears, from the evidence, that the partners made no attempt to objectively assess whether Mr Miles was carrying out the job to the standard required. In fact, Mr Miles had to confront them over the issue. Only then was it finally agreed that the higher salary would apply, subject to a new condition being met, namely that a replacement Chef, to the apprentice, be engaged by Mr Miles.

That new condition was accepted by Mr Miles. The higher salary was paid in the next pay.

In this whole process, the impression is certainly created that the partners in the cafe were endeavouring to renege from their contractual obligations, but the Commission does not so find. More importantly however, this needs to be considered in the light of Mr Miles co-operation and acquiescence, on two occasions.

The Commission accordingly finds that with respect to the applicant's salary payments, no contractual benefit was denied.

This is not the position, however, relating to the bonus, of 10% of profits, in that no bonus was paid to him at all.

Following the meeting with the partner, Mr Gray, towards the end of April, a clear agreement was reached with Mr Miles to receive both the higher salary and the bonus, subject to the condition, of engaging a replacement Chef. That condition, was soon thereafter met.

When Mr Miles confronted Mr Gray over the bonus not having been paid, Mr Gray gave the explanation that the company was not making enough money. On the figures, admittedly imprecise, provided by Mr Miles, with which he as Chef would have been familiar, this was patently not the case. A profit in the order of \$5,000 per week was being made over this period of the cafe's operation. The Commission forms the view that Mr Gray's explanation, represented an attempt to simply repudiate the contract which had been entered into with Mr Miles.

Merely because Mr Miles took the matter no further does not mean that at this point, he acquiesced. He simply saw no prospect in challenging it further with the partners.

This is not to say that it would be due from the outset of his employment. It was certainly the case that in the meeting with the partner who engaged him, in the second week in April, he acquiesced on the bonus matter, in the same way as he did with the salary matter, referred to above.

The Commission accordingly considers that a contractual benefit, in the form of a bonus, based on 10% of the profits earned, over a period of four weeks to the point of his dismissal, was denied. The Commission is therefore prepared to order that an amount of \$2,000, in consideration of such a benefit, be paid by the company to Mr Miles.

It follows that a Minute of Proposed Order will issue setting out the monies due to the applicant, and confirming the Commission's findings with respect to compensation and the bonus payment. If the parties require a Speaking to the Minutes, my Associate is to be advised accordingly. Otherwise, the Order will issue, requiring the payment of the monies to be made, within 14 days.

Appearances: Mr M. Miles appeared on his own behalf

There was no appearance on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael Miles

and

Graystone WA Pty Ltd and Turnball/Weir Pty Ltd T/As
Carnegies.

No. 592 of 1995.

COMMISSIONER R.H. GIFFORD.

13 February 1996.

Order.

HAVING heard Mr M. Miles on his own behalf and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

- (1) THAT the respondent company pay to the applicant, Michael Miles—
- a) compensation of \$2,917.00, in consideration of the dismissal of the applicant in a harsh, oppressive or unfair manner, and
 - b) a bonus payment of \$2,000.00, as a denied contractual benefit,
- constituting a total sum of \$4,917.00; and
- (2) THAT payment of the sum of \$4,917.00 be made within 14 days of the date hereof.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Luis Antonio Moreno

and

Wembley Concrete Industries Division of CSR Readymix
Pty Ltd.

No. 1287 of 1995.

COMMISSIONER A R BEECH.

8 January 1996.

Order.

WHEREAS a conference was convened in the Commission on the 20th December 1995;

AND WHEREAS the applicant agreed to advise the respondent by close of business on the 21st December 1995 whether a counter-offer put to him was acceptable or not and advise the Commission within 14 days of the date of the conference of the outcome of the discussions.

AND WHEREAS the applicant's agent filed a Notice of Discontinuance in the Commission on the 8th February 1996.

AND HAVING heard Mr T.C. Crossley on behalf of the Applicant and Ms E. Mackey on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Mowczan

and

Environmental Industries Pty Ltd.

No. 1199 of 1995.

COMMISSIONER A.R. BEECH.

24 January 1996.

Order.

WHEREAS a conference of the parties was held;

AND WHEREAS the parties reached agreement;

AND WHEREAS the Commission adjourned the matter to enable the parties to implement the terms of the agreement;

AND WHEREAS the Commission has been advised that the terms of the agreement have now been implemented;

AND HAVING heard the applicant on his own behalf and Ms E.L. Mackey on behalf of the respondent;

NOW THEREFORE, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT the hearing of the application be discontinued.

(Sgd.) A. R. BEECH,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Danette Gail Norman

and

S H R M.

No. 757 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that she was dismissed in a harsh, oppressive or unfair manner by the Respondent company. The claim was denied by the company.

A Conference, involving the parties, was conducted before the Commission on 25 August 1995, to consider the claim.

A settlement of the claim was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission on 13 September 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr Anthony Rogers
and

Metro Hardware.

No. 984 of 1995

COMMISSIONER P E SCOTT.

4 January 1995.

Order.

WHEREAS this is a claim of unfair dismissal and denied contractual benefits pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979; and

WHEREAS a conference was held on Thursday, the 2nd day of November 1995; and

WHEREAS the Applicant was requested by way of letter dated the 4th day of December 1995 to notify the Commission of the status of the application to which no reply was received;

NOW THEREFORE the Commission pursuant to the powers conferred on in under the Industrial Relations Act, 1979 hereby orders;

THAT this application be and is hereby dismissed.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr Anthony Rogers
and

Metro Hardware.

No. 984 of 1995.

COMMISSIONER P E SCOTT.

11 January 1996.

Correcting Order.

WHEREAS an error occurred in the Order in Matter No. 984 of 1995 which issued on the 4th day of January 1996;

NOW THEREFORE the Commission pursuant to the powers conferred on in under the Industrial Relations Act, 1979 hereby orders—

DELETE the issue date of “4 January 1995” and insert “4 January 1996” in lieu thereof.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr Scott M Russell
and

Sontax Australia Pty Ltd.

No. 977 of 1995.

COMMISSIONER P E SCOTT.

4 January 1995.

Order.

WHEREAS this is a claim of unfair dismissal pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979; and

WHEREAS a conference was held on Tuesday, the 26th day of September 1995; and

WHEREAS the Applicant's agent was requested by way of letter dated the 4th day of December 1995 to notify the Commission of the status of the application to which no reply was received;

NOW THEREFORE the Commission pursuant to the powers conferred on in under the Industrial Relations Act, 1979 hereby orders;

THAT this application be and is hereby dismissed.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr Scott M Russell

and

Sontax Australia Pty Ltd.

No. 977 of 1995.

COMMISSIONER P E SCOTT.

11 January 1996.

Correcting Order.

WHEREAS an error occurred in the Order in Matter No. 977 of 1995 which issued on the 4th day of January, 1996;

NOW THEREFORE the Commission pursuant to the powers conferred on in under the Industrial Relations Act, 1979 hereby orders—

DELETE the issue date of “4 January 1995” and insert “4 January 1996” in lieu thereof.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Anthony Sisco

and

Foodland Associated Limited.

No. 950 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner by the Respondent company. The claim was denied by the company.

A Conference, involving the parties, was conducted before the Commission on 26 September 1995, to consider the claim.

The Conference was adjourned to enable the Applicant to review his position in light of matters raised at the Conference, and to then advise the Commission of his intentions.

A Notice of Discontinuance was filed by the Applicant's agent on his behalf with the Commission on 11 October 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

[L.S.] (Sgd.) R. H. GIFFORD,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sevda Stankovska

and

Quirk Corporate Cleaning Australia Pty Ltd.

No. 645 of 1995.

Tomislav Stankovski

and

Quirk Corporate Cleaning Australia Pty Ltd.

No. 646 of 1995.

COMMISSIONER R.H. GIFFORD.

15 January 1996.

Reasons for Decision.

THE COMMISSIONER : Application No. 645 of 1995 was filed by Mrs Sevda Stankovska claiming harsh, oppressive or unfair dismissal from her position as a cleaner with Quirk Corporate Cleaning Australia Pty Ltd, together with an outstanding contractual benefit.

Application No. 646 of 1995 which was filed by Mr Tomislav Stankovski, dealt with the same claims, concerning his position as a cleaner with the respondent company.

Conference proceedings in accordance with S.32 of the Industrial Relations Act (the Act) were conducted on three occasions, but were unavailing.

At the hearing of these matters, by agreement, both applications were dealt with together, as they both arose out of the same incident, where both applicants, being husband and wife, had worked together cleaning two banks, in Bassendean.

Mr Stankovski represented himself with respect to his application and represented his wife with respect to her application.

Both applications allege dismissal in a harsh, oppressive or unfair manner by a Relieving Contracts Manager on Tuesday, 30 May 1995, including no advice as to the reasons for the dismissal and no opportunity to explain their respective positions. Although reinstatement into their former positions was sought by the applications, that was altered to a claim for compensation in lieu, in the course of the present proceedings.

The contractual benefit claims were of the order of a claim of \$250 for allegedly unpaid holiday pay and sick leave, together with a claim of the order of \$300.00 as unpaid wages in respect of the cleaning of the front external area of one of the banks, based on half hour a day's additional work. It is to be noted that their employment was governed by the terms of the Contract Cleaners Award 1986.

With respect to the claims alleging harsh, oppressive or unfair dismissal, the respondent company answers by claiming that no dismissal was effected at all; but rather, that both of the applicants resigned from their positions. Such being the case, it is necessary, consistent with S.29(1)(b)(i) of the Act, for the Commission to determine that there had been a "dismissal" effected, on Tuesday, 30 May 1995.

Mr Stankovski argues that dismissal was effected by means of the Relieving Contracts Manager visiting their house and taking possession of the keys to the two banking premises in Bassendean which they cleaned, without explanation. Without saying so, he was suggesting that he and his wife were constructively dismissed, in that without the keys there was no cleaning work they could do for the company.

The respondent company, on the other hand, argue that Mrs Stankovska had indicated to the Relieving Contracts Manager, on both her behalf and her husband's behalf, that they did not wish to do the cleaning any more and to come and collect the keys. This had been taken as an act of resignation.

The background to the matter, as revealed in the evidence led in these proceedings, is that both of the applicants had since 1992 cleaned the BankWest premises in Bassendean and in addition, from this year, the Westpac premises in Bassendean. In the course of Monday, 29 May 1995, Mrs Stankovska became very sick and was taken to her doctor by Mr Stankovski. They returned home late.

Between 8.00 pm and 9.00 pm that evening, the Relieving Contracts Manager, Mrs Anna Marjanovich, who was responsible for both of the bank contracts, had visited both banks to locate Mr and Mrs Stankovski with a view to asking them specifically to clean up some dead cockroaches on some stairs at the BankWest premises as had been requested by the bank. In not finding them at either premises, she rang their home and spoke with Mr Stankovski and learnt of Mrs Stankovska's illness. In asking how the cleaning of the banks was to be done that night including the removal of the cockroaches, Mr Stankovski advised that he would be carrying it out later.

The next day, Mrs Marjanovich received telephone calls from both banks advising that the cleaning work had not been done at both premises. Mrs Marjanovich then telephoned Mrs Stankovska and asked her why the cleaning had not been done that night. Mrs Stankovska then advised that she had been sick, a fact of which Mrs Marjanovich was already aware.

It is Mrs Marjanovich's evidence that Mrs Stankovska then said to the effect that: "We are fed up with all this"; and that: "we don't want to do it any more". Mrs Stankovska then said to the effect: "If you don't like it, come and get the keys". This, in Mrs Marjanovich's recollection was the essence of the telephone discussion, which lasted in total of half an hour. She understood Mrs Stankovska's English adequately; both parties had known each other socially for about 15 years. It was Mrs Marjanovich's clear impression from this discussion that both Mrs and Mr Stankovski were wishing to resign.

Mrs Stankovski, in her evidence, which was given in broken English, recollected that in the telephone discussion in question, Mrs Marjanovich stated to the effect that "..... my boss is very upset about that" (ie. the failure to clean the banks); and that "..... tomorrow, we got meeting; I come to pick up the key". Earlier in her evidence she had indicated, in relation to the picking up on the key because of: "..... something wrong with security".

Mrs Stankovska recalls that the discussion also embraced their claim for underpayment of wages based on the half hour per day.

When asked by the Commission as to whether there was any discussion about she (Mrs Stankovska) not wanting to work any more at the banks, she responded in the negative, adding though the question as to how she could work when the key was to be taken.

With respect to the collection of the keys, Mrs Marjanovich recollected that she visited Mrs Stankovska's house late that afternoon and collected them. Mrs Stankovska in her evidence, recollected the visit and gave evidence that she asked a question as to whether Mrs Marjanovich wanted the keys of both banks, which the latter confirmed as the case.

In terms of determining whether a constructive dismissal was effected or whether a resignation occurred, it is necessary for the Commission to weigh the evidence of Mrs Marjanovich against that of Mrs Stankovska. There is no corroborating evidence, as to the events on the Tuesday in question. Mr Stankovski, although purporting to be effected by the discussions, did not participate in them.

Mr Stankovski, under cross examination, in speaking on behalf of his wife, indicated that if it were found by the Commission that Mrs Stankovska had said what Mrs Marjanovich recollected her saying, then it was to be taken as a statement made by Mrs Stankovska in anger, as a result of having been provoked by Mrs Marjanovich.

When this was put to Mrs Marjanovich in cross examination, she denied that there was any provocation and spoke nothing of the statement being made in anger. Significantly, Mrs Stankovska herself, did not admit to any anger. In the end, Mrs Marjanovich postulated that it would not have been her wish to provoke Mrs Stankovska, because she considered both her and her husband, to be good workers.

With respect to Mrs Stankovska's statement concerning a connection between the dismissal and the problem with security, Mrs Marjanovich claimed that such matter, which had occurred some five weeks earlier, in respect of the Westpac premises, was not a matter of any consequence and played no part whatsoever in the parting of the ways.

With respect to the fact that Mr Stankovski failed to carry out the cleaning duties he undertook to do, on Monday evening

29 May 1995, this was not an issue that influenced the company in its dealing with this matter, and as such is not a matter that the Commission needs to consider in the context of whether a resignation occurred or not.

Having weighed the evidence of Mrs Marjanovich against that of Mrs Stankovska, the Commission has no difficulty whatsoever, in preferring the recollection of Mrs Marjanovich, of the conversation between them on Tuesday, 30 May 1995 over the telephone. The recollection of Mrs Marjanovich was clear, and when asked to repeat her recollection, it was stated with equivalent clarity and precision.

The word resignation is not used by Mrs Stankovska, but her language was unequivocal as to its meaning and on whose behalf it was spoken. It meant that she and her husband had no wish to continue with their employment with Quirk.

There is no sense, in the evidence, that Mrs Marjanovich was provoking or pressing Mrs Stankovska. She was merely seeking an explanation; a not unreasonable situation, when she had been faced with two unhappy clients.

Nor can it be suggested that Mrs Marjanovich's understanding of the conversation was flawed because of Mrs Stankovska's style of broken English. They both shared similar eastern European languages, and in any event had known each other socially for about 15 years.

Mrs Stankovska's evidence in relation to the conversation, on the other hand, came across as being incomplete, and appeared to confuse issues, such as the security matter, which was not relevant to the time.

Even if she had had second thoughts over what she had said, this was not evident at the time the keys were handed over. It may have been that she had second thoughts, after she explained to her husband what had taken place.

The Commission accordingly finds that both Mrs Stankovska and Mr Stankovski, resigned from their positions as cleaners with Quirk on Tuesday, 30 May 1995.

Such being the case, there was no dismissal of their services effected by the company. There is therefore no ability for them to proceed with a claim under S.29(1)(b)(i).

With respect to the claims for contractual benefits, there is likewise no ability on their part to proceed with these claims, under S.29(1)(b)(ii), as they deal with matters that directly arise from the provisions of the Award under which they were employed, the Contract Cleaners Award 1986, and such matters are expressly excluded.

It accordingly follows that the Commission is left with no alternative but to dismiss each application, and the Commission so Orders.

Appearances: Mr T. Stankovski on his own behalf in respect of Application No. 646 of 1995 and on behalf of the applicant, Mrs Stankovska in respect of Application No. 645 of 1995.

Ms D. Rowe on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sevda Stankovska

and

Quirk Corporate Cleaning Australia Pty Ltd.

No. 645 of 1995.

COMMISSIONER R.H. GIFFORD.

15 January 1996.

Order.

HAVING heard Mr T. Stankovski on behalf of the applicant and Ms D. Rowe on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

THAT the application be, and is hereby dismissed.

(Sgd.) R. H. GIFFORD,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tomislav Stankovski

and

Quirk Corporate Cleaning Australia Pty Ltd.

No. 646 of 1995.

COMMISSIONER R.H. GIFFORD.

15 January 1996.

Order.

HAVING heard Mr T. Stankovski on his own behalf and Ms D. Rowe on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

THAT the application be, and is hereby dismissed.

(Sgd.) R. H. GIFFORD,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael John Swinar

and

Quality Design Cabinets.

No. 1238 of 1995.

COMMISSIONER R.N. GEORGE.

23 January 1996.

Order.

WHEREAS a dispute exists between the parties concerning a claim that the Applicant was unfairly dismissed from his employment with the Respondent; and

WHEREAS the matter was the subject of a conciliation conference before the Commission on 22 January 1996; and

WHEREAS in the course of conference proceedings before the Commission the parties reached agreement in terms which they requested be formalised in a consent order of the Commission; and

WHEREAS the Applicant undertook that the agreement reached and to be reflected in this consent order is in full and final settlement of all claims associated with his termination, including any claims for entitlements under his contract of employment.

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

1. The Respondent pay to the Applicant by no later than close of business on Thursday, 25 January 1996:
 - (a) one week's wages in lieu of notice—\$433.20 less tax
 - (b) accrued annual leave entitlements—\$499.83 less tax
 - (c) an amount by way of compensation—\$500
2. The Respondent pay to the appropriate authority all superannuation entitlements accrued by the Applicant during the course of his employment which the Respondent has not already paid.
3. That a group certificate for the period of employment with the Respondent be issued to the Applicant.

(Sgd.) R. N. GEORGE,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ms R H Taylor

and

Town of Cambridge.

No. 931 of 1995.

COMMISSIONER P E SCOTT.

4 January 1995.

Order.

WHEREAS this is a claim of unfair dismissal and denied contractual benefits pursuant to sections 29(1)(b)(i) and (ii) of the Industrial Relations Act, 1979; and

WHEREAS a conference was held on Thursday, the 12th day of October 1995; and

WHEREAS the Applicant was requested by way of letter dated the 4th day of December 1995 to notify the Commission of the status of the application to which no reply was received;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders;

THAT this application be and is hereby dismissed.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ms R H Taylor

and

Town of Cambridge.

No. 931 of 1995.

COMMISSIONER P E SCOTT.

11 January 1996.

Correcting Order.

WHEREAS an error occurred in the Order in Matter No. 931 of 1995 which issued on the 4th day of January 1996;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

DELETE the issue date of “4 January 1995” and insert “4 January 1996” in lieu thereof.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Garry D. Tilbury

and

Cool or Cosy Natural Insulation Pty Ltd and
C.O.C. Pty Ltd.

No. 1187 of 1995.

COMMISSIONER C.B. PARKS.

17 January 1996.

Order.

WHEREAS on 25 October 1995 an application alleging unfair dismissal was filed in the Commission pursuant to s.29 of the Industrial Relations Act, 1979; and

WHEREAS on 9 January 1996 a conference was held pursuant to s.32 of the Industrial Relations Act, 1979, whereat the matter was resolved by conciliation and the hearing listed for that day was vacated;

AND WHEREAS on 12 January 1996, a facsimile request that the application be discontinued, signed by the applicant, was lodged with the Commission;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

THAT this application be and is hereby wholly discontinued.

(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leslie John Tomlinson

and

S and M Painting Company.

No. 726 of 1995.

COMMISSIONER R.H. GIFFORD.

9 February 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner and had been denied a contractual benefit, by the Respondent company. The claims were denied in part by the company.

A Conference, involving the parties, was conducted before the Commission on 25 August 1995, to consider the claims.

A settlement of the claims was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission at the conclusion of the Conference, on 25 August 1995.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the application be discontinued.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter John Zucchi

and

Falconet Pty Ltd trading as Sonic Office Automation.

No. 1044 of 1995.

COMMISSIONER A R BEECH.

8 January 1996.

Order.

WHEREAS a conference was convened in the Commission; AND WHEREAS the Applicant has filed a Notice of Discontinuance.

AND HAVING heard Mr M. Bennet (of Counsel) on behalf of the Applicant and Ms M. Armstrong on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

SECTION 29(b)—Notation of—

Applicant	Respondent	Number	Commissioner	Result
Bell G.	Nimble Holdings Pty Ltd t/a Century 21 Northside Realty	110/1995	Halliwell S.C.	Discontinued
Bennets S.F.	Maddington Glass	730/1995	Halliwell S.C.	Discontinued
Blackney R.J.	Osborne Cold Stores (WA) Pty Ltd	75/1995	Parks C.	Discontinued
Brindle I.C.	Joondalup Resort International	885/1995	Halliwell S.C.	Discontinued
Buxton L.	George Mitanoski	1130/1995	Scott C.	Withdrawn
Chambers J.W.C.	Lawrence Peter Ferris and Maureen Carroll t/a Carroll Realty	1133/1995	Halliwell S.C.	Discontinued
Clough C.M.	Community Newspapers (1985) t/a Community Newspaper Group	1002/1995	Halliwell S.C.	Discontinued
Dowling C.A.	Prestige Motors Pty Ltd t/a Prestige Toyota	1088/1995	Halliwell S.C.	Discontinued
Eades A.J.	Claremont Dry Cleaners	1120/1995	Halliwell S.C.	Discontinued
Eriksen T.	Southern Wools Pty Ltd t/a Woolcell Insulation	1230/1995	Halliwell S.C.	Discontinued
Gillan A.F.	Tarcoola Beach Resort	166/1995	Scott C.	Dismissed
Gomez M.	Doric Constructions Pty Ltd	1097/1995	Scott C.	Dismissed
Gorton J.	Wilhal Pty Ltd t/a Durabond	864/1995	Parks C.	Discontinued
Hunter S.	Katerina Zeelenburg (Quickstop Kalamunda)	1008/1995	Halliwell S.C.	Discontinued
Hutchinson N. R.	Adasound and Lighting	1084/1995	Parks C.	Discontinued
Longthorn L.	(John Wilks) Kicks—The Fitness Club	807/1995	Parks C.	Discontinued
Martin S.K.	Barrington Partners	1027/1995	Parks C.	Discontinued
McQuinn L.E.	Airport Landside Services Pty Ltd	783/1995	Halliwell S.C.	Discontinued
Mennicken S.A.	Monkey Mia Airlines Pty Ltd t/a Flightseeing Tours	830/1995	Parks C.	Discontinued
Moynihan K.	A F Tang Pty Ltd	822/1995	Halliwell S.C.	Dismissed
Murphy E.S.	Technical and Further Education	PSAB7/1995	Parks C.	Discontinued
Myers K.	Elite Office Supplies	1236/1995	Halliwell S.C.	Discontinued
Palmer K.	Retravision (WA) Ltd	844/1995	Halliwell S.C.	Discontinued
Sinclair C.A.	Reg Russell and Sons	922/1995	Halliwell S.C.	Discontinued
Shard M.	Mardo Australia	1102/1995	Parks C.	Discontinued
Sharp P.A.	Konig Engineering	808/1995	Parks C.	Discontinued
Sherratt C.	Peter Harvey Holden Wreckers	1043/1995	Halliwell S.C.	Discontinued
Stephens M.	Tom Tyres	983/1995	Scott C.	Discontinued
Swan J.	L and W Sales and Service Hardware Magic	1152/1995	Halliwell S.C.	Discontinued
Tengvall S.M.	The Committee of the Wundowie Club Inc	771/1995	Halliwell S.C.	Discontinued
Thorne J.	Perth Sign Co Pty Ltd	1115/1995	Halliwell S.C.	Discontinued
Walsh J.	MJB & B Advertising	1109/1995	Parks C.	Discontinued
Woolworths (WA) Ltd and Others	The Australian Liquor, Hospitality and Miscellaneous Workers Union	A3/1992	Halliwell S.C.	Discontinued

CONCILIATION ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch and Others

and

Transfield Construction Pty Ltd and Others.

No. 1241 of 1995.

Metal, Electrical and Building Trades (Wagerup Alumina
Refinery and Willowdale Mine Site) Construction Order,
1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

1 February 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicants,
Mr C. Keys on behalf of the Respondents and by consent, the
Commission, pursuant to the powers conferred on it under the
Industrial Relations Act, 1979, hereby orders—

THAT the Metal, Electrical and Building Trades
(Wagerup Alumina Refinery and Willowdale Mine Site)
Construction Order, 1995, shall replace Order No. 1027
of 1994 in accordance with the following Schedule and
shall have effect from the beginning of the first pay
period commencing on or after the 19th day of January 1996.

(Sgd.) G.G. HALLIWELL,

[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This Order shall be known as the Metal, Electrical and Building Trades (Wagerup Alumina Refinery and Willowdale Mine Site) Construction Order No. 1241 of 1995 and, subject to its terms, shall supplement the Metal Trades (General) Award No. 13 of 1965, the Electrical Contracting Industry Award No. R 22 of 1978, the Building Trades (Construction) Award No. R 14 of 1978 and the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 and shall replace Order No. 1027 of 1994.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Order that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. Area and Scope
4. General Conditions of Employment
5. Travelling Allowance
6. Site Allowance
7. Job Stewards
8. Date of Operation.

Schedule of Respondents.

3.—AREA AND SCOPE

This Order shall apply to those employees who, except for the terms of this Order, would be bound by either the Metal Trades (General) Award No. 13 of 1965, the Electrical Contracting Industry Award No. R 22 of 1978, the Building Trades (Construction) Award No. R 14 of 1978 and the Engine Drivers' (Building and Steel Construction) Award No. R 20 of 1973 who are employed by any of the employers named in the Schedule attached to this Order on construction work at the Wagerup Alumina Refinery and the Willowdale Mine Site operated by Alcoa of Australia Ltd.

4.—GENERAL CONDITIONS OF EMPLOYMENT

Except as provided in Clause 5.—Travelling Allowance, Clause 6.—Site Allowance and Clause 7.—Job Stewards of this Order, the terms and conditions of each employee covered by this Order shall be as prescribed in the Award by which the employee would be bound if not for this Order.

5.—TRAVELLING ALLOWANCE

Each employee not provided with transport by his/her employer to travel to and from the job shall be paid as follows—

	Per Day \$
(1) Employees residing in the Pinjarra township shall be paid as provided in the award.	11.30
(2) Employees other than those provided for in subclause (1) and who travel from a point—	
(a) Up to 32km radius from the job site	22.70
(b) 32-50km radius from the job site	30.30
(c) 50-68km radius from the job site	37.50
(d) Over 68km radius from the job site	52.70
(3) Notwithstanding the foregoing, an employee not provided with transport by his/her employer and who is required to travel, by the shortest possible route, a distance of more than 60kms from home to the job, shall be paid an allowance of not less than \$37.50 per day and such an employee who is required to travel, by the shortest possible route, a distance of more than 80kms from his/her home to the job, shall be paid an allowance of \$52.70 per day.	
(4) (a) An employee shall not be entitled to the allowance prescribed in subclause (3) hereof unless and until he/she submits a written statement to the employer setting out his/her place of residence and the number of kilometres he/she is required to travel from home to the job by the shortest possible route.	
(b) An employee who wilfully sets out an incorrect distance in his/her written statement shall be deemed guilty of wilful misconduct.	

6.—SITE ALLOWANCE

(1) An additional allowance of \$1.19 per hour shall be paid for each hour worked.

(2) Such allowance is specifically prescribed to cover all disabilities associated with construction work at the Wagerup Alumina Refinery and the Willowdale Mine Site.

7.—JOB STEWARDS

(1) Prior to the termination or transfer of a job steward, two days' notice shall be given by the employer to the union for the purpose of discussing the reasons for such termination or transfer.

(2) In the event of a dispute arising in relation to such termination or transfer, the matter shall be referred within seven days to a Board of Reference.

8.—DATE OF OPERATION

This Order shall operate from the commencement of the first pay period beginning on or after 19 January 1996.

SCHEDULE OF RESPONDENTS

Electric Power Transmission Pty Ltd
O'Donnell Griffin
Ralph M. Lee (W.A.) Pty Ltd
Transfield Construction
Western Construction Co. (1978) Pty Ltd
The Electrical Contractors' Association of Western Australia
(Union of Employers).

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch and Others

and

United Construction Pty Ltd and Others.

No. 1240 of 1995.

Metal, Electrical and Building Trades (Pinjarra and
Kwinana Alumina Refineries and Huntley, Del Park and
Jarrahdale Mine Sites) Construction Order.

SENIOR COMMISSIONER G.G. HALLIWELL.

1 February 1996.

Order.

Having heard Mr G. Sturman on behalf of the Applicants, Mr
C. Keys on behalf of the Respondents and by consent, the
Commission, pursuant to the powers conferred on it under the
Industrial Relations Act, 1979, hereby orders—

THAT the Metal, Electrical and Building Trades
(Pinjarra and Kwinana Alumina Refineries and Huntley,
Del Park and Jarrahdale Mine Sites) Construction Order,
shall replace Order No. 1310 of 1993 in accordance with
the following Schedule and shall have effect from the
beginning of the first pay period commencing on or after
the 19th day of January 1996.

(Sgd.) G. G. HALLIWELL,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Order shall be known as the Metal, Electrical and
Building Trades (Pinjarra and Kwinana Alumina Refineries
and Huntley, Del Park and Jarrahdale Mine Sites) Construction
Order No. 1240 of 1995 and, subject to its terms, shall
supplement the Metal Trades (General) Award No. 13 of 1965,
the Electrical Contracting Industry Award No. R 22 of 1978
and the Building Trades (Construction) Award No. R 14 of
1978 and the Engine Drivers' (Building and Steel
Construction) Award No. 20 of 1973 and shall replace Order
No. 1310 of 1993.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Order that any variation to its terms
on or from the 30th day of December 1994, including the \$8.00
per week Arbitrated Safety Net Adjustments, shall not be made
except in compliance with the Statement of Principles set down
by the Commission in the Reasons for Decision in Matter No.
985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. Area and Scope
4. General Conditions of Employment
5. Travelling Allowance
6. Site Allowance
7. Job Stewards
8. Date of Operation.

Schedule of Respondents.

3.—AREA AND SCOPE

This Order shall apply to those employees who, except for
the terms of this Order, would be bound by either the Metal
Trades (General) Award No. 13 of 1965, the Electrical
Contracting Industry Award No. R 22 of 1978 or the Building
Trades (Construction) Award No. R 14 of 1978 and the Engine
Drivers' (Building and Steel Construction) Award No. R 20
of 1973 and who are employed by any of the employers named
in the Schedule attached to this Order on construction work at
the Pinjarra and Kwinana Alumina Refineries and the Huntley,
Del Park and Jarrahdale Mine Sites operated by Alcoa of
Australia Ltd.

4.—GENERAL CONDITIONS OF EMPLOYMENT

Except as provided in Clause 5.—Travelling Allowance,
Clause 6.—Site Allowance and Clause 7.—Job Stewards of
this Order, the terms and conditions of each employee covered
by this Order shall be as prescribed in the Award by which the
employee would be bound if not for this Order.

5.—TRAVELLING ALLOWANCE

(1) Each employee who is not provided with transport by
the employer to travel to and from the job shall be paid as
follows:

- | | Per Day
\$ |
|--|---------------|
| (a) Employees residing in the Pinjarra township shall be paid as provided in the award | 11.30 |
| (b) Employees other than those provided for in paragraph (a) who travel from a point— | |
| (i) Up to 32km radius from the job site | 22.70 |
| (ii) 32-50km radius from the job site | 30.30 |
| (iii) Over 50km radius from the job site | 37.50 |
| (c) Notwithstanding the foregoing, an employee not provided with transport by his/her employer and who is required to travel, by the shortest possible route, a distance of more than 60kms from home to the job, shall be paid an allowance of not less than \$37.50 per day and such an employee who is required to travel, by the shortest possible route, a distance of more than 80kms from his/her home to the job, shall be paid an allowance of \$52.70 per day. | |
| (2) (a) An employee shall not be entitled to the allowance prescribed in paragraph (c) of subclause (1) hereof unless and until he/she submits a written statement to the employer setting out his/her place of residence and the number of kilometres he/she is required to travel from home to the job by the shortest possible route. | |
| (b) An employee who wilfully sets out an incorrect distance in his/her written statement shall be deemed guilty of wilful misconduct. | |

(3) Employees engaged on the Kwinana Alumina Refinery or the Jarrahdale Mine Site shall not be subject to the provisions of this clause, but shall be entitled to the provisions of Clause 6.—Allowance for Travelling and Employment in Construction Work of Part II—Construction Work of the Metal Trades (General) Award No. 13 of 1965 or Clause 20.—Allowance for Travelling and Employment in Construction Work of the Electrical Contracting Industry Award No. R 22 of 1978 or Clause 12A.—Fares and Travelling (Except Plumbers) of the Building Trades (Construction) Award No. R 14 of 1978 or Clause 22.—Allowances for Travelling and Employment in Construction work of the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

6.—SITE ALLOWANCE

- (1) An additional allowance of \$1.44 per hour shall be paid for each hour worked at the Alcoa Kwinana Alumina Refinery.
- (2) An additional allowance of \$1.23 per hour shall be paid for work on the Alcoa Pinjarra Alumina Refinery and the Huntley, Del Park and Jarrahdale Mine Sites.
- (3) Such allowance is specifically prescribed to cover all disabilities associated with construction work at the Pinjarra and Kwinana Alumina Refineries or the Huntley, Del Park and Jarrahdale Mine Sites.

7.—JOB STEWARDS

(1) Prior to the termination or transfer of a job steward, two days' notice shall be given by the employer to the union for the purpose of discussing the reasons for such termination or transfer.

(2) In the event of a dispute arising in relation to such termination or transfer, the matter shall be referred within seven days to a Board of Reference.

8.—DATE OF OPERATION

This Order shall operate from the commencement of the first pay period beginning on or after 19 January 1996.

SCHEDULE OF RESPONDENTS

Amec Services Pty Ltd
 Bains Harding Industries Pty Ltd
 Barclay Mowlem (W.A.) Ltd
 ABB E.P.T. Pty Ltd
 O'Donnell Griffin
 United Construction Pty Ltd
 Western Constructin Pty Ltd
 The Electrical Contractors' Association of Western Australia (Union of Employers).

7. Travelling Allowance
8. Site Allowance
9. Safety Footwear
10. Liberty to Apply.

Schedule of Respondents.

3.—NO EXTRA CLAIMS

An express condition of this Order is that the unions bound will make no further claims on the employers bound, or the project, over and above the conditions set out in this Order for the life of the Worsley Alumina Refinery Project, except in accordance with the Principles. This no extra claims provision expressly applies to claims for increased severance/termination payments and site allowance payments.

4.—AREA AND SCOPE

This Order shall apply to those employees who, except for the terms of this Order, would be bound by the Metal Trades (General) Award No. 13 of 1965—Part II Construction, the Electrical Contracting Industry Award No. R 22 of 1978, the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 and the Building Trades (Construction) Award No. R 14 of 1978 who are employed by any of the employers named in the Schedule attached to this Order on work at the Worsley Alumina Refinery operated by Worsley Alumina.

5.—TERM

Subject to Clause 6.—General Conditions of Employment and Clause 7.—Travelling Allowance hereof, the term of this Order shall be 12 months from the first pay period commencing on or after 19 January 1996.

6.—GENERAL CONDITIONS OF EMPLOYMENT

Except as provided in Clause 7.—Travelling Allowance and Clause 8.—Site Allowance of this Order, the terms and conditions of each employee covered by this Order shall be as prescribed in the Metal Trades (General) Award No. 13 of 1965—Part II Construction, the Electrical Contracting Industry Award No. R 22 of 1978, the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 and the Building Trades (Construction) Award No. 14 of 1978.

7.—TRAVELLING ALLOWANCE

Each employee who is not provided with transport by the employer to travel to and from the job shall be paid a travel allowance as follows—

	Per Day \$
Employees who travel from a point—	
(1) Up to 30km radial distance from the job site	11.30
(2) 30-60km radial distance from the job site	24.90
(3) More than 60kms radial distance from the job site	32.40

8.—SITE ALLOWANCE

(1) An additional allowance of \$1.16 shall be paid for each hour worked from the first pay period commencing on or after 18th June 1991, provided that this site allowance shall increase to \$1.19 for each hour worked from the first pay period commencing on or after 27th September 1991.

(2) The site allowance in subclause (1) of this clause specifically covers all disabilities associated with any type of work undertaken by employees of the Respondents to this Order at the Worsley Alumina Refinery.

9.—SAFETY FOOTWEAR

(1) Approved safety footwear shall be worn by all employees. The employer shall supply approved safety footwear on an 'as required' basis, subject to the employee returning to the employer the footwear being replaced.

(2) Further, it is agreed between the parties that failure to wear such footwear will render the offending employee liable to disciplinary action, including dismissal.

10.—LIBERTY TO APPLY

(1) The Unions bound have liberty to apply to establish a definition of what constitutes major construction work which is not contemplated under this Order.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Others

and

United Construction Pty Ltd and Others.

No. 1242 of 1995.

Metal, Electrical and Building Trades (Worsley Alumina Refinery Modification and Construction) Order.

SENIOR COMMISSIONER G.G. HALLIWELL.

1 February 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicants and Mr C. Keys on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Metal, Electrical and Building Trades (Worsley Alumina Refinery Modification and Construction) Order, shall replace Order No. 1028 of 1994 in accordance with the following Schedule and shall have effect from the beginning of the first pay period commencing on or after the 19th day of January 1996.

(Sgd.) G.G. HALLIWELL,

[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This Order shall be known as the Metal, Electrical and Building Trades (Worsley Alumina Refinery Modification and Construction) Order No. 1242 of 1995 and, subject to its terms, shall supplement the Metal Trades (General) Award No. 13 of 1965—Part II Construction, the Electrical Contracting Industry Award No. R 22 of 1978, the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 and the Building Trades (Construction) Award No. 14 of 1978 and shall replace Order No. 1028 of 1994.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Order that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. No Extra Claims
4. Area and Scope
5. Term
6. General Conditions of Employment

(2) The Unions bound have liberty to apply for the provision of work clothing to employees of the Respondent employers on site.

SCHEDULE OF RESPONDENTS

Bains Harding Industries Pty Ltd
Devaugh
James Watt Electrical
Jadsco Pty Ltd
O'Donnell Griffin
R.C.R. Engineering Pty Ltd
Ralph M. Lee (W.A.) Pty Ltd
United Construction Pty Ltd

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch

and

Anglican Homes (Inc.) and Others.

No. 1375 of 1995.

House Care Person Interim Wages Order, 1996.

COMMISSIONER R.H. GIFFORD.

8 February 1996.

Order.

Having heard Ms S. Ellery on behalf of the Applicant and Mr P. Robertson on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the House Care Person Interim Wages Order, 1995, being an Order that operates in conjunction with the Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978, be replaced by the following Schedule which shall have effect from the beginning of the first pay period commencing on or after the 27th day of December 1995.

(Sgd.) R. H. GIFFORD,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Order shall be known as the "House Care Person Interim Wages Order, 1996", and shall replace the House Care Person Interim Wages Order, 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Definitions
5. Conditions of Employment
6. Wages
Schedule of Respondents

3.—AREA AND SCOPE

This Order shall only apply to House Care Persons (as defined) employed by the respondents within cluster or modularised nursing homes or group homes, provided that it shall not apply to enrolled nurses.

4.—DEFINITIONS

(1) "House Care Person" shall mean a person appointed as such who is a member of a care team within a cluster or modularised nursing home or group home and who assists residents with all their individual personal, domestic and communal needs.

(2) "Care Team" shall mean the group of individuals responsible for the overall care and well being of residents.

5.—CONDITIONS OF EMPLOYMENT

Except as hereinafter provided the provisions of the Enrolled Nurses and Nursing Assistants (Private) Award No. 8 of 1978 shall be applied to the employees covered by this Order *mutatis mutandis*.

6.—WAGES

(1) (a) The rates of pay in this Order include the first \$8.00 per week Arbitrated Safety Net Adjustment payable under the December 1994 State Wage Decision. This first \$8.00 per week Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset Arbitrated Safety Net Adjustments.

(b) The rates of pay in this Order include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) The minimum weekly rate of wage payable to employees shall be:

House Care Person	Base Rate Per Week \$	Arbitrated Safety Net Adjustments \$	Total Per Week \$
Level One	398.50	16.00	414.50
Level Two	413.00	16.00	429.00

(3) For the purpose of this interim wages order an employee shall be paid at the Level Two rate when:

- (a) the employee has been satisfactorily employed at the House Care Person level One rate for twelve months; or
- (b) the employee had prior experience and has been satisfactorily employed as a Nursing Assistant for a period of three years; or
- (c) the employee has been satisfactorily employed and has had prior experience as a Nursing Assistant and House Care Person Level One provided that the combined experience of the employee in the positions is three years.

SCHEDULE OF RESPONDENTS

Anglican Homes (Incorporated)
416 Stirling Highway
Cottesloe WA 6011
The Homes of Peace (Incorporated)
Thomas Street
Subiaco WA 6008
Rocky Bay (Incorporated)
60 McCabe Street
Mosman Park WA 6012

CONFERENCES— Matters arising out of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Ledger Engineering Pty Limited.

No.'s C 360 & C 382 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

10 January 1996.

Order.

WHEREAS pursuant to Section 44 of the Act, industrial disputes were referred to the Commission; and

WHEREAS on the 6th December, 1995 and the 10th January, 1996, conferences were held by the Commission pursuant to Section 44 of the Act; and

WHEREAS, the parties accepted a recommendation of the Commission, had negotiations and have now reached agreement as to qualification for pro rata long service leave; and

WHEREAS having heard Mr C. Young and Ms S. McGurk on behalf of the applicants and

Mr C. Rocke and Ms J. Athanasoff on behalf of the respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT employees who would qualify for pro rata long service leave after seven (7) years service shall qualify for such pro rata leave provided that their service is not less than three (3) months short of the seven (7) years.

(Sgd.) G. G. HALLIWELL,
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia W.A. Branch

and

O'Donnell Griffin, Bains Harding Industries Pty Limited
and Amec Services Pty Ltd.

No. C 25 and C 31 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

14 February 1996.

Order.

WHEREAS pursuant to Section 44 of the Act an industrial dispute was referred to the Commission; and

WHEREAS on the 7th day of February, 1996 a conference was held by the Commission pursuant to Section 44 of the Act; and

WHEREAS, the parties had negotiations and have now reached agreement as to site allowance; and

WHEREAS having heard Mr F. Logan on behalf of the Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch, Mr L. McLaughlan on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied

Services Union of Australia W.A. Branch, and Mr P. Stillman on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT a site allowance of \$1.70 per hour be paid to employees at the Liquor Burning Project at Alcoa, Wagerup and payment shall commence on and from the 8th day of January, 1996

(Sgd.) G. G. HALLIWELL,
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Others

and

Chiefton Management Pty Ltd.

No. C 4B of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

30 January 1996.

Order.

WHEREAS pursuant to Section 44 of the Act an industrial dispute was referred to the Commission; and

WHEREAS on the 16th, 22nd and 24th days of January 1996 conferences were held by the Commission pursuant to Section 44 of the Act; and

WHEREAS the parties had negotiations and have now reached agreement as to the wage rates; and

WHEREAS having heard Ms D MacTiernan on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr C Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and Mr W Deakin on behalf of The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers, and Mr S Edwards on behalf of the Respondent, and by consent, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document attached hereto and marked Schedule A shall be known as the Chiefton Management Pty Ltd (WABMA Facility Managers) Wages Agreement and shall come into operation on or after the 29th day of January 1996.

(Sgd.) G. G. HALLIWELL,
Senior Commissioner.

[L.S.]

Schedule A

1.—TITLE

This Agreement will be known as the Chieftons Management Pty Ltd (WABMA Facility Managers) Wages Enterprise Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Relationship with Award
 7. Wages
 8. Dispute Settlement Procedure
 9. Ratification
- Appendix A
Allowance Schedule

3.—AREA AND PARTIES BOUND

This is an Agreement between:

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; and

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers; and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch;

hereinafter referred to as the "Unions" and

Chiefton Management Pty Ltd hereinafter referred to as the "Employer" in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Employer, the Unions, their officers and members, and any person eligible to be a member of any of the named Unions employed by the Employer on work pertaining to the Facility Management contracts with the WABMA and covered by the terms of the parent Awards being:

The Metal Trades (General) Award 1966 No. 13 of 1965;

Building Trades (Construction) Award 1987 No. R 14 of 1978; (if applicable)

Building Trades (General) Award 1966 No. 31 of 1966;

The Electrical Contracting Industry Award No. R 22 of 1978.

5.—DURATION

This agreement shall commence from the first pay period on or after 29th January 1996 and shall continue in effect until 30th April 1996.

The parties agree to develop and Enterprise Agreement to comprehensively cover terms and conditions prior to the expiration of this Agreement.

6.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Awards. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the relevant Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award, the higher rate shall apply.

When an employee works on site which is subject to a site agreement the terms and conditions of that agreement shall be paid if higher than the rates specified in this Agreement.

7.—WAGE INCREASE

(a) This Agreement provides for increases resulting in the hourly rates as set out in Appendix A.

8.—DISPUTES SETTLEMENT PROCEDURE

In order to minimise the effect of disputes that may arise between the parties or between the Facilities Manager and its employees, it is agreed that the following procedure will be observed:

- (a) Where a dispute, grievance or other question arises, the employee concerned shall raise the matter with the appropriate Supervisor or other nominated representative. At the employee's option, the shop steward may also be present.
- (b) If not satisfactorily settled, or in cases where the matter is of such a nature as to warrant the omission of the step detailed in subclause (a) hereof, the shop steward and the employee(s) concerned shall discuss the matter with the appropriate Company representative.
- (c) If satisfaction is not achieved, the Shop Steward shall refer the matter to an appropriate full time official of the union, who shall discuss the matter with the appropriate representative of the Company.
- (d) Throughout the foregoing procedure, normal work shall continue. No party shall be prejudiced to final settlement by the continuance of work in accordance with this subclause.

(e) Each of the foregoing steps shall be followed in good faith and without any undue or unreasonable delay by any party.

(f) This procedure shall not apply in the event of any genuine issue involving the safety of the employee, or other person, mobile crane or any other property, whether belonging to the employer or any other person, corporation or entity.

(g) At any stage of this procedure, either party may refer the matter to the Western Australian Industrial Relations Commission for determination.

Alternatively

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as that outlined in Settlement of Disputes of the relevant Award.

9.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after 29th January 1996.

Signed

ON BEHALF OF THE CFMEU

ON BEHALF OF CHIEFTON
MANAGEMENT

ON BEHALF OF THE CEPU
(Electrical Division)

ON BEHALF OF THE CEPU
(Plumbing Division)

ON BEHALF OF THE AMWU

Dated this day of 1996.

APPENDIX A

Components: (Weekly amounts)

Classification	Total Weekly Payment
<i>Electricians</i>	
Level 1	543.00
Level 2A (Leading Hand)	575.30
<i>Carpenters</i> (including locksmiths)	
Category 1	523.00
Category 2 (Leading hand 1)	536.25
<i>Plumbers</i>	
Category 1	533.40
Category 2 (Leading hand 1)	551.35
Category 3 (Leading hand 2)	579.95
<i>Mechanical Fitters</i>	
Level 1	523.00
<i>Electronic Technicians</i>	594.10

ALLOWANCE SCHEDULE.

Electricians
Licence
Construction
Welshpool
Tool
First Aid
Carpenters
Tool
Travel
Disability
First Aid
Administration
Plumbers
Licence
Tool
Disability
First Aid
Administration
Mechanical Fitters
Commuted overtime
Electronic Technicians
Tools

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia—Western Australian
Branch and Others

and

Serco Australia.

No. C 4A of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

30 January 1996.

Order.

WHEREAS pursuant to Section 44 of the Act an industrial
dispute was referred to the Commission; and

WHEREAS on the 16th, 22nd and 24th days of January
1996 conferences were held by the Commission pursuant to
Section 44 of the Act; and

WHEREAS the parties had negotiations and have now
reached agreement as to the wage rates; and

WHEREAS having heard Ms D MacTiernan on behalf of
The Construction, Mining, Energy, Timberyards, Sawmills and
Woodworkers Union of Australia—Western Australian
Branch, and The Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union of Workers—Western
Australian Branch, and Mr C Young on behalf of the
Communications, Electrical, Electronic, Energy, Information,
Postal, Plumbing and Allied Workers Union of Australia,
Engineering and Electrical Division, WA Branch, and Mr W
Deakin on behalf of The Plumbers and Gasfitters Employees'
Union of Australia, West Australian Branch, Industrial Union
of Workers, and Mr S Edwards on behalf of the Respondent,
and by consent, now therefore the Commission, pursuant to
the powers conferred on it under the Industrial Relations Act,
1979 hereby orders—

THAT the document attached hereto and marked Sched-
ule A shall be known as the Serco Australia (WABMA
Facility Managers) Wages Agreement and shall come into
operation on or after the 29th day of January 1996.

(Sgd.) G. G. HALLIWELL,

[L.S.] Senior Commissioner.

Schedule A

1.—TITLE

This Agreement will be known as the Serco Australia
(WABMA Facility Managers) Wages Enterprise Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Relationship with Award
 7. Wages
 8. Dispute Settlement Procedure
 9. Ratification
- Appendix A
Allowance Schedule

3.—AREA AND PARTIES BOUND

This is an Agreement between:

The Construction, Mining, Energy, Timberyards, Saw-
mills and Woodworkers Union of Australia—Western
Australian Branch; and

The Western Australian Builders' Labourers, Painters
and Plasterers Union of Workers; and

Communications, Electrical, Electronic, Energy, Infor-
mation, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA
Branch; and

The Automotive, Food, Metals, Engineering, Printing
and Kindred Industries Union of Workers—Western
Australian Branch;

hereinafter referred to as the "Unions" and

Serco Australia Pty Ltd hereinafter referred to as the
"Employer" in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Employer, the
Unions, their officers and members, and any person eligible
to be a member of any of the named Unions employed by the
Employer on work pertaining to the Facility Management
contracts with the WABMA and covered by the terms of the
parent Awards being:

- The Metal Trades (General) Award 1966 No. 13 of
1965;
- Building Trades (Construction) Award 1987 No. R
14 of 1978; (if applicable)
- Building Trades (General) Award 1966 No. 31 of
1966;
- The Electrical Contracting Industry Award No. R 22
of 1978.

5.—DURATION

This agreement shall commence from the first pay period
on or after 29th January 1996 and shall continue in effect until
30th April 1996.

The parties agree to develop and Enterprise Agreement to
comprehensively cover terms and conditions prior to the
expiration of this Agreement.

6.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with
the Awards. Where this Agreement is silent on rates of pay
and other matters pertaining to the employment relationship,
the relevant Award shall apply. Where there is conflict between
the rates of pay, conditions, allowances and other matters in
this Agreement and the Award, the higher rate shall apply.

When an employee works on site which is subject to a site
agreement the terms and conditions of that agreement shall be
paid if higher than the rates specified in this Agreement.

7.—WAGE INCREASE

(a) This Agreement provides for increases resulting in the
hourly rates as set out in Appendix A.

8.—DISPUTES SETTLEMENT PROCEDURE

In order to minimise the effect of disputes that may arise
between the parties or between the Facilities Manager and its
employees, it is agreed that the following procedure will be
observed:

- (a) Where a dispute, grievance or other question arises,
the employee concerned shall raise the matter with
the appropriate Supervisor or other nominated rep-
resentative. At the employee's option, the shop stew-
ard may also be present.
- (b) If not satisfactorily settled, or in cases where the
matter is of such a nature as to warrant the omission
of the step detailed in subclause (a) hereof, the shop
steward and the employee(s) concerned shall discuss
the matter with the appropriate Company representa-
tive.
- (c) If satisfaction is not achieved, the Shop Steward shall
refer the matter to an appropriate full time official of
the union, who shall discuss the matter with the ap-
propriate representative of the Company.
- (d) Throughout the foregoing procedure, normal work
shall continue. No party shall be prejudiced to final
settlement by the continuance of work in accordance
with this subclause.
- (e) Each of the foregoing steps shall be followed in good
faith and without any undue or unreasonable delay
by any party.
- (f) This procedure shall not apply in the event of any
genuine issue involving the safety of the employee,
or other person, mobile crane or any other property,
whether belonging to the employer or any other per-
son, corporation or entity.
- (g) At any stage of this procedure, either party may refer
the matter to the Western Australian Industrial
Relations Commission for determination.

Alternatively

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as that outlined in Settlement of Disputes of the relevant Award.

9.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after 29th January 1996.

Signed

ON BEHALF OF THE CFMEU

ON BEHALF OF SERCO AUSTRALIA PTY LTD

ON BEHALF OF THE CEPU (Electrical Division)

ON BEHALF OF THE CEPU (Plumbing Division)

ON BEHALF OF THE AMWU

Dated this day of 1996.

APPENDIX A

Components: (Weekly amounts)

Classification	Total Weekly Payment
<i>Electricians</i>	
Level 1	543.00
Level 2A (Leading Hand)	575.30
<i>Carpenters (including locksmiths)</i>	
Category 1	523.00
Category 2 (Leading hand 1)	536.25
<i>Plumbers</i>	
Category 1	533.40
Category 2 (Leading hand 1)	551.35
Category 3 (Leading hand 2)	579.95
<i>Mechanical Fitters</i>	
Level 1	523.00
<i>Electronic Technicians</i>	
	594.10

ALLOWANCE SCHEDULE.

- Electricians
- Licence
- Construction
- Welshpool
- Tool
- First Aid
- Carpenters
- Tool
- Travel
- Disability
- First Aid
- Administration
- Plumbers
- Licence
- Tool
- Disability
- First Aid
- Administration
- Mechanical Fitters
- Commuted overtime
- Electronic Technicians
- Tools

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Others

and

Transfield.

No. C 4C of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

30 January 1996.

Order.

WHEREAS pursuant to Section 44 of the Act an industrial dispute was referred to the Commission; and

WHEREAS on the 16th, 22nd and 24th days of January 1996 conferences were held by the Commission pursuant to Section 44 of the Act; and

WHEREAS the parties had negotiations and have now reached agreement as to the wage rates; and

WHEREAS having heard Ms D MacTiernan on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and Mr C Young on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and Mr W Deakin on behalf of The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers, and Mr S Edwards on behalf of the Respondent, and by consent, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document attached hereto and marked Schedule A shall be known as the Transfield (WABMA Facility Managers) Wages Agreement and shall come into operation on or after the 29th day of January 1996.

(Sgd.) G. G. HALLIWELL,

Senior Commissioner.

[L.S.]

Schedule A

1.—TITLE

This Agreement will be known as the Transfield (WABMA Facility Managers) Wages Enterprise Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Relationship with Award
 7. Wages
 8. Dispute Settlement Procedure
 9. Ratification
- Appendix A
Allowance Schedule

3.—AREA AND PARTIES BOUND

This is an Agreement between:

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; and

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers; and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch;

hereinafter referred to as the "Unions" and

Transfield Construction Pty Ltd hereinafter referred to as the "Employer" in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Employer, the Unions, their officers and members, and any person eligible to be a member of any of the named Unions employed by the Employer on work pertaining to the Facility Management contracts with the WABMA and covered by the terms of the parent Awards being:

The Metal Trades (General) Award 1966 No. 13 of 1965;

Building Trades (Construction) Award 1987 No. R 14 of 1978; (if applicable)

Building Trades (General) Award 1966 No. 31 of 1966;

The Electrical Contracting Industry Award No. R 22 of 1978.

5.—DURATION

This agreement shall commence from the first pay period on or after 29th January 1996 and shall continue in effect until 30th April 1996.

The parties agree to develop and Enterprise Agreement to comprehensively cover terms and conditions prior to the expiration of this Agreement.

6.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Awards. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the relevant Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award, the higher rate shall apply.

When an employee works on site which is subject to a site agreement the terms and conditions of that agreement shall be paid if higher than the rates specified in this Agreement.

7.—WAGE INCREASE

(a) This Agreement provides for increases resulting in the hourly rates as set out in Appendix A.

8.—DISPUTES SETTLEMENT PROCEDURE

In order to minimise the effect of disputes that may arise between the parties or between the Facilities Manager and its employees, it is agreed that the following procedure will be observed:

- (a) Where a dispute, grievance or other question arises, the employee concerned shall raise the matter with the appropriate Supervisor or other nominated representative. At the employee's option, the shop steward may also be present.
- (b) If not satisfactorily settled, or in cases where the matter is of such a nature as to warrant the omission of the step detailed in subclause (a) hereof, the shop steward and the employee(s) concerned shall discuss the matter with the appropriate Company representative.
- (c) If satisfaction is not achieved, the Shop Steward shall refer the matter to an appropriate full time official of the union, who shall discuss the matter with the appropriate representative of the Company.
- (d) Throughout the foregoing procedure, normal work shall continue. No party shall be prejudiced to final settlement by the continuance of work in accordance with this subclause.
- (e) Each of the foregoing steps shall be followed in good faith and without any undue or unreasonable delay by any party.
- (f) This procedure shall not apply in the event of any genuine issue involving the safety of the employee, or other person, mobile crane or any other property, whether belonging to the employer or any other person, corporation or entity.
- (g) At any stage of this procedure, either party may refer the matter to the Western Australian Industrial Relations Commission for determination.

Alternatively

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as that outlined in Settlement of Disputes of the relevant Award.

9.—RATIFICATION

The signatures that follow testify to the fact that this Agreement shall come into effect from the first pay period on or after 29th January 1996.

Signed

ON BEHALF OF THE CFMEU

ON BEHALF OF TRANSFIELD
CONSTRUCTION

ON BEHALF OF THE CEPU
(Electrical Division)

ON BEHALF OF THE CEPU
(Plumbing Division)

ON BEHALF OF THE AMWU

Dated this day of 1996.

APPENDIX A

Components: (Weekly amounts)

Classification	Total Weekly Payment
<i>Electricians</i>	
Level 1	543.00
Level 2A (Leading Hand)	575.30
<i>Carpenters</i> (including locksmiths)	
Category 1	523.00
Category 2 (Leading hand 1)	536.25
<i>Plumbers</i>	
Category 1	533.40
Category 2 (Leading hand 1)	551.35
Category 3 (Leading hand 2)	579.95
<i>Mechanical Fitters</i>	
Level 1	523.00
<i>Electronic Technicians</i>	594.10

ALLOWANCE SCHEDULE.

Electricians
Licence
Construction
Welshpool
Tool
First Aid
Carpenters
Tool
Travel
Disability
First Aid
Administration
Plumbers
Licence
Tool
Disability
First Aid
Administration
Mechanical Fitters
Commuted overtime
Electronic Technicians
Tools

CONFERENCES— Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

BHP Iron Ore Pty Ltd—

Applicant

and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA
Branch—First Respondent

The Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union of Workers Western
Australian Branch—Second Respondent.

No. CR 100 of 1995.

COMMISSIONER A.R. BEECH.

12 January 1996.

Reasons for Decision.

THE COMMISSIONER: In July 1993 BHP Iron Ore Pty Ltd (BHP) and the several unions covering employees at its operations at Mount Newman and Port Hedland agreed to an enterprise bargaining agreement (the EBA) which was registered in the Commission. The dispute between the parties to this matter arises essentially because the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch (CEPU) on the one part and BHP and The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch (AFMEPKIU) on the other, are unable to agree on the implementation of part of the EBA.

The disagreement relates particularly to the part of the EBA relating to the career structure for the mechanical tradespeople. That is contained in part 3.6 of the EBA as follows:

“A) Career Structure Amendments

MEWU

A level 8 (120%) will be introduced into the mechanical career structure with the inclusion of electrical modules.

The content of the modules and the hours involved to attain Level 8 are to be agreed, however will provide an additional degree of cross skilling which may provide access to a restricted electrical licence.”

It is BHP's intention to have six mechanical tradespeople trained in electrical modules so that they qualify and then possess a Restricted Electrical Licence (REL) issued by the Office of Energy (formerly the SEC of WA). However the CEPU has expressed complete opposition to the training of mechanical tradespeople to enable them to gain an REL.

Background

This dispute was initially brought before the Commission in 1994 by way of a conference. As a result of that conference Commissioner Gregor issued a five page Recommendation which concluded that the intent and the purpose of the EBA, when read as a whole, is to allow the type of training which is being proposed for metal tradespeople in the electrical field. He recommended that training commence with six metal tradespeople and that the CEPU assist in the on the job component of the training (C410 of 1994).

That Recommendation was eventually not accepted by the CEPU. BHP then made this application to the Commission. The application effectively seeks the Recommendation of Commissioner Gregor to be issued as an order from these proceedings.

The application is supported by the AFMEPKIU.

The Commission was unable to resolve the dispute by means of a further conference and the application was referred for hearing and determination. Proceedings were held in Perth and Port Hedland over a period of days. Evidence was also taken via video link from a witness in Brisbane.

The Issue to be Determined

What is before the Commission really is more like an interpretation of the EBA as registered in the Commission. Although there was much said in the proceedings about the opposition of the CEPU to RELs as such, the issue really is what the parties agreed to in the EBA. The Commission in these proceedings is not really concerned with the issue of RELs in principle and their implementation at BHP's operations in Mount Newman and Port Hedland. But it is concerned to assist the parties to the EBA in fully implementing the terms of their own agreement.

In relation to their own agreement a number of matters were raised and argued in these proceedings. I propose to deal only with those matters which are of relevance to the conclusions that I have reached. The first of those matters is to note that the EBA was the product of the parties' own agreement. It was not imposed upon them by any third party. They were free to agree to any matters that they wished to agree to. Once having agreed to it, all the parties to the agreement, and the Commission, would expect the parties to abide by their agreement.

The words used by the parties in the EBA do bind them but it is noted that the EBA was the product of long negotiations and is not a document which should be subject to legal interpretation. This was noted by Gregor C and there seems to be a general agreement that this is an appropriate approach. I also agree with those comments. However, at the end of the day the parties are bound by the words that they chose to use and freely agreed to and in interpreting their agreement the Commission will use the parties' own words as the best guide to trying to decide what in fact was agreed between them.

It was argued by the CEPU that because the issue arises from that part of the EBA which was negotiated between BHP and the AFMEPKIU that the CEPU did not agree to the wording and cannot be held to it. However I reject that argument. I am quite satisfied that the CEPU was aware of the wording agreed to in 3.6 part A above and was aware of it when the CEPU voted to accept the agreement and, eventually, signed the agreement. And reference in that part of the agreement to electrical modules, cross skilling and the issue of access to a restricted electrical licence are issues which would be of particular interest to the CEPU and its members. That is quite a different subject from the other parts of the EBA which affects other unions and other employees (for example “trucks, shovels and drills”—per Mr Rooney, transcript p.267) in which the CEPU has no interest. I find that the CEPU was aware of the wording in 3.6 part A and voted to accept the EBA containing those words. I therefore find that it agreed in principle to an additional degree of cross-skilling by metal tradespeople which may provide access to a restricted electrical licence, subject to the content of the modules and the hours involved being agreed.

I am disturbed by the evidence before the Commission which suggests that the CEPU only agreed to sign the EBA because it believed the word “may” in “may provide access to a restricted electrical licence” means “never” (transcript pages 253, 260). The evidence before the Commission is that some cross-skilling in areas of electrical fundamentals, plant electrics and Queensland electronics occurred before the EBA (transcript p.268). I cannot accept the CEPU position that the wording of the EBA, which they agreed to, means no real move beyond that previous position. If the CEPU is to avoid the criticism that it is either not genuine and that its word can no longer be relied on then it must acknowledge that while the content of the modules and the hours involved are to be agreed there will be an additional degree of cross-skilling which may provide access to a restricted electrical licence and it cannot reasonably oppose that by saying it will “never” happen. Whilst I have been fully informed regarding the opposition in principle of the CEPU to RELs, that policy position cannot undo the action of the CEPU in freely entering into an agreement which contains the above provision. It is simply bound by its agreement. In this regard I note that the EBA did confer some monetary benefit upon the CEPU members. The signing of the EBA provided opportunities which led, in some instances, to greater wage rates for electrical workers (transcript page 259). If the concept of “a deal is a deal” is to continue to have the validity that I believe it must have, then the CEPU

must recognise that by signing the agreement and receiving its benefits training will now occur which may lead to the granting of a restricted electrical licence.

Although some time was spent in these proceedings in bringing evidence about what was and was not said by the CEPU during the negotiations which led to the EBA, in my view the wording of their own agreement is sufficient and it is not necessary to go behind the words in the EBA other than in trying to appreciate why the word "may" was used.

The other parties are also bound by their agreement. I make this reference because I suspect from the form of order sought in these proceedings by BHP that BHP, and the AFMEPKIU, intends to act as though the word "may" in "may provide access to a restricted electrical licence" means "will" provide access to a restricted electrical licence. BHP and the AFMEPKIU are as much bound by use of the "may" as is the CEPU.

The parties agreed to use the word "may" for at least two reasons. The first is that at the time the EBA was agreed to, BHP was not sure what cross-skilling training BHP could provide. The content of the modules and the hours involved were not specifically known at that point in time (transcript page 125). Further, the CEPU made it plain in the proceedings that they would not have agreed to the EBA if it had contained the word "will". The CEPU gained some comfort from the use of the word "may". If that was the extent then of the parties' ability to agree on this issue, it is not for the Commission in these proceedings to allow one party to the agreement to take it further than what was freely agreed between them.

It follows that the agreement reached was with the knowledge of all parties of the demarcation between mechanical and electrical work (transcript p.266). A reading of 3.1 Efficiency Measures shows some of the demarcations at BHP. The parties cannot have been unaware that reference to RELs raises a demarcation issue. But unless it is intended that a mechanical tradesperson holding an REL is entitled to be paid at level 8 even if the REL is not used by that person, then the agreement does affect that demarcation.

In dealing with the differences between the parties in this matter it is useful to see the distinction between training in an electrical module which may lead to an REL and the work intended to be performed at BHP by a level 8 mechanical tradesperson.

Conclusions

In my view the Commission will be giving effect to the parties' own agreement by the following requirements:

1. There is to be an agreement between BHP and the AFMEPKIU regarding the content of the modules and the hours involved to attain level 8. I noted the evidence of Mr J Harris that, at the time of the EBA, these issues were not specifically known (transcript page 125). I also noted the suggestion that because subsequently the modules and hours for an REL have been finalised by the Office of Energy that means that the modules and the hours involved to attain level 8 have been agreed (transcript pages 283, 287). But in my view that is not correct. If it was correct, that would be to say that the object of the exercise is merely to have mechanical tradespeople holding restricted electrical licences. If the parties had agreed to that, then they would have used the word "will" and not "may". As I have said before, BHP and the AFMEPKIU are as much bound by the words that they agreed to as is the CEPU.

What is required is for BHP and the AFMEPKIU to agree between them the precise work which they intend to be undertaken by the level 8 as introduced by the EBA into the mechanical career structure. This work needs to be identified with particularity. In this regard I found the evidence brought by BHP which attempted to explain what work would be performed by level 8 mechanical tradespeople to be far too general notwithstanding some attempt by Mr J Harris to give detail (transcript pages 111, 112). Only then will BHP and the AFMEPKIU be able to identify the degree of cross-skilling in total which will be involved. 3.6A envisages that some of the additional cross-skilling will require training. And that training will be by modules which may provide access to

a restricted electrical licence. Equally, some of that training may not. They will be able to identify the content of the modules and the hours involved to attain level 8 in the context of BHP's operations at Mount Newman and Port Hedland. A copy of this agreement is to be forwarded to the Commission.

2. The agreement then reached is to be discussed with the CEPU. And the CEPU cannot retain integrity if it refuses to provide any training in a particular module at all merely because that module may provide access to a restricted electrical licence. In this regard the CEPU acknowledged that RELs were "the law of the land".
3. If agreement is reached with the CEPU then, in accordance with the original Recommendation of Gregor C, training will commence with six mechanical tradespeople. This will enable the operation as a whole to be monitored by all parties in the interests of good industrial relations.

In the event that agreement with the CEPU is not possible then the Commission may decide that an order in the terms sought by BHP, or similar to the terms sought by BHP, may be necessary. However in my view the orders as sought should only issue after the steps the parties agreed to themselves in 3.6A have been followed. The Commission will then have the advantage of tailoring any order to issue to the specific circumstances revealed in the agreement between BHP and the AFMEPKIU. This is preferable to the quite general order sought by BHP presently.

The Commission therefore proposes:

- (a) To require BHP and the AFMEPKIU to meet as set out above.
- (b) To then require the CEPU to meet with BHP and the AFMEPKIU in accordance with the above.
- (c) To require the above to happen in a time frame to be agreed between the parties; but the Commission would envisage that occurring in two or, at the most, three weeks.
- (d) To re-convene these proceedings in Port Hedland at a date to be fixed, but which will occur shortly after the parties have implemented parts (a) and (b) above. The purpose of the re-convening is for the Commission to be informed on the success or otherwise of the steps set out above and to endeavour to assist the parties informally. If agreement is not possible then the Commission will give consideration to issuing an order at that time. In doing so the Commission will provide a further opportunity for the parties to be formally heard on the content of the order before any order issues.

My Associate will contact the parties shortly after the delivery of these Reasons for Decision to arrange the times for the re-convening.

Appearances: Mr M Borlase and with him Mr Carey appeared for BHP Iron Ore Pty Ltd.

Mr AF Lovell and with him Mr McCulloch for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

Mr J Mossenton for The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers' Union, Miscellaneous Workers' Division, Western
Australian Branch

and

Main Roads Department.

No. CR 83 of 1994.

COMMISSIONER C.B. PARKS.

31 January 1996.

Reasons for Decision.

THE COMMISSIONER: Situated within the premises of the Main Roads Department ('the Department') at Waterloo Crescent, East Perth is a cafeteria which, until March 1994, had been staffed by Mesdames P. Blewett (the Manageress), P. Shafto, J. Gibson, C. Schrimpt and D. Lloyd. The applicant union asserts that the Commissioner for Main Roads ('the CMR') had been the employer of the aforementioned five women, or alternatively, the CMR had represented to them that he had been their employer, and requests that the CMR order that the five women be reinstated in the employment positions they held (or their equivalent), or alternatively, the CMR be ordered to employ the women. The CMR denies having employed the five women, or having represented to them he was their employer, and objects to the relief claimed. It is contended by the CMR that the five women had been employed by the Head Office Social Club (Inc.), previously known as the M.R.D. Social Club (Inc.), hereinafter referred to as the 'Social Club'.

A statement of agreed facts has been submitted to the Commission and is set out hereunder—

“STATEMENT OF AGREED FACTS

1. Ms Patricia Shafto commenced employment at the staff canteen situated in the Don Aitken Centre, Waterloo Crescent, East Perth on 1 February 1972.
2. Ms Connie Schrimpt commenced employment at the said canteen on 14 July 1975.
3. Ms Dawn Lloyd commenced employment at the said canteen on 7 December 1981.
4. Ms Patricia Blewett commenced employment at the said canteen on 9 October 1989.
5. Ms Joan Gibson commenced permanent part-time employment at the said canteen on 19 September 1992.
6. The contract of employment of Messrs Shafto, Gibson, Schrimpt and Lloyd was terminated on 7 March 1994.
7. The contract of employment of Ms Blewett was terminated on 28 March 1994.
8. The duties performed by Messrs Shafto, Gibson, Schrimpt and Lloyd would, if the employer is found to be the Commissioner for Main Roads, bring them within the scope of the Catering Employees and Tea Attendants (Government) Award 1982, No. A34 of 1981, but the scope does not preclude employees other than those employed by the Commissioner of Main Roads to be engaged under the award.
9. Alternatively, the duties performed by Messrs Shafto, Gibson, Schrimpt and Lloyd would, if the employer is found to be the Main Roads Social Club (Inc), bring them within the scope of the relevant private sector award—that award being the Restaurant, Tea-room and Catering Workers' Award, 1979 No. R48 of 1978.
10. The duties performed by Ms Blewett would, if the employer is found to be the Commissioner for Main Roads, bring her within the scope of the Government Officers' Salaries Allowances and Conditions Award, 1989.
11. Alternatively, the duties performed by Ms Blewett would, if the employer is found to be the Main Roads Social Club (Inc), render her effectively award free.
12. If the five aforementioned workers were found to have been employed by the Commissioner for Main Roads, then the provisions of the Western Australian Government Employees Redeployment, Retraining and Redundancy General Order (Ref: 73 WAIG 216) should have been applied to those particular employees. In relation to Ms Shafto, Schrimpt, Lloyd and Gibson the General Order would apply by virtue of the provisions of Clause 1.—Scope, Clause 2.—Definitions and Schedule B—List of Award (sic) to Which This Order Applies [Catering Employees and Tea Attendants (Government) Award 1982, No. 34 of 1981]. In relation to Mrs Blewett the General Order would apply by virtue of the provisions of Clause 1.—Scope, Clause 2.—Definitions and Schedule B—List of Award (sic) To Which This Order Applies [Government Officers Salaries, Allowances and Conditions Award 1989].
13. The provisions of the Catering Employees and Tea Attendants (Government) Award 1982, No. 34 of 1981 and its predecessor the Cafeteria, Catering and Tea Attendants (Government) Award No. 21 of 1972 have always been applied to Ms Shafto, Schrimpt, Lloyd and Gibson.
14. Some of the provisions of the Government Officers' Salaries, Allowances and Conditions Award 1989 have been applied to Mrs Blewett.
15. The provisions of the Long Service Leave State Government Wages Employees General Order (Ref: 66 WAIG 319) were applied to Ms Shafto, Schrimpt and Lloyd.
16. In general, the Long Service Leave State Government Wages Employees General Order provides for an entitlement of 13 weeks' LSL.
 - (a) after a period of 10 years' continuous service; and
 - (b) after each further period of seven years' continuous service
 for 'all Government wages employees employed by a Public Authority'.
17. In accordance with the provisions of the aforementioned General Order, Ms Shafto has been allowed the following periods of LSL—
 - (a) 6 weeks' LSL commencing 3 May 1982, return to work 14 June 1982 (see p.76, Volume 1—Exhibit Book)
 - (b) 7 weeks' LSL commencing 12 July 1982, return to work 30 August 1982 (see p.72, Volume 1—Exhibit Book)
 - (c) 4 weeks' LSL commencing 21 May 1990, return to work 18 June 1990 (see p.44 and also p.52, Volume 1—Exhibit Book)
 - (d) 5 weeks' LSL commencing 3 February 1992, return to work 9 March 1992 (see p.16 and also p.27, Volume 1—Exhibit Book)
 - (e) 4 weeks' LSL commencing 9 November 1992, return to work 7 December 1992 (see p.10, Volume 1—Exhibit Book)
 The outstanding balance of Long Service Leave due under the aforementioned General Order was paid out on termination.
18. In accordance with the provisions of the aforementioned General order Ms Connie Schrimpt has been allowed the following periods of LSL—
 - (a) 13 weeks' LSL commencing 2 September 1985, return to work 2 December 1985 (see p.37, Volume 3—Exhibit Book)
 - (b) 6 weeks' LSL commencing 25 January 1993, return to work 8 March 1993 (see p.20, Volume 3—Exhibit Book)

The outstanding balance of Long Service Leave due under the aforementioned General Order was paid out on termination.

19. In accordance with the provisions of the aforementioned General Order Ms Dawn Lloyd has been allowed the following period of LSL—

(a) 13 weeks' LSL commencing 4 May 1992, return to work 3 August 1993 (see p.15, Volume 4—Exhibit Book)

The outstanding balance of Long Service Leave due under the aforementioned General Order was paid out on termination.

20. In the case of Ms Shafto, Schrimpt, Gibson and Lloyd all other forms of leave (ie: sickness, annual leave etc) were granted in accordance with the provisions of the Catering Employees and Tea Attendants (Government) Award.
21. All of the five employees were members of the State Government Employees Superannuation Fund administered by the Government Employees' Superannuation Board.
22. Membership of the fund is only available to employees of the State Government working in any of its departments, agencies or instrumentalities (see p.17 of Volume 6—Exhibit Book).
23. A number of Workers' Compensation claims were made by the employees during the period of their employment. All such claims were processed with the 'Main Roads Department' being named as the relevant employer. The State Government Insurance Office accepted liability in all of the claims on behalf of the Main Roads Department (see p.32 of Volume 3—Exhibit Book, p.23, Volume 2—Exhibit Book, P.53, Volume 1—Exhibit Book).
24. Personnel files were kept by the Main Roads Department in relation to each of the five employees. Ms Shafto's file is numbered 6-1310, Ms Blewett's file is numbered 6-4078, Ms Gibson's file is numbered 6-4122V2, Ms Schrimpf's file is numbered 6-2648, Ms Lloyd's file is numbered 6-4194. All of these are located in Exhibit Books, Volume 1—5.
25. All of the five employees were recorded on the Government's Personnel Information Management System (PIMS). Each of them was allocated an 'Employee's Number' on that system (see PIMS Extracts on Volume 6—Exhibit Book).
26. All Group Certificates issued to the five employees listed the 'Main Roads Department' as being the employer.
27. The 'Statement of Termination Payment (Employer)' provided by the employer to the Australian Taxation Office on behalf of each of the five employees lists the 'Main Roads Department' as the 'Employer'. It also records the relevant commencement date for each employee (see p.1—Volume 1, p.3—Volume 2, p.1—Volume 3, p.1—Volume 4 and p.1—Volume 5).
28. The provisions of the Western Australian Government Employees Redeployment, Retraining and Redundancy General Order were not applied to the 5 employees."

It is argued by the union that the role of the Social Club in relation to the cafeteria was the management thereof, but that such did not include the employment of the Manager and the other female persons who staffed the cafeteria. It is said that each of the five women for whom relief is sought commenced employment in the cafeteria believing that, in effect, they had been engaged as employees of the department. That belief was reinforced throughout their employment because the administrative matters associated with their employment had been addressed, recorded and actioned by the Department via its standard forms and processes. Examples thereof were pro-

vided to the Commission and included matters such as the Department; paying wages to the five women in its name; accepting liability as the employer in relation to workers compensation insurance and claims; accepting and processing applications to join a superannuation fund as if the five women had been its employees, and therefore entitled to join the fund, which they were not as employees of the Social Club; and finally the Department having issued Statements of Termination Payments, and Group Certificates for taxation assessment purposes, which cite the Department as their employer. The union also contends that the 'Cafeteria committee', because it was formed on the basis that it include a representative of the CMR was a body formed to oversee the management and operation of the cafeteria and thereby ensure such suited the Department. All this the union argues is evidence that the CMR was the employer of the cafeteria staff, or if that be in doubt, the CMR represented to be the employer and ought be deemed such.

On behalf of the CMR it has been put that he did not employ any of the cafeteria staff, including the several Managers, nor did the CMR purport to do so. The involvement of the CMR is said to have been limited to an arrangement whereby the CMR undertook to assist the Social Club in its operation of the cafeteria. To the extent that assistance included employment related matters, such was said to be limited to providing a subsidy to meet the wages costs of the manager and by providing the administrative resources of the Department to maintain employment records, pay wages, and generally administer the employment related matters according to established Departmental procedures. It is said that since the cafeteria commenced operation the CMR has done no more than meet that arrangement through the use of Departmental documentation and processes. It is conceded that there have been occasions when Departmental processes have been unnecessarily applied and the Department has mistakenly been named as the employer of the cafeteria staff in documentation issued in relation to those staff. Although that be the case, it is argued that such does not alter the factual position that none of the cafeteria staff were engaged on behalf of the CMR but were engaged on behalf of the Social Club which they were served as employees, it is said. As a matter of administrative assistance, the CMR provided the system, and initially the funds, to pay the wages to the cafeteria staff and, except in relation to the Manager, the funds expended were reimbursed at predetermined intervals. As for the Manager, the CMR was not reimbursed his overall employment costs for the majority of the time that the Social Club operated the cafeteria, but that represented a subsidy to the Social Club and not the employment of the Manager.

Each of the five women gave testimony to the Commission together with, Mr W.J. Allen who had been President of the Social Club circa 1963 to circa 1973, Mr G.R. Harris who joined the Social Club Committee circa 1984 and since that date has also been Chairman of the 'Cafeteria committee'. Mr Harris also served for a period as Vice President of the Social Club and for approximately 3 years prior to 1994 had served as President of the Club. Mr B.N. Manson who, for approximately 6 years prior to 1994 and on several occasions prior to that, served as the representative of the CMR on the 'Cafeteria committee'.

In or about 1970 the Department relocated to premises at Waterloo Crescent which had been newly constructed and included a cafeteria facility. In January 1969, whilst the premises were under construction, the Social Club proposed to the CMR that the cafeteria be leased to it for a nominal annual rental charge and on the basis that the Department meet all the establishment costs necessary to ensure that the cafeteria was fully operational (except labour and food stocks) at the date of hand over to the Social Club and thereafter the Department to be responsible for the cleaning, power, light and maintenance and replacement of all the equipment used in the cafeteria. It was also proposed that a sub-committee of the Social Club be formed to control the operations of the cafeteria through a full time Manager or Manageress. In June of 1969 the CMR accepted the Social Club proposal, on the conditions that the Social Club be responsible for certain cleaning duties and that the Department had the right to nominate a representative on the proposed cafeteria sub-committee. The conditions named by the CMR were accepted by the Social

Club and the Social Club commenced to operate the cafeteria when completed.

The cafeteria was not operated by the Social Club as a commercial venture but as one to provide benefits to the Departmental employees, its members, at the least possible cost to them. Accordingly, the finances of the cafeteria were structured with the principle intention of its income balancing expenditure. A change in government policy required that departmental cafeterias become essentially financially self supporting and, as a consequence, the CMR reviewed the cost implications of his Department's contribution toward the Social Club operating the cafeteria. That review led to the CMR withdrawing his agreement to meet the employment cost of the cafeteria Manager and resulted in the arrangement with the Social Club that, from 1991 onward, it would meet that cost. Thereafter, the viability of the cafeteria declined and caused the Social Club to decide that it would cease to operate the cafeteria and it so ceased in March 1994. The Commission is told that in the week following the Social Club ceasing to operate the cafeteria a new party commenced to operate the cafeteria under a lease arrangement.

The Social Club trading results for the period 4 to 29 January 1971 reflect substantial monetary sums expended for wages or allowed for other employee related benefits. A subsequent report provided by the President of the Social Club on 11 May 1971, made at the request of the CMR, records that the Social Club had been unable to set aside the reserve funds necessary to meet its future obligations regarding accumulating employee benefits.

In May 1987 the Department reviewed its involvement with the conduct of the cafeteria and an internal report from the Clerk In Charge Expenditure, dated 3 April 1987, lists the wages of the cafeteria Manager as being paid for by the Department and the wages of other categories of cafeteria employees as paid for by 'the Cafeteria'. A further Departmental report dated 26 September 1989 reveals that if the costs borne by 'the Cafeteria', were to be increased to include the salary of the cafeteria Manager and other charges, the operation would not remain viable.

A profit and loss statement of the Social Club, regarding the cafeteria for the period 1 November 1989 to 31 December 1989, lists a substantial operating expense which is described as wages.

A communication from the Social Club to the Department, dated 30 July 1990, indicates that the Department then met the cost of wages and other employment related matters in relation to the Manager and other employees in the cafeteria, and that in turn, the Department recouped from the Social Club the cost of wages but excluding that for the Manager. That memo proposes that the cafeteria Manager's wages and employment related costs be met by the Social Club in the future, but phased in so that such was totally met by the Social Club from January 1991 onward.

The cafeteria commenced operation under an unidentified male manager who was followed in that position by Mrs King, Mr B. Haffenden, Mr D. Phillipsz, and finally by Mrs P.J. Blewett. Each of these persons the union asserts were, as Managers, employees of the CMR and they engaged the other cafeteria staff as an agent of the CMR.

Mesdames Shafto, Schrimpf and D. Lloyd were each engaged to work in the cafeteria by Mrs King. Mrs Blewett was originally engaged to work in the cafeteria by Mr Phillipsz and later promoted and appointed Manager, according to her, by the 'Cafeteria committee'. Mrs Gibson was appointed by Mrs Blewett after she had become manager. According to Mr Harris he, acting on behalf of the Social Club, appointed Mrs Blewett to the position of Manager of the cafeteria and, in addition, he engaged the two managers who preceded her, although he also described each of the three events as having been effected by the 'Cafeteria committee'.

It is clear from the evidence that during the period circa 1970 to March 1994, a form of committee controlled the operation of the cafeteria. This body has been referred to in proceedings and exhibits, as both the 'Cafeteria sub-committee' and the 'Cafeteria committee', and while operational this body was constituted of members of the Social Club and a representative appointed by the CMR. Mr Manson was the representative of the CMR for in excess of six years.

The CMR is the principal of the Department staffed by employees who, by dint of that employment, are eligible to be members of the Social Club. Consequently it is those employees from the Department who are members of the Social Club who have been elected to fill the offices and committee positions that have been responsible for the management of the Social Club. They, together with other employees of the CMR who have dealt with administrative matters, have done so as an adjunct to their Departmental duties using Departmental forms and processes. I therefore believe that the separate roles between acting as an employee of the CMR and that of an elected person acting on behalf of the Social Club, would not have been apparent to the staff employed in the cafeteria. The processing of the documentation shows that others also had difficulty separating the different roles.

Exhibited to the Commission are two copies of the constitution and rules of the Social Club, one copy dated April 1974, and another undated copy said by the Advocate for the CMR to have been published in the 1980's. I observe that the undated copy could not have been published prior to 1987 because such contains a reference to the Associations Incorporation Act 1987. According to the 1974 rules, management of the Social Club is vested in a committee constituted of certain past office bearers, office bearers, and a number of committee members elected at an annual general meeting. That committee had the express power to employ staff to carry out its objects and functions and, in addition, had the power to appoint sub-committees to which it could delegate its functional authority. The rules and constitution published circa 1987, and applicable at March 1994, declare that the affairs of the Social Club, are to be managed exclusively by a 'Committee of Management' consisting of office bearers, one past office bearer, and a number of other elected persons and that such committee has the express power to employ staff to operate the 'MRD Cafeteria'. The named office bearers and the past office bearer are, as a group, described as 'the Executive', and that body has the power to manage the day to day affairs of the Social Club subject to it reporting to the 'Committee of Management'. Hence I find that under the 1974 rules the Social Club was empowered to form a specialised sub-committee to manage the cafeteria but not so under the rules applicable since circa 1987. From that time onward the 'Committee of Management', or the 'Executive body', were empowered to manage the affairs of the Social Club and therefore the cafeteria. In either case, whether under the rules as published in 1974, or those published circa 1987, there was never power for the CMR to directly appoint a person to any committee of the Social Club nor did the Social Club have power to sanction such an arrangement.

The Social Club's 26th (1989) and 27th (1990) Annual Reports both list what are described as the 'Committee' and various 'Sub Committees'. Listed under the heading 'Committee' are the names of the numerous members who constituted that body each year and therein those of them who held office are identified accordingly. Hence it is reasonable to assume that this body constituted the 'Committee of Management'. Under the heading 'Sub Committee' is the

sub-heading 'Catering' and that is followed by the names of the several persons listed as the membership of that body.

It is readily apparent that the body of persons named under the heading 'Catering' was neither the 'Committee of Management', nor was it 'the Executive' body, of the Social Club and therefore the body described as the 'Catering' sub-committee certainly had no power to make decisions for the Social Club upon the management and operation of the cafeteria. The rules and constitution of the Social Club do not provide for either of the governing bodies to delegate any of their powers or functions. It is therefore my opinion that the 'Catering committee' was not empowered to function as it has been said to have done. The situation may also be that a body of this type, ie. a sub or lesser committee established for any purpose, had no valid standing under the rules and constitution, circa 1987.

According to Mr Manson the representative of the CMR was not a true member of the 'Catering committee' but was involved as an observer and advisor. Both Messrs Allen and Harris described the role of such representative in a similar way. I therefore conclude that the representative of the CMR

was not a member of the 'Catering committee' but, was a person given the ongoing right to attend each meeting of that body. Were it otherwise and the representative had been allowed to function as a true member, that circumstance although not correct, would not have given that body a character separate from the Social Club.

The body described as the 'Catering committee' was originally formed as, and in my view continued to function as, a limb of the Social Club notwithstanding that from circa 1987 the body may not have been validly constituted, or may have acted in excess of power. The Social Club accepted and operated as if the actions of that body were its own. It was not a body which was formed, or which operated throughout, as one acting for and on behalf of the CMR.

Mrs Blewett, from the time she became Manager, and as a consequence of that, was the only one of the five female staff to have any direct contact with the 'Cafeteria committee'. Mrs Blewett understood that body to represent the Social Club, that it had promoted her to Manager, and that she was subject to its control regarding the management of the cafeteria.

I am satisfied that the foregoing analysis shows that the CMR did not intend to, nor did he, or some agency acting on his behalf, employ the several managers of the Cafeteria. His association with the position of Manager was limited to meeting the employment cost of the appointed person by means of a subsidy to the Social Club. Although the Department paid the Manager's wages it did not do so as the employer. That was done for all staff employed in the Cafeteria as administrative assistance to the Social Club and the expenditure by the CMR was recouped from the Social Club except to the extent of the subsidy. The Social Club employed the several Managers and through their agency the subordinate cafeteria staff. It is a most unsatisfactory state of affairs that various documentation issued by the Department identifies the five women as employees of the Department, that is, the CMR. However, that does

not alter the fact of the employment, nor does it or the simple beliefs of the five women that they had been employed by the CMR, warrant the Commission directing they be now employed by the CMR. This application will therefore be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Commissioner for Main Roads.

No. CR 83 of 1994.

COMMISSIONER C.B. PARKS.

31 January 1996.

Order:

HAVING heard Ms D. Blaskett on behalf of the Applicant and Mr J. Taya on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,
Commissioner.

[L.S]

CONFERENCES—Notation of—

Parties	Number— Commissioner	Date	Matter	Result	
Australian Workers' Union and Others	BHP Iron Ore Pty Ltd and Others	Halliwell S.C. C339/1995	17/11/95 24/11/95	Proposed Enterprise Bargaining Agreement	Concluded
Australian Workers' Union	Durba Springs Pty Ltd	Halliwell S.C. C308/1995	25/10/95	Reinstatement	Concluded
Australian Nursing Federation	Ngaanyatjarra Health Service	Parks C. C156/1995	N/A	Time and Wages Record	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Centurion Industries Ltd	Halliwell S.C. C323/1995	14/11/95	Non Payment of Superannuation Contributions	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Collier Smash Repairs	Halliwell S.C. C367/1995	N/A	Non-Payment for Overtime and Holiday Pay	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Direct Engineering Pty Limited	Halliwell S.C. C381/1995	5/1/96	Rates of Pay	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Harnischferger of Australia Pty Ltd	Halliwell S.C. C330/1995	9/11/95	Enterprise Agreement	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	United Construction Pty Limited	Halliwell S.C. C279/1995	26/9/95	Strike Action	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Baldivis Mobile Repairs	Halliwell S.C. C10/1996	N/A	Non Payment of Penalties	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and Another	ABB-EPT Construction Pty Ltd	Fielding C. C278/1995	26/9/95	Site Agreement	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Transfield Construction Pty Ltd (WA)	Parks C. C337/1995	N/A	Industrial Action	Concluded
Builders, Labourers, Painters and Plasterers Union	Programmed Maintenance Services Pty Ltd	Beech C. C486/1994	N/A	Superannuation Contribution	Concluded
Civil Service Association	Dept of Occupational Health, Safety and Welfare	Parks C. PSA C17/1995	30/3/95	Enterprise Bargaining Agreement	Concluded
Civil Service Association	Director General, Dept. of Transport	Parks C. PSA C64/1995	17/11/95	Reclassification	Concluded

	Parties	Number— Commissioner	Date	Matter	Result	
	Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	O'Donnell Griffin and Another	Halliwell S.C. C317/1995	26/10/95 30/10/95	Industrial Action	Concluded
	Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	Building Management Authority	Halliwell S.C. C364/1995	11/12/95	Employment Status	Concluded
	Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	Wundowie Foundry Pty Ltd	Halliwell S.C. C70/1995	4/4/95 11/5/95	Credit of Extra Annual Leave	Referred
	Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union	Wundowie Foundry Pty Ltd	Halliwell S.C. CR70/1995	4/4/95 11/5/95	Credit of Extra Annual Leave	Discontinued
	Electrical, Electronics, Foundry and Engineering Union	Ralph M Lee Pty Ltd	Beech C. C394/1994	11/10/94 3/2/95	Logs of Claims	Referred
	Electrical, Electronics, Foundry and Engineering Union	Argyle Diamond Mines Pty Ltd	Halliwell S.C. C127/1995	8/6/95 9/6/95	Interpretation of Award	Concluded
	Electrical, Electronics, Foundry and Engineering Union	Austral Ships Pty Ltd and Another	Halliwell S.C. C87/1995	18/5/95	Right of Entry	Concluded
	Electrical, Electronics, Foundry and Engineering Union	ERG Electronics Ltd	Halliwell S.C. C242/1995	N/A	Dismissals	Concluded
	Electrical, Electronics, Foundry and Engineering Union	Ministry of Justice	Halliwell S.C. C78/1995	27/3/95	Refusal to reclassify	Concluded
	Electrical, Electronics, Foundry and Engineering Union	Orbital Engine Company	Halliwell S.C. C132/1995	24/5/95	Disciplinary Action	Concluded
	Electrical, Electronics, Foundry and Engineering Union	Fremantle Hospital	Halliwell S.C. C224/1995	N/A	Classification of employee	Concluded
	Electrical, Electronics, Foundry and Engineering Union	Werstern Mining Corporation	Halliwell S.C. C157/1995	N/A	Change of terms of employment	Concluded
	Food Preservers' Union	Smiths Snackfood Co	Gifford C. C350/1995	21/12/95	Shift Work Roster	Concluded
	Hospital Salaried Officers Association	St. John of God Hospital	Parks C. C479/1994	N/A	Enterprise Agreement	Discontinued
	Independent Schools Salaried Officers' Association	Moerlina School	Parks C. C159/1995	19/06/95	Calculation of Remuneration	Concluded
	Liquor, Hospitality and Miscellaneous Workers' Union	Hon. Minister for Employment and Training	Beech C. C495/1994	21/12/94	Reduction of Hours	Concluded
	Liquor, Hospitality and Miscellaneous Workers' Union	Education Department of W.A.	Coleman C.C. C333/1995	13/11/95 14/11/95	Bans	Discontinued
	Liquor, Hospitality and Miscellaneous Workers' Union	Berkeley Challenge P/L	Gifford C. C250/1995	N/A	Dismissal	Discontinued
	Liquor, Hospitality and Miscellaneous Workers' Union	Curtin University Child Care Centre	Gifford C. C10/1995	21/1/95	Pro-rata Long Service Leave	Discontinued
	Liquor, Hospitality and Miscellaneous Workers' Union	Management Committee, Lotus Child Care and Learning Centre	Gifford C. C325/1995	N/A	Classification of employee/member	Discontinued
	Liquor, Hospitality and Miscellaneous Workers' Union	Regal City P/L t/a Albion Hotel	Gifford C. C374/1995	11/1/96	Dismissal	Discontinued
	Liquor, Hospitality and Miscellaneous Workers' Union	Brambles Armoured, A Division of Brambles Security Services Limited	Halliwell S.C. C298/1995	1/11/95	Reinstatement to Level 4	Concluded
	Meat Industry Employees' Union	Meatworld Wanneroo Pty Ltd	Halliwell S.C. C65/1995	27/3/95	Dismissals	Concluded
	Meat Industry Employees' Union	Western Meat Packers	Halliwell S.C. C114/1995	N/A	Redundancy	Concluded
	Meat Industry Employees' Union	Metro Meat International Ltd	Halliwell S.C. C336/1995	N/A	Industrial Action	Concluded
	Meat Industry Employees' Union	Metro Meat International Ltd	Halliwell S.C. C165/1995	12/6/95	Payment for Standdown	Concluded
	Meat Industry Employees' Union	Metro Meat International Ltd, Katanning Division	Halliwell S.C. C227/1995	28/7/95	Industrial Action	Concluded
	Metals and Engineering Workers' Union	ANI Products—Wear Products Division	Halliwell S.C. C135/1995	30/5/95 21/6/95	Hours of Work	Concluded
	Metals and Engineering Workers' Union	Du Feu Metals	Halliwell S.C. C424/1994	9/11/94	Industrial Action	Concluded
	Metals and Engineering Workers' Union	East Perth Electrical Services	Halliwell S.C. C413/1994	20/10/94 9/11/94	Dismissal	Concluded
	Metals and Engineering Workers' Union	Howard Porter Pty Ltd	Halliwell S.C. C222/1995	14/8/95	Reimbursement for cost of tools	Concluded

	Parties	Number— Commissioner	Date	Matter	Result	
	Metals and Engineering Workers' Union	Main Roads Department	Halliwell S.C. C57/1995	N/A	Job Cuts	Concluded
	Metals and Engineering Workers' Union	Midland Brick Co Pty Ltd	Halliwell S.C. C182/1995	26/6/95	Enterprise Bargaining	Concluded
	Metals and Engineering Workers' Union	Stalker Pumps	Halliwell S.C. C435/1994	9/11/94	Clearance to work on site	Concluded
	Metals and Engineering Workers' Union	Travelle Engineering Pty Ltd	Halliwell S.C. C101/1995	3/5/95	Wages and Conditions	Concluded
	Metals and Engineering Workers' Union	Mywest Australia	Halliwell S.C. C91/1995	4/5/95	Contractual Benefits	Concluded
	Metals and Engineering Workers' Union	HVAC Constructions Ltd and Another	Halliwell S.C. C36/1995	N/A	Benefits	Concluded
	Metals and Engineering Workers' Union	Ledger Engineering Pty Ltd	Halliwell S.C. C216/1995	N/A	Industrial Action	Concluded
	Metals and Engineering Workers' Union	Sunshine General Industries Pty Ltd	Halliwell S.C. C155/1995	2/6/95	Breach of Right of Entry Provisions	Concluded
	Metals and Engineering Workers' Union	City of Perth	Halliwell S.C. C121/1995	4/5/95	Mechanical Workshop	Concluded
	Metals and Engineering Workers' Union	United Construction Pty Limited	Halliwell S.C. C140/1995	19/5/95 22/5/95 25/5/95	Overtime Bans	Concluded
	Metals and Engineering Workers' Union	Jonquest Pty Ltd	Beech C. C278/1994	31/8/94 20/9/94 7/10/94	Non-payment of Wages to an Employee	Concluded
	Municipal, Administrative, Clerical and Services Union	TAB of W.A.	Beech C. C376/1995	22/12/95	Enterprise Bargaining Agreement	Concluded
	Railways Union	Western Australian Government Railways Commission	Scott C. C217/1995	1/8/95 15/9/95	Discriminatory Practice	Concluded
	Shop, Distributive and Allied Employees' Association	Jentech Pty Ltd t/a River Fresh Supa Value	Beech C. C358/1994	16/9/94 20/10/94 25/11/94 13/9/95 22/11/95	Reinstatement and Contractual Benefits	Concluded
	Shop, Distributive and Allied Employees' Association	Competitive Foods Ltd	Gifford C. C300/1995	9/11/95 15/12/95	Employment Status	Concluded
	Shop, Distributive and Allied Employees' Association	Fremantle Dumpers Limited	Gifford C. C190/1995	30/6/95	Redundancy	Concluded
	Shop, Distributive and Allied Employees' Association	Woolworths (WA) Limited	Gifford C. C349/1995	15/12/95	Payment for Overtime	Concluded
	Sir Charles Gairdner Hospital	Richard Cowe	Parks C. C256/1995	N/A	Long Service Leave	Discontinued

CORRECTIONS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers and Others
and

Coca Cola Bottlers and Others.

No. 1181 of 1995.

Building Trades Award 1968.

No. 31/1966.

COMMISSIONER P E SCOTT.

9 January 1996.

Correction Order.

WHEREAS an error occurred in the issuance of an Order in this application on the 22nd day of December 1995, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders the correction to be made in accordance with the following schedule—

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

Schedule.

3. Clause 23.—Distant Work:

B. Delete the amount of \$11.00 in subclause (9) and insert \$11.30 in lieu thereof.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers
and

Blastcoaters Pty Ltd and Others.

No. 1179 of 1995.

Industrial Spraypainting and Sandblasting Award 1991.

No. A33 of 1987.

COMMISSIONER P E SCOTT.

9 January 1996.

Order.

WHEREAS an error occurred in the issuance of an Order in this application on the 22nd day of December 1995, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders the correction to be made in accordance with the following schedule—

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

Schedule.

2. Clause 31.—Compensation for Clothes and Tools: Delete the amount of \$1009.00 in paragraph (a) of subclause (2) and insert \$1054.00 in lieu thereof.

3. Clause 47.—Fares and Travelling:

- B. Delete the amount of 33 cents in subparagraph (ii) of paragraph (b) of subclause (5) and insert 34 cents in lieu thereof.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Governor of Western Australia and Others.

No. 1096 of 1994.

COMMISSIONER C.B. PARKS.

12 January 1996.

Correcting Order.

HAVING heard Mr N.D. Ellery on behalf of the Applicant and Ms C. Zadkovich and with her Ms C. Baetge on behalf of the Respondents and by consent;

AND WHEREAS by consent of the parties the Commission issued an order No. 1096 of 1994 on 25 August 1995 which wrongly prescribes base rates per week that were not agreed between the parties;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Schedule to Order No. 1096 of 1994 dated 25 August 1995 relating to the Parliamentary Employees Award, 1989 be and is hereby deleted and replaced with the following Schedule.

(Sgd.) C.B. PARKS,

[L.S] Commissioner.

Schedule.

1. Clause 25.—Parliamentary Support Services Employees Wages:

- A. Delete paragraph (a) of subclause (1) of this clause and insert in lieu thereof:

(a) Classification	Base Rate Per Week	1st & 2nd Arbitrated Safety Net Adjustment	Total Rate Per Week
	\$	\$	\$
Kitchen Hands and Gardeners			
1st year of service	372.08	16.00	388.08
2nd year of service	376.68	16.00	392.68
3rd year of service	380.58	16.00	396.58
Steward/Cleaner			
1st year of service	391.45	16.00	407.45
2nd year of service	395.96	16.00	411.96
3rd year of service	399.65	16.00	415.65
Steward/Cleaner and Relieving Bar Attendant			
1st year of service	401.69	16.00	417.69
2nd year of service	406.41	16.00	422.41
3rd year of service	410.82	16.00	426.82
Cook (Cakes and Second)			
1st year of service	414.51	16.00	430.51
2nd year of service	419.32	16.00	435.32
3rd year of service	423.53	16.00	439.53
Assistant Chief Steward			
1st year of service	425.17	16.00	441.17
2nd year of service	431.53	16.00	447.53
3rd year of service	437.27	16.00	453.27
Horticulturist (Certificate)			
1st year of service	433.27	16.00	449.27
2nd year of service	438.60	16.00	454.60
3rd year of service	442.95	16.00	458.95

Classification	Base Rate Per Week	1st & 2nd Arbitrated Safety Net Adjustment	Total Rate Per Week
	\$	\$	\$
Tradesperson Cook			
1st year of service	454.79	16.00	470.79
2nd year of service	459.10	16.00	475.10
3rd year of service	462.89	16.00	478.89
Chef, Chief Steward and Bar Attendant			
1st year of service	491.90	16.00	507.90
2nd year of service	498.15	16.00	514.15
3rd year of service	504.61	16.00	520.61
Foreperson of Horticulture			
1st year of service	478.27	16.00	494.27
2nd year of service	483.19	16.00	499.19
3rd year of service	487.39	16.00	503.39

- B. Insert after paragraph (b) of subclause (1) the following new paragraph:

- (c) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset arbitrated safety net adjustments.

2. Clause 37.—Establishment of Consultative Mechanisms: Delete this clause and insert in lieu thereof—

37.—ESTABLISHMENT OF CONSULTATIVE
MECHANISMS

The Association and the Union are required to establish a consultative mechanism/s and procedures appropriate to their size, structure and needs, for consultation and negotiation on matter affecting the efficiency and productivity of the Public Sector.

3. Clause 38.—Award Modernisation: Delete this clause and insert in lieu thereof—

38.—AWARD MODERNISATION

- (1) The Association and the Union are committed to modernising the terms of the Award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the quality of working life, skills and job satisfaction and assists working life, skills and job satisfaction and assists positively in the restructuring process.
- (2) In conjunction with testing the current Award Agreement structure the parties are prepared to discuss all matters raised by the parties for increased flexibility and efficiency. As such, any discussions between the parties must be premised on the understanding that:
- the majority of employees employed in the section, branch or division must genuinely agree;
 - no employee will suffer a reduction in ordinary earnings as a result of the change;
 - the Association and/or the Union, as applicable, must be party to the agreement, in particular, where the employees at any section, branch or division are holding discussions which would require any award variation. The Association and/or the Union shall be invited to participate.
 - the Association and/or the Union shall not unreasonably oppose any agreement;

- (e) subject to the provisions of this award, any agreement reached may require ratification by the Commission.
- (3) Should an agreement be reached pursuant to subclause (2) hereof and that agreement requires an award variation, no party will oppose the award variation.
- (4) There shall be no limitation on any award matter being raised for discussion.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jacob Gilmore

and

Cecil Bros., FDR Pty Ltd and Cecil Bros Pty Limited.

No. 878 of 1995.

COMMISSIONER A R BEECH.

30 January 1996.

Order.

WHEREAS an application for the production of documents in matter no. 667 of 1995 was lodged in the Commission;

AND WHEREAS matter No. 667 of 1995 was finalised by decision of the Commission dated 30 January 1996;

AND HAVING heard Mr R Lilburne (of counsel) on behalf of the Applicant and Mr D Solomon (of counsel) on behalf of the Respondent;

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arthur Frederick Palmer

and

Radiators Australia Pty Ltd.

No. 53 of 1996.

COMMISSIONER A R BEECH.

7 February 1996.

Order.

WHEREAS the Commission has before it an application for the production of documents in application 1283 of 1995;

AND WHEREAS the Commission dealt with the matter in chambers;

AND WHEREAS agreement was reached between the parties;

AND HAVING heard Mr T.C. Crossley on behalf of the Applicant and Mr D.M. Jones on behalf of the Respondent—

NOW THEREFORE I, the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act, 1979, hereby order:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ITT Sheraton Asia Pacific Division

and

Frederick William Harmer.

No. 97 of 1996.

COMMISSIONER R.H. GIFFORD.

8 February 1996.

Order.

By this application, the applicant company seeks an extension of time for the filing of a Notice of Answer and Counter Proposal, in relation to Application No. 18 of 1996.

On 6 February 1996, a conference of the parties was held before the Commission, to deal with the matter. At that conference the applicant outlined its grounds, and the respondent advised that he did not oppose the application.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order—

THAT the date upon which the Notice of Answer and Counter Proposal in relation to Application No. 18 of 1996 be filed, be extended to a date no more than 7 days following the date upon which the applicant, in Application No. 18 of 1996, files an amended schedule to that application, with the Commission.

(Sgd.) R. H. GIFFORD,

[L.S.]

Commissioner.

NOTICES— Appointments—

APPOINTMENT

ADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the Industrial Relations Act, 1979, hereby appoint, subject to the provisions of that Act, Commissioner P. E. Scott to be an additional Public Service Arbitrator for the duration of her appointment under Section 17 of the Act.

Dated the 27th day of December, 1995.

W. S. COLEMAN,
Chief Commissioner.

APPOINTMENT

RAILWAY CLASSIFICATION BOARD

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of the Industrial Relations Act, 1979 and having consulted with the Minister and the Union referred to in Section 80N of the Industrial Relations Act, 1979, I hereby re-appoint Commissioner P.E. Scott to be Chairperson of the Railway Classification Board for a period of one year with effect from the 9th day of February, 1996.

Dated at Perth this 9th day of February, 1996.

W. S. COLEMAN,
Chief Commissioner.

**NOTICES—
Cancellation of Awards/
Agreements/Respondents—
Under Section 47—**

**CATERING WORKERS' (RACECOURSE, SHOW
AND SPORTING GROUNDS) AGREEMENT, 1976
No. AG 47 of 1976.**

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act, 1979, intends, by Order, to cancel out the following agreement, namely—

Catering Workers' (Racecourse, Show and Sporting
Grounds) Agreement, 1976

on the grounds that there are no longer any persons employed under the provisions of that agreement.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. 686/77 Part 42 on all correspondence.

Dated this 25th day of January, 1996.

J.G. CARRIGG,
Registrar.

**CLERKS' (WHOLESALE AND RETAIL
ESTABLISHMENTS) AWARD
No. 38 of 1947.**

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act, 1979, intends, by order, to strike out the following parties to the Clerk's (Wholesale and Retail Establishments) Award No. 38 of 1947, namely—

C.E. Bolt & Co Ltd, Lower Stirling Tce, Albany, 6330
Albany Aerated Water Factory, Albany
Henry Wills & Co Ltd, Stirling Tce, Albany
Cowdens Manufacturing Co, Albany
Wellman Engineering Works, Albany
Albany (WA) Gas Co, Albany
E. Barnett & Co Ltd, Albany
Arthur Johnson & Co, Albany
Cobley & Co, Albany
Beals Ltd, York St, Albany
Timewell's Stores, Albany
Drew, Robinson & Co, 134 Stirling Tce, Albany

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has a sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. 76/80 Parts 60-71 on all correspondence.

Dated this 24th day of January, 1996.

J.G. CARRIGG,
Registrar.

**GATE, FENCE AND FRAMES
MANUFACTURING AWARD
No. 24 of 1947.**

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act, 1979, intends, by order, to strike out the following party to the Gate, fence and frames Manufacturing Award, namely—

Boral Cyclone Limited

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has a sufficient interest in the matter may, within 30 days of the date of the publication of this notice, object to the Commission making such order.

Please quote File No. 76/80 Part 189 on all correspondence.

Dated this 23rd day of January, 1996.

J.G. CARRIGG,
Registrar.

**AWARDS/AGREEMENTS—
Consolidation by Registrar—**

**BUILDING TRADES AWARD 1968 AWARD
No. 31 of 1966.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 5th day of January, 1996.

J. CARRIGG,
Registrar.

"Building Trades Award No. 31 of 1966".

1.—TITLE

This award shall be known as the "Building Trades Award 1968" and it shall replace Award No. 24 of 1958 as amended, Award No. 1 of 1965 and Award No. 30 of 1965.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
- 2A. Award Modernisation
- 2B. Structural Efficiency Exercise
3. Scope
4. Area
5. Term
6. Definitions
7. Contract of Service
8. Breakdowns, Etc.
9. Terms of Service
10. Wages
- 10A. Minimum Wage—Adult Males and Females
11. Payment of Wages
12. Leading Hands
13. Special Rates and Provisions
14. Fares and Travelling Time

15. Under-Rate Workers
16. Apprentices
17. Hours
18. Shift Work
- 18A. Part Time Employment
19. Overtime
20. Holidays and Annual Leave
21. Long Service Leave
22. Absence Through Sickness or Bereavement
23. Distant Work
24. Location Allowance
25. Provision of Appliances
26. Protection of Workers' Tools
27. Change Room
28. Records
29. Representative Interviewing Workers
30. Posting of Award and Union Notices
31. Board of Reference
32. No Reduction
33. Maternity Leave
34. Shop Stewards
35. Introduction of Change
36. Redundancy
37. Avoidance of Industrial Disputes
38. Superannuation

Appendix A— Termination of Redundancy Provisions—Local Government Authorities

Schedule A— Parties to the Award

Schedule B— Respondents

2A.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the Award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.

(2) The parties commit themselves to the following principles as part of the structural efficiency process and have agreed to participate in a restructuring process in accordance with the provisions of this clause.

- (a) Acceptance in principle that the new Award skill level definitions will be more suitable for the needs of the industry, sometimes more broadly based, in other matters more truly reflective of the different skill levels of the tasks now performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.
- (b) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.
- (c) Co-operation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputations.

2B.—STRUCTURAL EFFICIENCY EXERCISE

(1) (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

(b) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.

(2) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the industry and to enhance the career opportunities and job security of employees within the industry.

(3) The parties have established working parties for the testing and/or trialling of various skill levels and to enable proper consultation with both employees and employers in the industry on matters consistent with the objectives of subclause (2) herein.

(4) Measures raised for consideration consistent with subclause (3) herein shall be related to implementation of a new classification structure, any facilitative provisions contained in this award and matters concerning training.

(5) Without limiting the rights of either an employer or a Union to arbitration, any other measure designed to increase flexibility on a site or within an enterprise sought by any party shall be implemented subject to the following requirements:

- the changes sought shall not affect provisions reflecting National standards;
- The majority of employees affected by the change at the site or enterprise must genuinely agree to the change;
- no employee shall lose income as a result of the change;
- the relevant Union or Unions must be a party to the agreement;
- any agreement shall be subject, where appropriate, to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this Award and take precedence over any provision of this award to the extent of any inconsistency.

(6) Award restructuring shall be given its wider meaning, and award restructuring should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.

(7) The parties to this award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (a) develop a more highly skilled workforce;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
- (c) removing barriers to the utilisation of skills acquired.

(8) At each plant or enterprise a consultative mechanism may be established by the employer or shall be established upon request by the employees. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of the plant or enterprise. Measures raised for consideration shall be consistent with subclause (2) of this clause.

3.—SCOPE

This award shall apply—

- (1) To all workers (including apprentices) employed in the calling or callings set out in clause 11 of this award in the industries carried on by the respondents set out in the schedule attached to this award, and
- (2) To all employers employing those workers, but it shall not apply—
 - (a) to a worker covered by the Painters' (Shipping) Award No. 32A of 1961 as amended or replaced from time to time;
 - (b) to a worker employed in sandblasting or in painting structural steel work in an establishment of an employer bound by the provisions of the Metal Trades (General) Award No. 13 of 1965 as amended or replaced from time to time;
 - (c) to a worker employed on work coming within the scope of any other award or industrial agreement in force at the date of this award or to a worker whose conditions of employment are regulated by any such award or industrial agreement;
 - (d) to a worker, not employed by a painting contractor or by a building contractor or not usually employed as a painter under this award, who is employed on work on which only one coat of paint or any other preparation used for preservative purposes is to be applied;
 - (e) to a worker who paints petrol or oil containers not exceeding fifty gallons capacity; or

- (f) to a worker employed by Di-Met (W.A.) Pty. Limited in painting or applying protective coating in its workshop, to any plant, machinery, object or structure, not being a building or a part, in situ, of a building.

4.—AREA

This award shall operate throughout the State of Western Australia.

5.—TERM

The term of this award shall be for a period of three years from the beginning of the first pay period commencing on or after the 16th January, 1969. (The date of this award is the 19th day of December, 1968).

6.—DEFINITIONS

(1) General:

- (a) "Union" means—

The Australian Builders' Labourers' Federated Union of Workers—Western Australian Branch;

The Western Australian Carpenters and Joiners, Bricklayers and Stoneworkers Industrial Union of Workers;

The Operative Painters and Decorators' Union of Australia, West Australian Branch, Union of Workers;

The Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers), Western Australian Branch;

The Plumbers and Gasfitters Employees Union of Australia, West Australian Branch, Industrial Union of Workers;

The Operative Stonemasons' Union of Workers of Western Australia;

or, as the case may be

The Building Trades Association of Unions of Western Australia (Association of Workers).

- (b) "Casual worker" means a worker who is engaged for, or who for no fault of his or her own, is dismissed before the expiry of two weeks (exclusive of hours of overtime worked).

(2) Bricklaying:

- (a) "Bricklayer" means a worker engaged in bricklaying, firework (including kiln work), furnaces or furnace work of any description, setting cement bricks, cement blocks and cement pressed work, setting coke slabs or coke bricks or plaster partition blocks and brick cutting, or any other work which comes or which may be adjudged to come within the scope of brick work generally.

- (b) "Stoneworker" means a worker who does all or any of the following classes of work whether hammer dressed or sawn—

- (i) Foundation work;

- (ii) Building random rubble uncoursed or building squared rubble in courses or regular coursed rubble and dressing quoins or shoddies in connection with any such work;

but this definition shall not of itself be taken to prejudice or affect the right of any other classes of tradesmen or workers to do any class or kind of work they have hitherto been accustomed to do.

(3) Builders Labouring:

- (a) "Builders Labourer" means a worker engaged—

- (i) As a scaffolder, a rigger, a dogman, a gear hand, a hod carrier, a mortar mixer or a drainage worker employed in connection with building operations; or

- (ii) to wheel to and from the lift, or to fill boxes with materials to be lifted with winch, hoist, elevator or crane required for servicing bricklayers, plasterers or masons or to control any such winch or hoist, or to control a trowelling machine; or

- (iii) in underpinning and timbering basements, in the rough finishing of the surfaces for granolithic floors, in the bagging off or the broom finishing of concrete surfaces, in the preparation of granolithic surfaces but not the finishing thereof unless that work is otherwise referred to herein, in the erection of steel stanchions, girders and principals, in the erection of steel structural work when such work is part of the building contractor's contract and under his direct control, on furnace work and bakers' ovens, in mixing, preparing and delivering of materials used hot such as bitumen, trinidad, and other similar patented materials, in the setting and jointing of pipes for sewerage or storm water drainage, in the timbering of shafts, pits or wells in or around buildings, in the mixing of plastic materials and the cleaning up of floors and woodwork after the application of such materials, in preparing or bending or placing into position steel reinforcements in concrete in connection with building operations, in using a jack hammer, in demolishing and removing buildings, in mixing, preparing or delivering or packing of concrete in connection with the erection of structures or buildings, in clearing, excavating or levelling off sites for buildings when such work is under the building contractor's contract and under his direct control, or in road construction work in connection with approaches to buildings inside the building line (other than road construction work governed by any award of the Western Australian Industrial Commission); or

- (iv) in general labouring not provided for herein when such work is part of the building contractor's contract and under his direct control.

- (b) "Assistant Powder Monkey" means a builder's labourer assisting under the direct supervision of a powder monkey in placing and firing explosive charges excluding the operation of explosive powered tools.

- (c) "Assistant Rigger" means a builder's labourer assisting under the direct supervision of a rigger in erecting or placing in position the members of any type of structure (other than scaffolding and aluminium alloy structures) and for the manner of ensuring the stability of such members, for dismantling such structures or for setting up cranes or hoists other than those attached to scaffolding.

- (d) "Direct Supervision" means, in relation to paragraphs (b) and (c) of this subclause, that the powder monkey or the rigger, as the case may be, must be present on the job to guide the work during its progress.

- (e) "Concrete Finisher" means a builder's labourer, other than a concrete floater, who is engaged in the hand finishing of concrete work.

- (f) "Concrete Floater" means a builder's labourer engaged in concrete work and using a wooden or rubber screeder or mechanical trowel or wooden float or engaged in bagging off or broom finishing.

- (g) "Drainer" means a builder's labourer directly responsible to his employer for the correct and proper laying of sewerage and drainage pipes.

- (h) "Scaffolder" means a builder's labourer engaged in the work of erecting or altering or dismantling scaffolding of all types.

(4) Carpentry and Joinery:

- (a) "Carpenter and Joiner" means a worker engaged upon work ordinarily performed by a carpenter and joiner in any workshop establishment, yard or depot, or on site (including dams, bridges, jetties or wharves).

Without limiting the generality of the foregoing, such work may include—

- (i) The erection and/or fixing work in metal.

- (ii) (aa) The marking out, lining, plumbing and levelling of prefabricated form work and supports thereto;
- (bb) the erection and dismantling of such form work but without preventing builders' labourers from being employed on such work.
- (iii) the fixing of asbestos products, dry fixing of fibre plaster materials and the fixing of building panels, wall board and plastic material;
- (iv) the erection of curtain walling;
- (v) the setting out and laying of wood blocks or parquetry or wooden mosaic flooring; and
- (vi) the erecting of pre-fabricated buildings or section of buildings constructed in wood, prepared in factories, yards or on site.
- (b) "Joiner—Assembler A" means a worker who in the manufacturing of any article is:
- (i) wholly engaged in assembling prepared pieces of timber or other material (which is dressed, morticed, tenoned or otherwise prepared by machining) by cramping, nailing, screwing, glueing, or fastening in any way;
- (ii) not responsible for the dimensions of the article other than by checking with gauges or other measuring instruments, but may be required to trim, dress and/or sand such prepared articles (excluding the fitting of joints) in accordance with instructions given by a tradesman joiner.
- (c) "Joiner—Assembler B" means a worker engaged exclusively in repetitive assembly of joinery components on any automatic, semi-automatic or single purpose machine and whose work may include:
- (i) the repetitive assembling of component parts of any article in predetermined positions in which no fitting or adjustment is required;
- (ii) the attachment of accessories, such as window fasteners, casement stays or balances, to articles in predetermined prepared positions provided that no such worker shall be responsible for the setting up of machines or the dimensions of the products.
- (d) "Detail Worker" means a carpenter and joiner who sets out and works upon staircases, bar, kitchen or office fittings or any similar detail work from architects' plans or blue prints.
- (e) "Setter Out" means a carpenter and joiner who sets out work (other than wood blocks or parquetry flooring) for three or more other carpenters and joiners.
- (5) Painting, Signwriting and Glazing:
- (a) "Painter" means a worker who applies paint or any other preparation used for preservative or decorative purposes—
- (i) to any building or structure of any kind or to any fabricated unit forming or intended to form part of any building or structure; or
- (ii) to any machinery or plant.
- The term includes any worker engaged in the hanging of wallpapers or substitutes therefor or in glazing, graining, gilding, decorating, applying plastic relief, putty glazing, or marbling and any worker who strips off old wallpapers or who removes old paint or varnish or who is engaged in the preparation of any work for painting by a worker otherwise covered by this award or in the preparation of any materials required for that painting.
- (b) "Glazier" means a worker who—
- (i) fits and fixes leadlights and stained windows into prepared positions; or
- (ii) fits and fixes glass or any of its kindred products, including vitrolite, into any place prepared for its reception or cuts such glass or such other product; or
- (iii) cuts glass or any of its kindred products including vitrolite, for any purpose.
- Provided that nothing in this definition shall apply—
- (aa) to work done by shop salesmen, picture frame or furniture makers, or by any other worker who at the date of this award is bound by any award of the Western Australian Industrial Commission or any industrial agreement made under the provisions of the Industrial Arbitration Act, 1912; or
- (bb) to workers engaged in the assembly of windows where such work involves the fixing, other than with putty, of an aluminium sash around glass which has already been cut to size and the work is carried out on the premises of a window frame manufacturer bound by the Metal Trades (General) Award No. 13 of 1965 as amended or replaced from time to time.
- (c) "Signwriter" means a worker who may prepare his own backgrounds and does any of the following work—
- (i) Lettering of every description, by brush, spray or any other method on any surface or material (other than the surface of a roadway);
- (ii) Pictorial or scenic painting by brush, spray or any other method on any surface or material;
- (iii) Designing for windows, posters, show window and theatre displays, honour rolls, illuminated addresses, neon signs, stencils, display banners or cut-out displays;
- (iv) Gilding, i.e., the application of gold, silver, aluminium or any metal leaf to any surface;
- (v) Cutting out, laying out and finishing of cut-out displays of all descriptions; or
- (vi) Screen process work, i.e., the designing, setting up and operation for duplication or multiplication of signs on any material, whether of paper, fabric, metal, wood, glass, or any similar material.
- Provided however, that nothing contained in this definition, nor in this award, shall be deemed to prevent the employment of ticket writers at the rates of wage and subject to the conditions prescribed by the Ticket Writers' Award No. 29 of 1958 as amended or replaced from time to time.
- (6) Plastering:
- "Plasterer" means a worker employed or usually employed on plastering work which shall mean—
- (a) All internal and external plastering and cementing whether manual or mechanical means be used, including hard wall plaster and texture work where the materials used in such texture work consist only of plaster or cement or both;
- (b) the fixing of wood lathing and metal lathing or any similar or other substitute which may be used as a ground for plastering work;
- (c) the fixing of precast plaster or any other kind of plaster required to be finished off with plastered joints;
- (d) the fixing of pressed cement work and ornaments and plaster partition blocks;
- (e) plastering in sewers, septic tanks, water channels and relining of pipes;
- (f) the fixing of plain and ornamental tiles on walls or floors;
- (g) the top dressing of concrete work finished in cement, granolithic or patent colouring, and all cement composition work and plain or fancy paving, except such work as is included in the definition of a builder's labourer unless such work is done by a worker who is engaged or employed as a plasterer;
- (h) the fixing and laying of cork or substitutes such as solomit in cool chambers and in refrigeration chambers; or

- (i) the working of flintcote where used with sand, cement or granulated cork or sawdust,

but plastering work shall not include—

- (i) work authorised to be done by workers under any other award or industrial agreement; or
(ii) work done by plumbers.

(7) Plumbing:

“Plumber” means a worker employed or usually employed in executing any general plumbing, ship plumbing, gas fitting, pipe fitting, lead burning, sanitary, heating and domestic engineering, industrial, commercial, medical, scientific and chemical plumbing. Without limiting the generality of the foregoing such work shall include the following—

- (a) The fixing of all soil, wastes and vent pipes to sanitary fixtures in galvanised mild steel, copper, brass, cast iron, plastic, P.V.C., sheet metal, asbestos, lead, glass or any other materials that may supersede the aforementioned.
- (b) Glazed earthenware pipes and fittings, fibrolite pipe and fittings, concrete pipe and fittings, plastic, P.V.C. pipe and fittings, and any other drainage materials that may be introduced in connection with pre-cast concrete septic tanks, or any other manufactured septic tank which has been passed by the Public Health Department. Soak wells, french drains, leach drains, grease traps and all forms of effluent disposal.
- (c) The installation of all types of sanitary fixtures such as water closets, hand basins, sinks, urinals, slop hoppers, bidets, troughs and pan washers in stainless steel, sheet metal, plastic, P.V.C., cast iron or any other materials that may supersede those materials normally used by the plumber.
- (d) The fixing of all water supply pipes in galvanised mild steel, copper, brass, cast iron, plastic, P.V.C., fibrolite, stainless steel, concrete, hydraulic, aluminium, asbestos, lead or any other materials that may supersede those materials normally used from mains to buildings, swimming pools, display fountains, drinking fountains, ejectors, supply tanks, water filters, water softeners, glass washers, fire services including valves and all piping for sprinkler work, cooling towers and spray ponds used for industrial, manufacturing, commercial or any other purposes.
- (e) The installation of all types of hot water and heating systems, including room heaters, sterilizers, calorifiers, condensate equipment, pumps, condensers and all piping for same in power houses, distributing and booster stations, bottling, distilling and brewery plants in connection with solid fuel, solar, fuel oil, gas (L.P. town and natural), electric (excluding electrical connections), all piping for power or heating purposes either by water, steam, air for heating, ventilating and air conditioning systems and any other equipment used in connection with medical, industrial, commercial, housing scientific and chemical work.
- (f) All piping, setting and hanging of units and fixtures for air conditioning, cooling, heating, refrigeration, ice making, humidifying, dehumidifying, the installation of chilled water units including pumps and condensers, the setting and piping of instruments, measuring devices, thermostatic controls, gauge boards and other controls used in connection with power, heating, refrigeration, ventilating, air conditioning in manufacturing, mining and industrial work.
- (g) All pneumatic, compressed air and gas lines used in connection with above, oxygen or similar gases used for medical purposes and all piping, valves and fittings thereto.
- (h) The installation of centrifugal, propeller or other exhaust fans, duct work, fume cupboards, registers, dampers, in sheet metal, plastics, P.V.C., stainless steel, copper, aluminium or other materials that may supersede the aforementioned.
- (i) The installation of irrigation and reticulation services in material used by the plumbers, mild steel,

copper, brass, cast iron, plastic, P.V.C., asbestos, lead or any other materials that may supersede the aforementioned.

- (j) All gas and arc welding, brazing, lead burning, soldered and wiped joints, expanding joints used in connection with the plumber.
- (k) The installation of all plumbing, pipe work and fittings in ships, aeroplanes, mobile or transportable homes, etc.
- (l) The fitting and fixing of guttering, downpipes, ridging, rain heads, fascia capping and all other work associated with housing, commercial and industrial undertakings in galvanised iron, copper, aluminium, cast iron, P.V.C., fibreglass, stainless steel, asbestos, sheet metal, zinc, galvanised corrugated iron, patent steel decking, aluminium decking, copper decking, corrugated asbestos, galvanised iron sheeting, fibreglass, plastic sheeting and moulds, fitting of patent roof outlets such as “Fulgo” in ventilators, skylights and such.
- (m) The installation of all laboratory, research and scientific plumbing and fixtures including radio active plumbing, etc.
- (8) Stonemasonry:
- (a) “Stonemason” means a worker who cuts by hand or fixes all classes of natural stone that has to be cut to a mould or template, or which has to be proven by a square or straight edge or set to a level or line.
The term includes a worker who fixes manufactured stone to the facade of a building.
- (b) “Natural stone” includes granite, trachite, slate, bluestone, limestone, marble and sandstone.

(9) “Overaward Payment” is defined as the amount in rates of pay which an employee would receive in excess of the minimum award wage as prescribed in this award for the classification in which such employee is engaged. Provided that this definition shall exclude overtime, shift allowances, penalty rates, expense related allowances, industry allowances, disability allowances, location allowances, special rates or allowances, responsibility allowances and any other ancillary payments of a like nature prescribed by this award.

7.—CONTRACT OF SERVICE

(1) One week’s notice on either side shall be necessary to terminate the contract of service of any worker, other than a casual worker (where the notice shall be one hour) or an apprentice. If the required notice of termination is not given, one week’s wages, or in the case of a casual worker, one hour’s wages, shall be paid or forfeited.

(2) “Statement of Employment”: The employer shall upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee.

(3) The provisions of this clause shall not apply to Local Government Authorities but in lieu the provisions of Clause 1 of Appendix A of this award shall apply.

(4) Fixed Term Employment

Where to meet the immediate needs of an employer, employment of a short term nature is required, employees may be employed on a fixed term basis. Such appointments should not ordinarily exceed six months in duration. The duration of any appointment under this subclause is to be agreed in writing prior to the employment commencing.

Employees appointed under this subclause shall be employed only for the extent of their fixed term and shall not be deemed to have permanent status.

8.—BREAKDOWNS, ETC.

The employer shall be entitled to deduct payment for any day or portion of a day upon which the worker cannot be usefully employed because of any strike by the Union or Unions affiliated with it or by any other Association or Union or through the breakdown of the employer’s machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.

9.—TERMS OF SERVICE

(1) Each worker shall faithfully serve his employer on the work in which he is employed in compliance with the terms and conditions of this award.

(2) A worker employed by an employer shall not without the express consent of such employer and the union accept temporary or other employment with any other employer whilst in such employ, nor shall such worker undertake a contract or sub-contract to perform any other work whilst his employment by the firstmentioned employer continues.

10.—WAGES

The rates of wages payable to the employees covered by the award (other than duly registered apprentices) shall be as follows:

(1) Base Rate and Supplementary Payment (per week)

	Base Rate Per Week \$	Safety Net Adjustment \$
(a) (i) Bricklayers, stoneworkers, carpenters, joiners, painters, signwriters, glaziers, plasterers and plumbers as defined in Clause 6 of this award	376.20	16.00
(ii) Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	385.40	16.00
(iii) Joiner—Assembler A (as defined in Clause 6 of this award)	344.60	16.00
(iv) Joiner—Assembler B (as defined in Clause 6 of this award)	330.70	16.00
(b) Builders Labourers—		
(i) Rigger	360.30	16.00
(ii) Drainer	360.30	16.00
(iii) Dogman	360.30	16.00
(iv) Scaffolder	345.00	16.00
(v) Powder Monkey	345.00	16.00
(vi) Hoist or Winch Driver	345.00	16.00
(vii) Concrete Finisher	345.00	16.00
(viii) Steel Fixer including tack welder	345.00	16.00
(ix) Operator Concrete Pump	345.00	16.00
(x) Bricklayer's Labourer	333.60	16.00
Plasterer's Labourer	333.60	16.00
Assistant Powder Monkey	333.60	16.00
Assistant Rigger	333.60	16.00
Demolition Worker (after three months' experience)	333.60	16.00
Gear Hand	333.60	16.00
Pile Driver	333.60	16.00
Tackle Hand	333.60	16.00
Jackhammer Hand	333.60	16.00
Mixer Driver (concrete)	333.60	16.00
Steel Erector	333.60	16.00
Aluminium Alloy Structural Erector	333.60	16.00
Gantry Hand or Crane Hand	333.60	16.00
Crane Chaser	333.60	16.00
Concrete Gang including Concrete Floater	333.60	16.00
Steel or Bar Bender to pattern or plan	333.60	16.00
Concrete Formwork Stripper	333.60	16.00
Concrete Pump Hose Hand	333.60	16.00
(xi) Builder's Labourers employed on work other than specified in classifications (i) to (x)	307.70	16.00

(2) Special Payment:

(a) A special payment of \$39.13 per week shall be paid to all employees covered by this award and shall be regarded as part of the "total rate" for all purposes.

(b) For the purpose of calculating the rate of wage payable to an apprentice the special payment prescribed in paragraph (a) hereof shall be deemed to be part of the tradesman's total rate.

(3) (a) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(b) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991, pursuant to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(4) Tool Allowance: (Per Week) \$

(a) Bricklayers and Stoneworkers	13.00
(b) Plasterers	14.90
(c) Carpenters and Joiners	18.10
(d) Joiners—Assembler A or B	9.15
(e) Plumbers	18.10
(f) Painters	4.50
(g) Signwriters	4.50
(h) Glaziers	4.50

Note 1: The tool allowance prescribed in paragraphs (a) to (h) inclusive of this subclause, each include an amount of 5 cents for the purpose of enabling the employees to insure their tools against loss or damage by theft or fire.

Note 2: The abovenamed allowances shall not be paid where the employer supplied the employee with all necessary tools.

(5) Construction Allowance: (per week) \$15.90. An employee shall not be entitled to this construction allowance except when required to work "on site" on any work in connection with the erection or demolition of a building or to carry out work which the employer and the union agree is construction work or in default of agreement, that is so declared by the Board of Reference.

(6) Casual Employees:

A casual employee as defined in Clause 6.—Definitions of this award, shall be paid a loading of 20 per cent in addition to the rates to which he/she is otherwise entitled pursuant to this clause.

(7) The rates prescribed by this award are maximum rates. An employer shall not pay more than the rates prescribed by this award or the rates which are otherwise determined or approved by the Western Australian Industrial Relations Commission.

(8) (a) Junior employees may be employed in the classification of Joiner—Assembler A but in no other classification and shall be paid the following percentages of the base rate and special payment applicable to that classification:

	%
Up to 16 years	38
16—17	46
17—18	53
18—19	73
19—20	88
20 +	100

(b) In addition to the above rates a junior employee shall be paid the tool allowance specified in subclause (3) hereof if required by the employer to supply tools.

(c) This subclause shall not operate to reduce the wages of any employee who is paid more than the rate prescribed herein for such employee nor shall the same permit the reduction of any such wages.

(d) Junior employees employed in the classification of Joiner—Assembler A may perform any of the duties of a Joiner—Assembler A and/or Joiner—Assembler B as defined in Clause 6.—Definitions and shall not perform work ordinarily carried out by any other classification of employee covered by this award.

(e) Junior employees shall be employed at a ratio of one junior employee to each five adult employees or part thereof.

10A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than \$275.50 per week as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$275.50.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the worker is employed.

11.—PAYMENT OF WAGES

(1) From 24th May, 1982 wages shall be paid as follows:

(a) Actual 38 ordinary hours

In the case of an employee whose ordinary hours of work are arranged in accordance with sub-paragraph (i) or (ii) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week of clause 7 so that he works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked each week.

(b) Average of 38 ordinary hours

Subject to subclauses (2) and (3) of this clause, in the case of an employee whose ordinary hours of work are arranged in accordance with sub-paragraphs (iii) or (iv) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week—of clause 17 so that he works an average of 38 ordinary hours each week during a particular four week cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the four week cycle.

(2) (a) An employee whose ordinary hours are arranged in accordance with sub-paragraph (iii) or (iv) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week of clause 17.—Hours, and who is paid wages in accordance with paragraph (b) of subclause (1) hereof and is absent from duty (except for paid absences pursuant to the provisions of clause 20.—Holidays and Annual Leave, but not Annual Leave, or clause 22.—Absence through Sickness or Bereavement) shall for each day or part day he is so absent, lose the average pay “credit” of 0.4 hours for that day.

(b) Consequently, during the week of the work cycle he is to work less than 38 ordinary hours he will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the “credit” he does not accrue for each whole or part day during the work cycle he is absent.

(3) Alternative Method of Payment

An alternative method of paying wages to that prescribed by subclauses (1) and (2) of this clause may be agreed between the employer and the majority of the employees concerned.

(4) (a) When an employee is dismissed (other than for misconduct) or lawfully terminates his service, he shall be paid all wages due to him before leaving the job unless that pay-

ment is prevented because of circumstances beyond the control of the employer.

Otherwise all moneys due shall be posted on the next working day to the employee's last known address or such other address as may be nominated by the employee.

(b) In the case of an employee whose ordinary hours are arranged in accordance with sub-paragraph (iii) or (iv) of paragraph (a) of subclause (2)—Implementation of 38 Hour Week—of clause 17 and who is paid average pay and who has not taken the day off due to him during the work cycle in which his employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle.

Provided further, where the employee has taken a day off during the work cycle in which his employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

(5) (a) Except as provided in paragraph (b) of this subclause an employer shall not keep more than one day's pay in hand.

(b) In respect of those employees covered by the provisions of clause 23.—Distant Work, who are employed in that area of the State north of latitude 26° S., an employer may keep not more than three day's pay in hand.

(6) (a) Payment of wages shall be made on or before Friday of each week at or before the usual finishing time on the normal pay day of each week.

(b) In the event that an employee, by virtue of the arrangement of his ordinary working hours, is to take a day off duty on a day which coincides with pay day such employee shall be paid no later than the working day immediately following pay day. Provided that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(7) Wages shall not be paid in the meal time.

(8) Subject to subclause (4) hereof, where an employee is required to spend time in waiting for wages or attending the employer's office on a subsequent day, he shall be paid at the ordinary rate of pay for the time so spent, in addition to any fares incurred.

Provided that this subclause shall not apply where such waiting or attending was due to an underpayment caused by a genuine mistake or by a genuine dispute as to the amount due.

(9) Subject to subclauses (4) and (10) hereof, all wages must be paid in cash except that, by agreement with the employee concerned, payment for distant work may be made by cheque the acceptance of which is conditional upon the cheque being paid on presentation.

(10) Payment by cheque or electronic fund transfer.

Where an employee and the employer agree, the employee's wages may be paid by cheque or direct transfer into the employee's bank or other recognised financial institution account. Notwithstanding this provision, if the employer and the majority of employees agree, all employees may be paid their wages by cheque or direct transfer into an employee's bank or other recognised financial institution account.

12.—LEADING HANDS

(1) An employee specifically appointed to be a leading hand who is placed in charge of—

	Per Week \$
(a) not more than one employee, other than an apprentice, shall be paid	10.19
(b) more than one and not more than five other employees shall be paid	22.72
(c) more than five and not more than ten other employees shall be paid	28.84
(d) more than ten other employees shall be paid	38.42

In each case, in addition to the rate prescribed for the highest classification or employee supervised, or his/her own rate, whichever is the highest.

(2) A leading hand means an employee who is given by his/her employer, or his/her agent, the responsibility of directing or supervising the work of others or, in the case of only one

employee, the specific responsibility of directing or supervising the work of that employee.

13.—SPECIAL RATES AND PROVISIONS

(1) General conditions under which special rate is payable:

- (a) The special rates prescribed in this clause shall be paid irrespective of the times at which work is performed and shall not be subject to any premium or penalty condition.
- (b) Where more than one of the following rates provide a payment for disabilities of substantially the same nature then only the highest of such rates shall be payable.

(2) **Insulation:** An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool or other recognised insulating material of a like nature or working in the immediate vicinity so as to be affected by the use thereof shall be paid 45 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(3) Hot Work:

- (a) An employee required to work in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this Award or in excess of 54 degrees Celsius shall be paid 45 cents per hour or part thereof in addition to the said rates.
- (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of 20 minutes after every two hours work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(4) Cold Work:

- (a) An employee required to work in a place where the temperature is lowered by artificial means to less than zero degrees Celsius shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of 20 minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(5) **Confined Space:** An employee required to work in a confined space, being a place the dimensions or nature of which necessitates working in a cramped position or without sufficient ventilation shall be paid 45 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(6) Toxic Substances:

- (a) An employee required to use toxic substances or materials of a like nature shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.
- (b) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority or in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the Union and the employer.
- (c) An employee using toxic substances or materials of a like nature shall be paid 45 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 37 cents per hour extra.
- (d) For the purpose of this subclause all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.

(7) **Asbestos:** Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) such employees shall be paid 45 cents per hour extra whilst so engaged.

(8) **Dry Polishing or Cutting of Tiles:** An employee required to dry polish tiles with a machine or to cut tiles with an electric saw shall be paid 45 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(9) **Bitumen Work:** An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 45 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(10) **Roof Repairs:** An employee engaged on repairs to roofs shall be paid 45 cents per hour or part thereof in addition to the rates otherwise provided in this award.

(11) **Wet Work:** An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(12) **Dirty Work:** An employee engaged on dirty work shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(13) An employee engaged in repairs to sewers shall be paid at the rate of 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(14) An employee working in a dust-laden atmosphere in a joiners' shop where dust extractors are not provided or in such atmosphere caused by the use of materials for insulating, deafening or pugging work (as, for instance, pumice, charcoal, silicate of cotton or any other substitute), shall be paid at the rate of 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(15) **Scaffolding Certificate Allowance:** A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Occupational Health, Safety and Welfare and is required to act on that certificate whilst engaged on work requiring a certificated person shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award but this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(16) **Spray Application—Painters:** A painter engaged on all spray applications carried out in other than a properly constructed booth, approved by the Department of Occupational Health, Safety and Welfare, shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(17) **Cleaning Down Brickwork:** An employee required to clean down bricks using acids or other corrosive substances shall be supplied with gloves and be paid 34 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(18) **Bagging:** An employee engaged upon bagging brick or concrete structures shall be paid 34 cents per hour hereof in addition to the rates otherwise prescribed in this award.

(19) **Furnace Work:** An employee engaged in the construction or alternation or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid 97 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(20) **Acid Work:** An employee required to work on acid furnaces, acid stills, acid towers and all other acid resisting brickwork shall be paid 97 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(21) **Plasterers using flintcote** shall be paid 25 cents per hour extra except where flintcote is applied by hawk and trowel to walls and ceilings when the rate shall be 45 cents per hour extra.

(22) **Chemical and Manure Works and Oil Refineries:** Journeymen and builders' labourers working on chemical and manure works or oil refineries shall receive 16 cents per hour in addition to the prescribed rate.

(23) **Height Money:** An employee required to work on a chimney stack, spire, tower, radio or television mast or tower, air shaft, cooling tower, water tower or silo, where the construction exceeds 15 metres in height shall be paid for all work above 15 metres, 37 cents per hour or part thereof, with an additional 37 cents per hour or part thereof for work above each further 15 metres in addition to the rates otherwise prescribed in this award.

(24) Swing Scaffold:

- (a) An employee employed—
- (i) on any type of swing scaffold or any scaffold suspended by rope or cable, or bosun's chair cantilever scaffold; or
 - (ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height of 20 feet or more above the nearest horizontal plane.
- shall be paid \$2.63 for the first four hours or part thereof and 54 cents for each hour thereafter on any day in addition to the rates otherwise prescribed in this award.
- (b) A solid plasterer when working off a swing scaffold shall be paid an additional 10 cents per hour.
- (c) No apprentice with less than two years' experience shall use a swing scaffold or bosun's chair.

(25) Plumbing:

- (a) A plumber doing sanitary plumbing work on repairs to sewer drainage or wastepipe services in any of the following places—
- (i) Infectious and contagious diseases hospitals or any block or portion of a hospital used for the care of or treatment of patients suffering from any infectious or contagious disease.
 - (ii) Morgues, shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (b) A plumber doing work on a ship of any class—
- (i) whilst under way; or
 - (ii) in a wet place, being one in which the clothing of an employee necessarily becomes wet to an uncomfortable degree or one in which water accumulates underfoot; or
 - (iii) in a confined space; or
 - (iv) in a ship which has done one trip or more in a fume or dust-laden atmosphere, in bilges, or when cleaning blockages in soil pipes or waste pipes or repairing brine pipes; shall be paid 45 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (c) A plumber carrying out pipework in a ship of any class under the plates in the engine and boiler rooms and oil fuel tanks shall be paid 95 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (d) A plumber required to enter a well nine metres or more in depth for the purpose in the first place of examining the pump, pipe or any other work connected therewith, shall be paid \$1.87 for such examination and 67 cents per hour thereafter for fixing renewing or repairing such work.
- (e) Permit Work: Any licenced plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid \$24.76 for that week, in addition to the rates otherwise prescribed in this award.
- (f) Plumbers on Sewerage Work: Plumbers or apprentices in their third, fourth or fifth year, on work involving the opening up on house drains or wastepipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a minimum of \$1.94 per day in addition to the prescribed rate whilst so employed.

(26) Explosive Powered Tools: An operator of explosive powered tools, being an employee qualified in accord with the laws and regulations of the State of Western Australia to operate explosive powered tools is required to use an explosive powered tool shall be paid 86 cents for each day on which he uses such tool in addition to the rates otherwise prescribed in this award.

(27) Secondhand Timber: Where whilst working with secondhand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber, shall be entitled to an allowance of \$1.42 per day on each day upon which his tools are so damaged provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job in order that the claim may be proved.

(28) Computing Quantities: An employee, other than a leading hand, who is regularly required to compute or estimate quantities of materials in respect of the work performed by others shall be paid \$2.63 per day or part thereof in addition to the rates otherwise prescribed in this award.

(29) Setter Out: A setter out in a joiner's shop shall be paid \$3.87 per day in addition to the rates otherwise prescribed by this award but where an employee qualifies for this allowance and is appointed leading hand he/she shall be paid whichever amount is the higher but not both.

(30) Detail Worker: A detail worker shall be paid \$3.87 per day in addition to the rates otherwise prescribed in this award but where an employee qualifies for this allowance and is appointed leading hand he/she shall be paid whichever amount is the higher but not both.

(31) Spray Painting—Painters:

- (a) Lead paint shall not be applied by a spray to the interior of any building.
- (b) All employees (including apprentices) applying paint by spraying shall be provided with full overalls and head covering and respirators by the employer.
- (c) Where from the nature of the paint or substance used in spraying a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substances used by an employee in spray painting, the employee shall be paid a special allowance of \$1.07 per day.

(32) Brewery Cylinders—Painters:

- (a) A painter required to work in brewery cylinders or stout tuns shall be allowed 15 minutes spell in the fresh air at the end of each hour worked by him. Such fifteen minutes shall be counted as working time and paid for accordingly.
- (b) A painter working in a brewery cylinder or a stout tun shall be paid at the rate of time and one half. When working overtime on such work a painter shall, in addition to the overtime rate payable, be paid one half of his ordinary rate.

(33) Fumes:

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer.

(34) (a) Lead Paint Surfaces: No surface painted with lead paint shall be rubbed down or scraped by a dry process.

(b) Width of Brushes: All paint brushes shall not exceed 125mm in width and no kalsomine brush shall be more than 175mm in width.

(c) Meals not to be taken in paint shop. No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.

(35) Loads:

Where bricks are being used the employee shall not be required to carry—

- (a) more than 40 bricks each load in a wheelbarrow (on a scaffold) to a height of 4.5 metres from the ground;
- (b) more than 36 bricks each load in a wheelbarrow over and above a height of 4.5 metres on a scaffold.

The type of wheelbarrow shall be agreed upon with the Union.

(36) Grinding Facilities:

The employer shall provide adequate facilities for the employees to grind tools and employees shall be allowed time to use the same whenever reasonably necessary.

(37) First Aid Outfit:

The employer shall provide a sufficient supply of bandages and antiseptic dressings for use in cases of accident.

(38) Water and Soap:

Water and soap shall be provided at each shop or on each job by the employer for use by the employees.

(39) Provision of Boiling Water:

The employer shall provide boiling water at each shop for the use of his/her employees at lunch time.

(40) (a) The employer shall supply a safety helmet for each of his/her employees requesting one on any job where, pursuant to the regulations made under the Occupational Health, Safety and Welfare Act 1984, a employee is required to wear such helmet.

(b) Any helmet so supplied shall remain the property of the employer and during the time it is on issue, the employee shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(41) Electrical Sanding Machines:

The use of electrical sanding machines for sanding down paint work shall be governed by the following provisions:

- (a) The weight of each such machine shall not exceed 5.9 kilograms.
- (b) Every employer operating any such machine shall endeavour to ensure that each such machine, together with all electrical leads and associated equipment, is kept in a safe condition and shall if requested so to do by any employee but not more often than once in any four weeks cause the same to be inspected under the provisions of the Electricity Act and the regulations made thereunder.
- (c) Employers shall provide and supply respirators of a suitable type, to each employee and shall maintain same in an effective and clean state at all times. Where respirators are used by more than one employee, each such respirator shall be sterilised or a new pad inserted after use by each such employee.
- (d) Employers shall also provide and supply goggles of suitable type provided that the goggles with celluloid lenses shall not be regarded as suitable.
- (e) All employees shall use the protective equipment supplied when using electrical sanding machines of any type.

(42) Protective clothing for bricklayers and bricklayers' labourers engaged on construction or repair of refractory brickwork:

- (a) Gloves shall be supplied when employees are engaged on repair work and shall be replaced as required, subject to employees handing in the used gloves.
- (b) Boots shall be supplied upon request of the employees after six weeks' employment, the cost of such boots to be assessed at \$20.00 and employees to accrue credit at the rate of \$1.00 per week.

Employees leaving or being dismissed before 20 weeks' employment shall pay the difference between the credit accrued and the \$20.00. The right to accrue credit shall commence from the date of request for the boots.

In the event of boots being supplied and the employee not wearing them whilst at work, the employer shall be entitled to deduct the cost of the boots if the failure to wear them continues after one warning by the employer.

Upon issue of the boots, employees may be required to sign the authority form in or to the effect of the Annexure to the clause. Boots shall be replaced each six months, dating from the first issue.

- (c) Where necessary when bricklayers are engaged on work covered by subclauses (19) and (20) of this clause, overalls will be supplied upon the request of the employee and on the condition that they are worn while performing the work.

ANNEXURE

The employee claiming the supply of boots in accordance with paragraph (b) hereof may be required to sign a form giving an authority to the employer in accordance with the following—

Deduction Form

..... acknowledge receipt of one (1) pair of boots provided in accordance with the provisions of subclause (42) of Clause 13.—Special Rates and Provisions of the Building Trades Award No. 31 of 1966. Should the full cost of the boots (\$20.00) not be met by accumulation of credit (at the rate of \$1.00 per week) from I authorise deduction from any moneys due to me by my employer of an amount necessary to meet the difference between the credit accrued and \$20.00.

Signed

Dated

(43) An employee, holding a Third Year First Aid Medalion of the St. John Ambulance Association, appointed by the employer to perform first aid duties, shall be paid at the rate of \$6.45 per week in addition to the prescribed rate.

(44) Attendants on Ladders:

No employees shall work on a ladder at a height of over 6.1 metres from the ground when such ladder is standing in any street, way or lane where traffic is passing to and fro, without an assistant on the ground.

(45) Where the employer provides transport to and from the job the conveyance used for such transport shall be provided with suitable seating and weatherproof covering.

(46) Sanitary Arrangements:

The employer shall comply with the provisions of section of the Occupational Health, Safety and Welfare Act, 1984-1987.

(47) The Secretary or any authorised officer of the Union shall have the right to visit any job for the purpose of ascertaining whether work is being performed in accordance with the provisions of the Occupational Health, Safety and Welfare Act, and any regulations made thereunder. Should he be of the opinion that the work being carried out is not in accordance with those provisions the Secretary or any authorised officer of the Union shall inform the employer and the workers concerned accordingly and may report any alleged breach of Act or the regulations to the Chief Inspector of the Department of Occupational Health, Safety and Welfare of Western Australia.

14.—FARES AND TRAVELLING TIME

(1) Where a worker is required to work away from his shop irrespective of whether such work is classified as construction work, the following provisions shall apply—

- (a) He shall be paid fares in excess of those he would incur in travelling between his home and his depot or shop.
- (b) He shall be paid travelling time at his ordinary rate of pay incurred in travelling to and from the site in excess of the travelling time he incurs in travelling between his home and his depot or shop provided such travelling time to and from the site is outside his normal hours of work.
- (c) Where an employer requests a worker to use his own car and the worker agrees, an amount of 62 cents per kilometre shall be paid for kilometres in excess of the kilometres a worker would normally incur in travelling between his home and his depot or shop.
- (d) This subclause shall be deemed to be complied with where an employer adopts the practice of paying an amount of \$11.30 on each day a worker is required to report to the job away from his shop.

(2) For travelling during working hours to and from the employer's place of business or from one job to another, a worker shall be paid by the employer at ordinary rates. The employer shall pay all fares and reasonable expenses in connection with such travelling. Provided that if an employer requests the worker to use his own vehicle, the employer shall pay a car allowance of not less than 62 cents per kilometre for each kilometre the worker travels in response to such request.

15.—UNDER-RATE WORKERS

(1) Any worker who, by reason of old age or infirmity, is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to the Board of Reference for determination.

(3) After application has been made to the Board and pending the Board's decision, the worker shall be entitled to work for and be employed at the proposed lesser rate.

16.—APPRENTICES

(1) (a) Wages per week (percentage of tradesperson's rate prescribed by subclauses (1) and (2) of Clause 10.—Wages).

	%
(i) Four Year Term—	
First year	42
Second year	55
Third year	75
Fourth year	88
(ii) Three and a Half Year Term—	
First six months	42
Next year	55
Next following year	75
Final year	88
(iii) Three Year Term—	
First year	55
Second year	75
Third year	88

(b) Construction Allowance (per week):

Where an apprentice works in circumstances which would entitle a tradesperson to the construction allowance prescribed in subclause (4) of Clause 10.—Wages, the following extra rate shall be paid to that apprentice—

	%
(i) Four year term (per cent of construction allowance per week):	
First year	40
Second year	72
Third year	95
Fourth year	100
(ii) Three and a half year term (per cent of construction allowance per week):	
First six months	40
Next year	72
Next following year	95
Final year	100
(iii) Three year term (per cent of construction allowance per week):	
First year	58
Second year	95
Third year	100

(c) Tool Allowance (per week)—

A tool allowance of one-third of the amount (if any) payable to a tradesman shall be paid to an apprentice to that trade in his first year of apprenticeship and of two-thirds of that amount in his second year and of the same amount (if any) as is payable to a tradesman in the remaining period of his apprenticeship.

(d) Provision of Tools:

An employer may, by agreement with the apprentices's parent or guardian, elect to provide the apprentice with a kit of tools and subject to establishing the value of the tools at the time of so providing, deduct the tool allowance until the cost of the kit of tools is reimbursed.

In the event of an apprentice being dismissed or leaving his employment before the cost of the tool kit has been reimbursed the employer shall be entitled to—

- (i) deduct from any monies owing the apprentice, the amount then owing; or
- (ii) by agreement retain tools at the originally nominated value to the amount still owing.

(2) (a) An apprentice to painting or signwriting shall not be registered in accordance with the provisions of this award until a certificate to the effect that he does not suffer any disability by reason of colour blindness has been lodged with the Registrar.

(b) An apprentice to painting or signwriting shall undertake a vocational aptitude test.

(3) The maximum number of apprentices to be taken by an employer shall be as follows—

- (a) Carpentry and joinery—one apprentice to every two or fraction of two journeymen provided the fraction shall not be less than one.
- (b) Plumbing—one apprentice to every two or fraction of two journeymen provided the fraction shall not be less than one.
- (c) Painting, signwriting or glazing—one apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.
- (d) Bricklaying—one apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.
- (e) Plastering—one apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.

17.—HOURS

(1) Hours of Work:

- (a) Except as provided elsewhere in this award the ordinary working hours shall be 38 per week to operate from May 24, 1982.
- (b) Subject to subclause (3) of clause 19.—Overtime and subject to the provisions of this subclause and subclauses (2)—Implementation of 38 Hour Week—and (3)—Procedures for In-house Discussions; the ordinary hours of work shall be an average of 38 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.
 - (v) For the purposes of paragraph (a) of subclause (3) of this clause any other work cycle during which a weekly average of 38 ordinary hours are worked as may be agreed in accordance with paragraph (d) of subclause (3).
- (c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday, inclusive, and except in the case of shift employees, shall be worked between the hours of 6.30 a.m. and 6.00 p.m. with an interval of not less than 45 minutes for lunch but the meal break of 45 minutes and/or the spread of hours may be altered by agreement between the employer and the majority of employees in the plant or section or sections concerned.

Provided that in the case of emergency work an employee in the plumbing industry may be rostered to work on Saturday morning and such work may be counted as part of the 38 hours per week. The altered starting and finishing times necessitated by such an arrangement shall be as agreed between the employee and the employer.
- (d) The ordinary hours of work shall not exceed 10 hours on any day.

Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed 8 hours on any day, the arrangement of hours shall be subject to the agreement between the employer and the majority of employees in the employer's premises or section or sections concerned.
- (e) (i) Subject to the provisions of subclause (2)—Implementation of 38 Hour Week and subclause (3)—Procedures for In-house Dis-

cussions, the ordinary hours of shift employees shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in twenty-eight consecutive days

- (ii) The ordinary hours of work prescribed herein shall not exceed 10 hours on any day. Provided that in any arrangement of ordinary working hours, where the ordinary hours are to exceed eight hours on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees in the employer's premises or section or sections concerned.

(2) Implementation of 38 Hour Week:

- (a) Except as provided in paragraph (c) hereof, the method of implementation of the 38 hour week may be any one of the following—

- (i) by employees working less than 8 ordinary hours each day; or
- (ii) by employees working less than 8 ordinary hours on one or more days each week; or
- (iii) by fixing one day of ordinary working hours on which all employees will be off duty during a particular four week cycle; or
- (iv) by rostering employees off duty on various days of the week during a particular four week cycle so that each employee has one day of ordinary working hours off duty during that cycle; or
- (v) on distant work by employees working eight ordinary hours on each day and accruing one day for each four weekly cycle. Such accrued day or days to be taken in conjunction with and additional to rest and recreation leave as prescribed in subclause (8) of clause 23.—Distant Work, or at the end of the project, or on termination, whichever comes first.
- (vi) Where any rostered day off duty falls on a Holiday as prescribed in clause 20.—Holidays and Annual Leave, the next working day shall be taken in lieu unless an alternate day in that four week cycle or the next is agreed.

- (b) An assessment should be made as to which method of implementation best suits each employer and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation.
- (c) Different methods of implementation of a 38 hour week may apply to various sites or establishments of the one employer.
- (d) Notice of Days Off

Except as provided in paragraph (e) of this subclause, in cases where, by virtue of the arrangement of ordinary working hours, an employee, in accordance with placita (iii) and (iv) of paragraph (a) of this subclause, is entitled to a day off duty during the work cycle, then such employee shall be advised by the employer at least four weeks in advance of the day to be taken off duty provided that a lesser period of notice may be agreed by the employer and the majority of employees in the plant or section or sections concerned.

- (e)
 - (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with sub-paragraphs (iii) and (iv) of paragraph (a) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.
 - (ii) An employer and employee may by agreement substitute the day the employee is to take off for another day.
- (f) Flexibility in relation to rostered days off.

Notwithstanding any other provision in this clause, where the hours of work of an establishment, plant

or section are organised in accordance with placita (iii) and (iv) of paragraph (a) of this subclause an employer, the union or unions concerned may agree to accrue up to a maximum of five rostered days off in special circumstances such as where there are regular and substantial fluctuations in production requirements in any year.

Where such agreement has been reached the accrued rostered days off must be taken within 12 months from the date of agreement and each 12 months thereafter.

It is understood between the parties that the involvement of the union or unions concerned would be necessary in cases where it or they have members in the plants concerned and not in non-union establishments.

(3) Procedures for In-House Discussions

- (a) Procedures shall be established for in-house discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with subclauses (1)—Hours of work and (2)—Implementation of 38 Hour Week of this clause and shall entail an objective review of current practices to establish where improvements can be made and implemented.
- (b) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.
- (c) The procedures should allow for the monitoring of agreements and understandings reached in-house.
- (d) In cases where agreement cannot be reached in-house in the first instance or where problems arise after initial agreements or understandings have been achieved in-house, a formal monitoring procedure shall apply. The basic steps in this procedure for settling such a problem are as follows—
 - (i) Consultation shall take place within the particular establishment concerned.
 - (ii) If it is unable to be resolved at establishment level, the matter shall be referred to the State Secretary of the union (or unions) concerned or his deputy, at which level a conference of the parties shall be convened without delay.
 - (iii) In the absence of agreement either party may refer the matter to the Western Australian Industrial Commission.

(4) An employee shall not be prohibited nor discouraged by his employer, nor by any leading hand or foreman acting for the employer, from having a "cup of tea" (which expression includes any suitable beverage, together with something to eat) at a convenient time once during each morning work period.

Provided that such a "cup of tea" is taken at a suitable place (where flasks and cribs may be safely left) designated by the employer for any particular employee or group of employees or, if no such place be designated, then at the nearest such suitable place to the place where the employee in question reasonably believes when he commences work for the morning that he will be working at about the time he customarily has such "cup of tea", and

Provided further that work is not unduly interfered with and that there is no organised stoppage of work for the purpose of having the "cup of tea" except with the consent of the employer.

(5) Where an employee is employed in such a place or under such circumstances that it is not permissible or practical for him to smoke at his working place, he shall be permitted at some convenient time, at least once during each morning work period, to go to some place at which smoking is permitted and practicable, for sufficient time, not exceeding seven minutes, to enjoy a smoke.

(6) Varied Starting Times:

By agreement between the employer, his employees and the union the working day may begin at 6.00 a.m. or at any other time between that hour and 8.00 a.m. and the working time shall then begin to run from the time so fixed with a consequential adjustment to the meal cessation period.

18.—SHIFT WORK

(1) (a) An employer may work any job on shifts but before doing so shall give notice of his intention to the Union and of the intended starting and finishing times of ordinary working hours of the respective shifts.

(b) Such notice shall be given as soon as practicable but not less than seven days before the day upon which it is intended that the shifts will commence.

(2) (a) Where work on any job is carried out on shifts and less than seven consecutive shifts (other than day shift) are worked on that job then the workers employed on such shifts shall be paid at the rate of time and a half for the first two hours and double time thereafter for the time so worked on each such shift other than day shift.

(b) The sequence of work shall not be deemed to be broken under paragraph (a) of this subclause by reason of the fact that work on the job is not carried out on a Saturday or Sunday or on any holiday prescribed in clause 20.—Holidays and Annual Leave of this award.

(3) The loading on the ordinary rates of pay, which shall include all the allowances prescribed in clause 10.—Wages, for any shift other than day shift worked in ordinary hours shall be—

(a) fifteen per cent; or

(b) twenty-five per cent if a worker is required to work for more than one week consecutively on a shift other than day shift but only in the consecutive second or subsequent weeks of shifts other than day shift and then only until that worker works for at least one week on day shift.

(4) Liberty is hereby reserved to the applicant to apply to amend this clause in the event of shift work being introduced on any job after the date of this award but only if conditions out of the ordinary are being experienced on that job.

18A.—PART TIME EMPLOYMENT

(1) A part time employee may be engaged to work for a constant number of hours each week which having regard to the various ways of arranging ordinary hours shall average less than 38 hours per week.

(2) An employee so engaged shall be paid per hour on thirty-eighth of the weekly wage prescribed for the classification in which the employee is engaged.

(3) An employee engaged on a part time basis shall be entitled in respect of annual leave, holidays, sick leave and bereavement leave arising under this award payment on a proportionate basis calculated as follows:

(a) Annual Leave

Where a part time employee is entitled to a payment either, on termination or for the purpose of annual leave or at a close down, for continuous service in any qualifying twelve monthly period then the payment of 2.923 hours' pay prescribed by paragraph (b) of subclause (6) of Clause 20.—Holidays and Annual Leave shall be in respect of each cumulative period of 38 ordinary hours worked during the qualifying period.

(b) Holidays

A part time employee shall be allowed the holidays prescribed by Clause 20.—Holidays and Annual Leave without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part time employee.

(c) Absence Through Sickness

Notwithstanding the provisions of paragraph (a) of subclause (1) of Clause 22.—Absence Through Sickness the accrual of one-sixth of a week for each completed month of service shall be calculated on the average number of ordinary hours worked each week for every completed month of service.

(d) Bereavement Leave

Where a part time employee would normally work on either or both of the two working days following the death of a close relative which would entitle an employee on weekly hire to bereavement leave in accordance with Clause 22.—Bereavement Leave of this award the employee shall be entitled to be absent on bereavement on either or both of those two working days without loss of pay for the day or days concerned.

(e) Overtime

A part time employee who works in excess of the hours fixed under the contract of employment shall be paid overtime in accordance with Clause 19.—Overtime of this award.

19.—OVERTIME

(1) Subject to the provisions of clause 17.—Hours and clause 18.—Shift Work a worker who commences work between midnight and 6 a.m. shall be paid at the rate of double time until his usual starting time and, subject thereto, all work performed outside the normal limits of the hours of labour on any day shall be paid for at the rate of time and a half for the first two hours and double time thereafter except that all work on a Sunday shall be paid for at the rate of double time.

(2) Any worker who has left the premises at which he is employed and is recalled to work after the usual ceasing time for less than one hour shall receive payment for one hour at overtime rates.

(3) If a worker is required to work during the recognised meal period so that the commencement of the meal period is postponed for more than half an hour he shall receive payment at double time rates until he gets his meal.

Provided that where it is necessary for work to continue uninterrupted, a lunch break of not less than thirty minutes shall be allowed between the hours of 11.15 a.m. and 1.30 p.m. to workers engaged on such work.

(4) Subject to subclause (3) hereof, if a worker who is required to work during the recognised meal period does not in consequence obtain during the shift the full continuous meal period, or loses any portion of the meal period, he shall be paid at double time rates for the period not obtained or any portion lost.

(5) The expression "recognised meal period" means the period customarily observed as the meal period between fixed times on the job, or at the works as the case may be, except where the time of commencement of the customary period is altered by mutual consent of the employer and the workers on a job to suit the convenience of the workers or the building proprietor, in which case the altered times shall be the basis of any rights under subclauses (3) and (4) hereof.

(6) Any employee who is required to continue working for more than two hours after his usual knock-off time on any day shall be supplied by the employer with a reasonable meal or, in lieu of such meal, shall be paid an allowance of \$7.30 for that meal.

Provided that this subclause shall not apply to a worker who has been notified on the previous day that he would be required to work such overtime.

(7) (a) When overtime work is necessary it shall, whenever reasonably practicable, be so arranged that workers have at least ten consecutive hours off duty between the work of successive days.

(b) A worker (other than a casual worker) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not at least ten consecutive hours off duty between those times shall, subject to paragraph (c) of this subclause, be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of his employer, such a worker resumes or continues work without having had such ten consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

20.—HOLIDAYS AND ANNUAL LEAVE

(1) (a) Subject as hereinafter provided the following days shall be regarded as holidays and shall be observed without deduction of pay: The days observed as New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, State Foundation Day, Union Picnic Day, Christmas Day and Boxing Day.

(b) When any of the days mentioned in paragraph (a) of this subclause falls on a Saturday or Sunday, the holiday shall be observed on the next succeeding Monday provided that Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(c) To obtain payment for a holiday prescribed in this subclause a worker shall have worked as required by his employer the working day immediately before and the working day immediately after such a holiday or have been absent with the permission of his employer or have been absent with reasonable cause on such days.

(d) An employer shall not terminate the employment of a worker within a period of seven days preceding a holiday prescribed in this award for the purpose of avoiding the obligation imposed by this clause.

(e) In special circumstances and by agreement between the employer and the majority of employees any other day(s) may be substituted for the days prescribed in (1)(a).

(2) "Union Picnic Day" shall be observed on the day also observed as "Sovereign's Birthday".

(3) All workers required to work on the days named in subclause (1) of this clause shall be paid double and one-half time rate for all time worked on any such day.

(4) On any public holiday not prescribed as a holiday under this award, the employer's establishment or place of business may be closed, in which case an employee need not present himself for duty and payment may be deducted, but if work be done, ordinary rates of pay shall apply.

(5) (a) Except as hereinafter provided, a period of four consecutive week's leave, "inclusive of any rostered day off arranged and agreed in accordance with the provisions of clause 17.—Hours", with payment as prescribed in paragraph (b) hereof shall be allowed annually to a worker by his employer after a period of twelve months' continuous service with that employer.

(b) (i) A worker before going on leave shall be paid the wages he would have received in respect of the ordinary time he would have worked had he not been on leave during the relevant period.

(ii) Subject to paragraph (c) hereof a worker shall, where applicable, have the amount of wages to be received for annual leave calculated by including the following where applicable:

(aa) the rate applicable to him as prescribed in clause 10.—Wages of this award, clause 12.—Leading Hands, subclause (22), (25)(e), (29) and (30) of clause 13.—Special Rates and Provisions and by clause 24.—Location Allowance of the award and,

(bb) Subject to paragraph (c)(ii) hereof the rate prescribed for work in ordinary time by clause 18.—Shift Work of the award according to the worker's roster or projected roster including Saturday and Sunday shifts;

(cc) Any other rate to which the worker is entitled in accordance with his contract of employment for ordinary hours of work; provided that this provision shall not operate so as to include any payment which is of a similar nature to or is paid for the same reasons as or is paid in lieu of those payments prescribed by clause 13.—Special Rates and Provisions, clause 14.—Fares and Travelling Time, clause 19.—Overtime or clause 23.—Distant Work, of this award, nor any payment which might have become payable to the worker as reimbursement for expenses incurred.

(c) During a period of annual leave a worker shall receive a loading calculated on the rate of wage prescribed by paragraph (b)(ii)(aa) of this subclause. The loading shall be as follows—

(i) Day Workers—A worker who would have worked on day work had he not been on leave—a loading of 17 1/2 per cent.

(ii) Shift Workers—A worker who would have worked on shift work had he not been on leave—a loading of 17 1/2 per cent.

Provided that where the worker would have received shift loadings prescribed by clause 18.—Shift Work had he not been on leave during the relevant period and such loadings would have entitled him to a greater amount than the loading of 17 1/2 per cent, then the shift loadings shall be added to the rate of wage prescribed by the said paragraph (b)(ii)(aa) in lieu of the 17 1/2 per cent loading.

Provided further, that if the shift loading would have entitled him to a lesser amount than the loading of 17 1/2 per cent then such loading of 17 1/2 per cent shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) hereof in lieu of the shift loadings.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(6) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(7) Proportionate Leave on Termination

If after one months continuous service in any qualifying twelve monthly period a worker lawfully leaves his employment or his employment is terminated by the employer through no fault of the worker, the worker shall be paid 2.923 hours' pay at the rate of wage prescribed by clause 10.—Wages, in respect of each completed week of continuous service.

(8) Any time in respect of which a worker is absent from work, except time for which he is entitled to claim sick pay, and except for any public holiday on which he is absent from work or time spent on holidays, annual leave or long service leave as prescribed by this award, shall not count for the purpose of determining his right to annual leave.

(9) In the event of a worker being employed by an employer for portion only of a year, he shall only be entitled, subject to subclause (7) hereof, to such leave on full pay as is proportionate to his length of service during that period with such employer and if such leave is not equal to the leave given to the other workers he shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(10) In addition to any payment to which he may be entitled under subclause (7) of this clause a worker whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which subclauses (11) or (14) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

(a) he has been justifiably dismissed for misconduct; and

(b) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(11) In special circumstances and by agreement between the employer and the employee annual leave may be taken in other than a period of four consecutive weeks.

(12) For the purpose of this clause "double time and one-half" shall be the rate which would have been payable to the worker on that day had it not been a holiday (including all allowances paid in accordance with the provisions of clause 10 of this award) multiplied by two and one-half.

(13) Payment for holidays shall be at the ordinary rate prescribed in clause 10 of this award including all allowances paid in accordance with the provisions of that clause.

(14) Notwithstanding anything else herein contained an employer who observes a Christmas close down for the purpose of granting annual leave may require a worker to take his annual leave in not more than two periods but neither of such periods shall be less than one week.

(15) The provisions of this clause shall not apply to casual workers.

21.—LONG SERVICE LEAVE

The Long Service Leave provisions set out in Volume 60 of the Western Australian Industrial Gazette at pages 1 to 6 both inclusive, are hereby incorporated in and form part of this award.

22.—ABSENCE THROUGH SICKNESS OR BEREAVEMENT

(1) (a) A worker who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the worker's services terminate, if before the end of that year of service, to the extent that the worker has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the worker if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that a worker shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of clause 20—Holidays and Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 20—Holidays and Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the worker's service has been deemed continuous in accordance with subclause (3) of clause (2) of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmitter shall stand to the credit of the worker at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) A worker shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary days of work. Proof of such death shall be furnished by the worker to the satisfaction of his employer.

Provided that this subclause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement leave.

For the purposes of this subclause, the words "wife" and "husband" shall include a person who lives with the worker as a de facto wife or husband.

(9) The provisions of this clause do not apply to casual workers.

23.—DISTANT WORK

(1) (a) Where a worker is sent by his employer or is engaged or selected or advised by an employer to proceed to a job or is told by an employer that a job will be available at such distance that he cannot return to his home each night, the employer shall pay the expenses reasonably incurred by the worker for board and lodging or shall provide suitable board and lodging.

(b) Any dispute which may arise between the union and an employer as to whether suitable board and lodging has been provided pursuant to this subclause may be determined by the Board of Reference. Should the Board consider that suitable board and lodging is not being provided, then it may require the employer to do such things as may be deemed necessary to meet that requirement.

(2) When any worker is required to travel at night, sleeping berth accommodation shall be provided by the employer.

(3) Time occupied in travelling (including waiting for transport connections) up to a maximum of eight hours each day shall be paid for at ordinary rates. Time occupied after arriving at the destination awaiting commencement of work during ordinary working hours shall be deemed to be time occupied in travelling.

Provided that the amount for the return travelling shall not be payable if the worker be dismissed for misconduct or, within one working week of his commencing work on the job, for incompetency or if the worker terminates or discontinues his work on the job within one month of his commencing thereon.

(4) The employer shall pay all fares which shall be deemed to include the cost of transporting the employee's tools, in connection with such travelling, and shall pay the cost of each

ordinary meal actually and reasonably required during such travelling but the minimum allowance for such meal shall be \$7.30.

Provided that the amount of the return fare shall not be payable if the worker be dismissed for misconduct or, within one working week of his commencing work on the job, for incompetency or if the worker terminates or discontinues his work on the job within one month of his commencing thereon.

Provided further that where such travelling is to or from or within the area of the State north of latitude 26°S., the following provisions shall apply—

- (a) The amount of the original fare shall be deducted from the subsequent earnings of the worker.
- (b) One-third of the amount of such fare shall be refunded by the employer to any worker who continues for each of the first three months of the duration of the job, with the full fare being refunded by the employer to a worker who continues in his service until the completion of any job of less than three months' duration or to any worker dismissed by the employer within the first three months of the employment unless such dismissal was due to the worker's misconduct.
- (c) Where a worker continues in the employer's service at a distant job for three months or six months, he shall be paid by the employer either one half or the full amount as the case may be, of the fares incurred in returning to his home, with the full amount of such fares being payable by the employer to a worker who continues in his service until the completion of any job of less than six months' duration or to any worker dismissed by the employer within the first six months of the employment unless such dismissal was due to the worker's misconduct.

(5) Where a worker uses any kind of conveyance of his own in travelling, the amount of the fare that would have been reasonably incurred had the worker used a public conveyance shall be paid by the employer to the worker.

(6) (a) A worker not required to work during a weekend who works as required during the ordinary hours of work on the working day before and the working day after a weekend, and who notifies his employer no later than the previous Tuesday of his intention to return home at the weekend and who returns home for that weekend, shall be paid an allowance of \$23.10 for each such occasion unless travelling facilities are provided.

(b) A worker shall be deemed to have returned home at the weekend only if he is absent from the accommodation provided for him at the distant place for not less than half the hours between ceasing work on Friday and commencing work on the next following working day.

(7) If a worker elects to return to his home at the weekend, after three months' continuous service away from home in the employ of the one employer and thereafter at the end of each three monthly period, he shall be paid a second class return rail or road bus fare on the pay day which immediately follows the date on which he returns to the job, unless travelling facilities are provided. This subclause shall not apply where the worker has visited his home at the employer's expense, whether under subclause (6) or otherwise, during the three monthly period.

(8) When a worker has been engaged by the one employer for six months to work at a distant place from which it was not practicable to return to his home at the end of three months, he shall at the end of six months be granted one day's leave without pay to enable him to return to his home during such "long" weekend and, unless travelling facilities are provided, he shall be paid a second class return rail or road bus fare on the pay day which immediately follows the date on which he returns to the job.

Provided that a worker on jobs in the area of the State north of latitude 26°S., shall after working continuously for an employer for six months without returning to his home be paid an additional three days' pay and after working for an employer continuously for twelve months be granted two days' leave without pay and be paid his return air fares between the job and his home on the pay day immediately following his return to the job.

Provided further that for any specified job in the area of the State north of latitude 26°S., with the consent of the union, any other arrangement acceptable to the workers may be substituted for the foregoing provision.

(9) Where an employee, supplied with board and lodging by his employer, is required to live more than one half of a mile from the job, he shall be provided with suitable transport to and from that job or be paid an allowance of \$11.00 per day provided that where the time actually spent in travelling either to or from the job exceeds twenty minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

(10) Alternative Paid Day Off Procedure

If the employer and the employee so agree in writing, the paid rostered day off, as agreed and arranged in accordance with subclause (1) of clause 17.—Hours, may be taken and paid for, in conjunction with and additional to rest and recreation leave as prescribed in subclause (8) hereof, or at the end of the project, or on termination, whichever comes first.

24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.50
Argyle (see subclause 12)	37.50
Balladonia	14.20
Barrow Island	24.40
Boulder	5.90
Broome	23.00
Bullfinch	6.90
Carnarvon	11.70
Cockatoo Island	25.30
Coolgardie	5.90
Cue	14.70
Dampier	19.90
Denham	11.70
Derby	24.00
Esperance	4.50
Eucla	16.10
Exmouth	20.60
Fitzroy Crossing	28.90
Goldsworthy	13.30
Halls Creek	32.80
Kalbarri	4.90
Kalgoorlie	5.90
Kambalda	5.90
Karratha	23.60
Koolan Island	25.30
Koolyanobbing	6.90
Kununurra	37.50
Laverton	14.60
Learmonth	20.60
Leinster	14.50
Leonora	14.60
Madura	15.20
Marble Bar	35.70
Meekatharra	12.70
Mt Magnet	15.70
Mundrabilla	15.70
Newman	13.90
Norseman	12.20
Nullagine	35.60
Onslow	24.40
Pannawonica	18.70
Paraburdoo	18.50
Port Hedland	19.80
Ravensthorpe	7.70
Roebourne	27.10
Sandstone	14.50
Shark Bay	11.70
Shay Gap	13.30
Southern Cross	6.90
Telfer	33.20

TOWN	PER WEEK \$
Teutonic Bore	14.50
Tom Price	18.50
Whim Creek	23.40
Wickham	22.80
Wiluna	14.80
Wittenoom	31.60
Wyndham	35.50

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid 66 2/3% of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by 33 1/3%; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause:

- (a) "Dependant" shall mean—
 - (i) a spouse or defacto spouse; or
 - (ii) a child where there is no spouse or defacto spouse;
 who does not receive a district or location allowance.
- (b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the

Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

25.—PROVISION OF APPLIANCES

(1) Builders' Labourers: The employer shall provide all necessary plant and tools free of charge.

(2) Carpenters: The employer shall provide the following tools when they are required on the job:- Dogs and cramps of all descriptions, bars of all descriptions, augers of all sizes, bits not ordinarily used in a race, all hammers except claw hammers, glue pots and brushes, dowel plates, trammels, hand and thumb screws, soldering irons, spanners from 19mm upwards and all power driven tools and machines on construction jobs.

(3) Painters: The employer shall provide all tools in connection with the painting trade, excepting putty knife, strippers, scissors, duster, paperhanging brush, roller, two lining fitches, a 600mm rule, hammer and hacking knife.

(4) Signwriters: Signwriters shall provide themselves with a full set of pencils and fitches, rest stick, wash leather and a 600mm rule.

(5) Plasterers: The employer shall supply all floating rules, darbies, trammels, centres, buckets and sieves. Stands for plasterers' mortar boards not less than 750mm from the ground or where practicable and safe from a scaffold level shall be provided for the plasterer by the employer when requested.

(6) Plumbers:

- (a) The following tools shall be provided by the employer—
 - Metal pots, plumbing irons, mandrils, long dummies, stocks and dies for iron and brass pipes, cutters, all tongs over 300mm, vices, hack saw blades, taps and chisels for brick and concrete, and the employer shall also supply all tools required for work to be performed on wrought iron and lead pipes over 50mm in diameter and a worker shall supply only the usual kit bag of tools.

(b) Plumbers shall supply themselves with all the tools set out hereunder—

- 1 680gm Claw Hammer;
- 1 Gimpy Hammer;
- 1 Ball Pein Hammer;
- 1 Cross Pein Hammer;
- 1 450 Pinch Bar;
- 1 12mm Hand Drill;
- 1 set Twist Drills 8mm to 12mm inclusive;
- 1 set Tungsten Tipped Drills, 6mm, 8mm, 10mm;
- 1 Ratchet Wood Brace;
- 1 Set Wood Bits (Rough Cut), 6mm-8mm-12mm-18mm-25mm-30mm;
- 1 300mm Half Round File;
- 1 250mm Wood Rasp;
- 1 250mm Round File;
- 1 Plugging Chisel;
- 1 set Star Drills, 6mm-10mm-12mm-18mm;
- 1 set Screwdrivers, 150mm—200mm-300mm;
- 1 Multipliers;
- 1 Gas Pliers;

- 1 450mm Stilson Wrench;
- 1 350mm Stilson Wrench;
- 1 350mm Footprints;
- 1 250mm Footprints;
- 1 300mm Crescent Spanner;
- 1 200mm Crescent Spanner;
- 1 300mm Straight Tin Snips;
- 1 Wiess Snips;
- 1 Steel Compass 225mm;
- 1 Mitre Square 200mm;
- 1 Soldering Head or 680gm Soldering Iron;
- 1 600mm Spirit Level;
- 1 Line level;
- 1 300 metre Nylon Line;
- 1 Plumb Bob and Line;
- 1 Brick Punch;
- 1 Rivet Set;
- 1 Grooving Tool;
- 1 Flat Lead Dresser;
- 1 Lead Bossing Mallet;
- 1 Bent Bolt;
- 1 Flaring Block and Drift 12mm-18mm-25mm;
- 1 12mm Copper Tube Bending Spring
- 1 18mm Copper Tube Bending Spring;
- 1 Pair Welding Glasses;
- 1 Hacksaw;
- 1 Gauging Trowel;
- 1 Nail Bag;
- 1 34 metre Tape (Steel);
- 1 Key Hole Saw Set;
- 1 Oxy Bottle Key;
- 1 set Cold Chisels 100mm-150mm—200mm-300mm;
- 1 set Wood Chisels 12mm-18mm-25mm;
- 1 Tool box and Lock;
- 1 Hand Saw 650mm

(7) Bricklayers: The employer shall supply scrutch combs and blades when required.

(8) Glaziers: The employer shall provide all tools in connection with the glazing trade excepting the following—

- 1 Lock-up Tool Box;
- 1 pair Glaziers Pliers;
- 1 pair Pincers;
- 2 Putty Knives (1 facing, 1 stripping)
- 2 Chisels (one 25mm, one 40mm);
- 1 Light Claw Hammer;
- 1 metre Rule;
- 1 pair 10 inch Snips;
- 1 Hacksaw;
- 1 Marking Line 18 metres;
- 2 Screwdrivers;
- 3 metre Steel Tape;
- 1 Centre Punch;
- 1 Prick Punch;
- 1 Broadknife

Hacksaw blades to be supplied by the employer.

(9) (a) A worker in receipt of a tool allowance shall provide himself with all necessary tools kept in suitable condition for the performance of his work (other than those tools to be provided by the employer in accordance with this clause).

(b) A worker who fails to provide all such tools when required shall be guilty of a breach of this award and shall not be entitled to the tool allowance prescribed in clause 10.—Wages until he complies with this clause.

26.—PROTECTION OF WORKERS' TOOLS

(1) Carpenters and Joiners: The employer shall provide a waterproof and reasonably secure place where the workers' tools (when not in use) may be locked up apart from the employer's plant or material.

(2) Other Workers except Builders' Labourers: The employer shall, when practicable, provide a reasonably secure place on each job for the safekeeping of the workers' tools when not in use.

(3) The employer shall indemnify a worker in respect of any tools of the worker stolen, if the employer's failure to comply with this clause is a material factor in contributing to the stealing of the tools.

27.—CHANGE ROOM

Where no other reasonably suitable place is available, the principal contractor shall (unless it is impracticable to do so) provide on each job a suitable and convenient change room where the workers may change their clothes. The change room shall not be used for storing lime, cement, or other similar materials.

28.—RECORDS

(1) The employer shall maintain a record, which may be maintained in one or more parts depending on the system of recording used by the employer, from which can be readily ascertained the following—

- (a) the name of each employee and his classification.
- (b) the hours worked by each employee each day.
- (c) the gross amount of wages and allowances paid.
- (d) the amount of each deduction made and the nature thereof including taxation deductions.
- (e) the nett amount of wages and allowances paid.
- (f) the period of time, if any, which an employee spends away from the employer's premises to work on site on construction work and the amount of construction allowance paid in accordance with clause 11(4)—Wages to the employee in respect thereof.

(2) All records and documentation referred to in subclause (1) or copies thereof shall be available for inspection by any authorised official or employee of the union during usual office hours, at the employer's office or other place convenient to the employer and the union, and such person may take extracts therefrom.

Provided that if such records are not available for any reason when demanded the employer shall within twenty four hours notify the union of a reasonable time and place at which they may be inspected.

Further where the authorised official or employee of the union reasonably suspects that a breach of the award has been committed he/she may in writing request the employer to provide to the union copies of the record as specified in subclause (1) hereof in respect of such periods of employment and such employees covered by this award as relate to the suspected breach of the award.

Where disagreement exists between the union and the employer with respect to the provision of such copies the matter may be referred to the Western Australian Industrial Relations Commission for determination.

(3) Details of how his/her wages are made up shall be available to the employee at the time of payment.

29.—REPRESENTATIVE INTERVIEWING WORKERS

On notifying the employer or his representative, the secretary or any authorised officer of the union shall have the right to visit and inspect any job or shop or factory at any time when work is being carried on whether during or outside the ordinary working hours and to interview the workers covered by this award provided that he does not unduly interfere with the work in progress.

30.—POSTING OF AWARD AND UNION NOTICES

No employer shall prevent an official of the union from posting a copy of this award or any union notice, not exceeding fourteen inches by nine inches, in a suitable place on any job.

31.—BOARD OF REFERENCE

(1) The Commission hereby appoints, for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed to section 48 of the Industrial Arbitration Act, 1979.

(2) The Board of Reference is hereby assigned the function of determining any dispute between the parties in relation to any matter which under this award may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

32.—NO REDUCTION

Notwithstanding the provisions of Clause 10.—Wages of this award, the rate of wage of any worker shall not be reduced if that worker, at the 15th day of September, 1977, was being paid a higher wage than the maximum prescribed in the said clause for his class of work.

33.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

A worker 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:

(a) A worker shall include a part-time worker but shall not include a worker engaged upon a casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

(a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

(b) A worker 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.

(c) A worker shall give not less than four 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.

(d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) 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 worker make it inadvisable for the worker to continue at her present work, the worker 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 worker may, or the employer may require the worker 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 (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

(a) 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 worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.

(b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be the right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(i) 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

(ii) 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.

(b) Where a worker 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.

(c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

(d) A worker 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 a worker who was transferred to a safe job pursuant to subclause (3) to the position she held immediately before such transfer. Where such a position no longer exists but there are other positions available, for which the worker 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.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks:

(a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

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

(9) Termination of Employment

(a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of a worker 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.

(10) Return to Work After Maternity Leave

(a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), 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 worker 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.

(11) Replacement Workers

- (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.
- (b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.
- (c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker 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 worker who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.
- (e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months qualifying period.

34.—SHOP STEWARDS

An employee appointed as a Shop Steward shall, upon notification in writing by the Union to the employer be recognised as an accredited representative of the Union to which he or she belongs and he or she shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he or she represents.

35.—INTRODUCTION OF CHANGE

(1) Employers' Duty to Notify

- (a) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have "significant effects" on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.
- (b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skill required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have "significant effects".

(2) Employer's Duty to Discuss Change

- (a) The employer shall discuss with the employees affected and their union or unions, the introduction of the changes referred to in subclause (1) of this clause among other things, the effects the changes are likely to have on employees, measures to avoid or minimise the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their unions in relation to the changes.
- (b) The discussion shall commence as soon as is practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1) of this clause.
- (c) For the purpose of such discussion, the employer shall provide in writing to the employees concerned and their unions, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

36.—REDUNDANCY

(1) Local Government Authorities

The provisions of this clause shall not apply to Local Government Authorities but in lieu the provisions of Clause 2 of Appendix A of this Award shall apply.

(2) Discussions Before Terminations

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.
- (b) The discussion shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse effect of any terminations to the employees concerned.
- (c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(3) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a) of subclause (2) of this clause, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(4) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

(5) Employees With Less Than One Year's Service

This clause shall not apply to employees with less than one year's service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by employees of suitable alternative employment.

37.—AVOIDANCE OF INDUSTRIAL DISPUTES

(1) A procedure for the avoidance of industrial disputes shall apply in establishments covered by this award.

The objective of the procedure shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion; to reduce the level of industrial confrontation; and to avoid interruption to the performance of work and the consequential loss of production and wages.

It is acknowledged that in some companies or sectors of the industry, disputes avoidance/settlement procedures are either now in place or in the process of being negotiated and it may be the desire of the immediate parties concerned to pursue those mutually agreed procedures.

(2) In other cases, the following principles shall apply:

- (a) Depending on the issues involved, the size and function of the plant or enterprise and the union membership of the employees concerned, a procedure involving up to four stages of discussions shall apply. These are:
 - (i) discussions between the employee/s concerned (and shop steward if requested) and the immediate supervisors;

- (ii) discussions involving the employee/s concerned, the shop steward and the employer representatives;
 - (iii) discussions involving representatives from the state branch of the union(s) concerned and the employer representatives;
 - (iv) discussions involving senior union officials (state secretary) and the senior management representative(s);
 - (v) there shall be an opportunity for any party to raise the issue to a higher stage.
- (b) There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.
 - (c) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.
 - (d) Sensible time limits shall be allowed for the completion of the various stages of the discussions. At least seven days should be allowed for all stages of the discussions to be finalised.
 - (e) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.
 - (f) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lockouts or any other bans or limitation on the performance of work while the procedures of negotiation and conciliation are being followed.
 - (g) The employer shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practices at the workplace.
- (e) Contributions shall be paid for all periods during which the eligible employee is in receipt of payments from the employer under the Workers Compensation and Assistance Act and during which the employee is employed by the employer.
 - (f) Subject to the trust deed an employer shall not be required to contribute during periods of unpaid leave in excess of 38 hours.
 - (g) Subject to the trust deed an employer shall not be required to contribute during periods of unauthorised absence in excess of 8 hours.

38.—SUPERANNUATION

(1) Application:

- (a) Subject to the provisions of subclause (4)—Exemptions of this clause, each employer to whom this award applies shall execute an agreement to become a participating employer in the preferred or an approved Occupational Superannuation Scheme, within one month of the enactment of this clause.
- (b) For the purpose of this award the preferred Occupational Superannuation Scheme is the Westscheme.
- (c) For the purpose of this award an approved Occupational Superannuation Scheme is one which complies with the standards for occupational superannuation schemes under the Occupational Superannuation Standards Act 1987 and Regulations made thereunder.

(2) Contributions:

- (a) Subject to the provisions of subclause (3)—Exemptions of this clause each employer shall make monthly contributions to the fund in respect of all eligible employees at the rate of 3% of ordinary time earnings.
- (b) Eligible employees are all full time and part time employees to whose employment this award applies and whose length of employment with the employer exceeds one month.
- (c) Subject to the provisions of subclauses (3) and (4) of this clause, contributions shall be made in respect of each current eligible employee from the date the employer executes the fund trust deed. Contributions in respect of all other eligible employees shall be made from commencement of employment with the employer but in no case prior to the date of the employer executes the fund trust deed.
- (d) Ordinary time earnings shall include base rate, supplementary payments, overaward payments, shift allowance and leading hand allowance.

(3) Employee Entry into Fund

- (a) On executing the fund trust deed the employer shall provide each current employee with an application form and documentation explaining the fund.
- (b) If an employee fails to return to the employer a completed application form to join the fund within two weeks of receipt the employer shall provide a reminder notice together with an application form and documentation explaining the fund to the employee.
- (c) If the employee fails to complete and return the application to join the fund within two weeks of receipt of the second form no contribution need be made in respect of that employee until such time as a completed application form is received by the employer.
- (d) It shall be the responsibility of the employer to ensure that all new employees complete an application to join the fund during the first month of employment.

Provided that where an eligible employee refuses to complete an application to join the fund the employer shall notify the union in writing of the employees refusal to do so.

(4) Exemptions

- (a) Employers of eligible employees who are covered by a Superannuation Order or Award made pursuant to the Industrial Relations Act 1979 shall be exempted from the provisions of this clause in respect of those employees to whose employment the said Order or Award applies.
- (b) Employers of eligible employees who are contributing to a Superannuation Fund, in accordance with an Order or Award made pursuant to the Industrial Relations Act 1979, the Conciliation and Arbitration Act 1904 or the Industrial Relations Act 1988 for a majority of employees and, at the date of issue of this Order, makes payment for eligible employees covered by this award in accordance with that Order or Award shall be exempt from the provisions of this clause.
- (c) The preferred Occupational Superannuation Scheme for employers of eligible employees who are covered by the Local Government Superannuation Act 1980 shall be the Western Australian Occupational Superannuation Fund.
- (d) Where an employer intends to join an approved Occupational Superannuation Scheme other than WESTSCHEME the employer shall notify the appropriate union(s) prior to so doing.
In the event of a dispute the matter shall be referred to the Western Australian Industrial Relations Commission.
- (e) Any other approved occupational superannuation fund to which an employer or eligible employee who is a member of the religious fellowship known as Brethren elects to contribute.
- (f) An employer may make application to the Western Australian Industrial Relations Commission for exemption from the provisions of this clause and until proceedings before the Western Australian Industrial Relations Commission are finalised the provisions of this clause shall be deemed to have been complied with.

APPENDIX A

The following provisions shall apply to Local Government Authorities who are respondent to this Award and shall apply in lieu of Clause 8 and Clause 35 of this Award.

1.—CONTRACT OF SERVICE

(1) (a) A contract of service to which this award applies may be terminated in accordance with the provisions of this clause and not otherwise but this subclause does not operate so as to prevent any party to a contract from giving a greater period of notice than is hereinafter prescribed, nor to effect an employer's right to dismiss an employee without notice for conduct that justified instant dismissal, including malingering, inefficiency or neglect of duty, and an employee so dismissed shall be paid for the time worked up to the time of dismissal only.

(b) Subject to the provisions of this clause, a party to a contract of service may, on any day give to the other party the appropriate period of notice of termination of the contract prescribed in subclause of this clause and the contract terminates when that period expires.

(2) Notice of Termination by Employer

(a) In order to terminate the employment of an employee (other than a casual employee) the employer shall give the following notice:

Period of Continuous Service	Period of Notice
Less than one year	one week
One year but less than three years	two weeks
Three years but less than five	three weeks
Five years and over	four weeks

(b) An employee who at the time of being given notice is over 45 years of age and who at the time of giving of the notice has completed two years' continuous service with the employer, shall be entitled to one week's notice in addition to the notice prescribed in paragraph (a) of this subclause.

(c) Payment in lieu of the notice prescribed in paragraphs (a) and (b) of this subclause shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period specified and part payment in lieu thereof.

(d) In calculating any payment in lieu of notice the employer shall pay the employee the ordinary wages for the period of notice had the employment not been terminated.

(e) The period of notice in this subclause shall not apply in the case of casual employees, apprentices or employees engaged for a specific task or tasks.

(f) For the purposes of this clause, continuity of service shall, *mutatis mutandis*, be as defined in Regulation 5 of the Local Government (Long Service Leave) Regulations 1983, as amended.

(3) Notice of Termination by Employee

(a) The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.

(b) If an employee fails to give the required notice or having given, or being given, such notice leaves before the notice expires, the employee forfeits the entitlement to any moneys owing to the employee under this award except to the extent that those moneys exceed the ordinary wages for the required period of notice.

(4) Time Off During Notice Period

Where an employer has given notice of termination to an employee who has completed one month's continuous service, that employee shall, for the purpose of seeking other employment be entitled to be absent from work up to a maximum of 8 ordinary hours without deduction of pay. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

Provided that the subclause shall not apply to a casual employee.

(5) Statement of Employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee.

(6) Casual Employees

(a) The period of notice of termination in the case of a casual employee shall be one hour.

(b) If the required notice of termination is not given, one hour's wages shall be paid by the employer or forfeited by the employee as the case may be.

(7) Apprentices

(a) The period of notice of termination in the case of an apprentice shall be one week.

(b) If the required notice of termination is not given, one week's wages shall be paid by the employer or forfeited by the employee as the case may be.

2.—REDUNDANCY

(1) Discussions Before Terminations

(a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.

(b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse effect of any terminations on the employees concerned.

(c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(2) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (1) of this clause the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to had the employment been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary weekly rate of wage and the new lower ordinary weekly rate of wage for the number of weeks of notice still owing.

(3) Severance Pay

(a) In addition to the period of notice prescribed in paragraph (a) of subclause (2) in Clause 1.—Contract of Service of this Appendix, for ordinary termination, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph (a) of subclause (1) of this clause shall be entitled to the following amount of severance pay in respect of continuous period of service.

Period of Continuous Service	Severance Pay
Less than one year	Nil
One year but less than two years	Four weeks
Two years but less than three	Six weeks
Three years but less than four	Seven weeks
Four years and over	Eight weeks

"Weeks Pay" means the ordinary weekly rate of wage for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if the employment with the employer had proceeded to the employee's normal retirement date.

- (b) For the purposes of this clause, continuity of service shall *mutatis mutandis*, be as defined in Regulation 5 of the Local Government (Long Service Leave) Regulations, as amended.

(4) Employee Leaving During Notice

An employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

(6) Time Off During Notice Period

- (a) During the period of notice of termination of employment given by an employer, an employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause that employee shall for the purpose of seeking other employment shall be entitled to be absent from work during each week of notice up to a maximum of eight ordinary hours without deduction of pay.

- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration shall be sufficient.

(7) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a) of subclause (1) of this clause, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Superannuation Benefits

- (a) Subject to further order of the Commission where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (3) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.

- (b) If the superannuation benefit is greater than the amount due under subclause (3) of this clause then the employee shall receive no payment under that subclause.

(9) Employees With Less Than One Year's Service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

(10) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty or in the

case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

(11) Incapacity to Pay

An employer, in a particular redundancy case may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

(12) Dispute Settling Procedures

Any dispute under these provisions shall be referred to the Commission.

SCHEDULE A—PARTIES TO THE AWARD

The following organisations are parties to this award:

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

Building Trades Association of Unions of Western Australia (Association of Workers)

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

SCHEDULE B—RESPONDENTS

Aerated Water Manufacturers:

Coca-Cola Bottlers (Perth) Pty Ltd
Mackay's Aerated Water

Agricultural Societies:

Royal Agricultural Society of W.A.

Aluminium Pre-Fabrication:

H.L. Brisbane and Wunderlich Ltd
Jason Industries Ltd

Biscuit and Cake Manufacturers:

Mills and Ware Biscuits Pty Ltd

Breweries:

Swan Brewery Company Ltd

Brick Manufacturers:

Cardup Metro Bricks Pty Ltd

Caterers:

Bright Spot Holdings Ltd
Poon Bros (W.A.) Pty Ltd

Ceiling Board Manufacturers:

Stramit Pty Ltd

Cement Manufacturers:

Cockburn Cement Pty Ltd
Swan Portland Cement Ltd

Colleges:

Wesley College

Concrete Tank Builders:

M.E. Hanks

Confectionery Manufacturers:

Plaiستowe and Co. Ltd

Dairy Produce Processors:

Brownes Dairy Ltd
Masters Dairy Ltd
Peters Creameries (W.A.) Ltd

Earth Moving Contractors:

Baker Construction Co.
Bell Bros
Theiss Bros Pty Ltd

Estate Developers:

Davison's Estates Pty Ltd

Fertiliser Manufacturers:

Westralian Farmers Co-op Ltd

Flour Manufacturers:

Great Southern Roller Mills

Fish Processors:

G.P. Kailis and Sons
Ross International Fisheries Pty Ltd

- Gas Manufacturer:
Fremantle Gas and Coke Ltd
- Horse Racing Associations:
Western Australian Trotting Association
Western Australian Turf Club
- Hotels:
Brisbane Hotel
Palace Hotel
Rockingham Hotel
- House Repairers and Renovators:
Australian Lumber Co. Pty Ltd
T.G. Fernihough and Sons
- Ice Cream Manufacturers:
Peters Ice Cream (W.A.) Ltd
- Industrial Gas Manufacturers:
C.I.G. (W.A.) Pty Ltd
- Insulation Materials Manufacturers:
Australian Fibre Glass Pty Ltd
Australian Sisalcraft Pty Ltd
- Insurance Companies:
Colonial Mutual Life Insurance Co.
- Joinery Manufacturers:
G.R. Aley Joinery Works
A. Armanasco
Avon Valley Joinery Works
Berry Joinery Pty Ltd
Bunning Bros Ltd
Deneff Joinery Works
Doorhouse Joinery Works
G.A. Esselmont and Son Pty Ltd
P.C. Freiberg Pty Ltd
Geraldton Building Co.
Hector Joinery Pty Ltd
Mapp Bros Joinery Works
Millars Timber and Trading Co. Ltd
Nestra Joinery Co.
New Market Joinery
Park Cabinet and Joinery Works
Preston Timber Co.
Rinaldi, S. Joinery and Cabinet Works
T.O. Cott
Whittaker's Building Supply Co.
- Local Government Authorities:
Albany Council
Bassendean Shire Council
Boulder City Council
Collie Municipal Council
Fremantle City Council
Kalgoorlie Shire Council
Perth City Council
Perth Shire Council
Subiaco City Council
- Meat Exporters and Frozen Food Storers:
Anchorage Butchers Pty Ltd
Derby Meat Processing Co. Ltd
- Fremantle Cold Storage Pty Ltd
Kimberley Meats Pty Ltd
- Motor Vehicle Distributors:
Attwood Motors Ltd
City Motors Ltd
Ford Motor Co. (Aust.) Pty Ltd
General Motors Holdens Ltd
- Neon Sign Manufacturers:
Claude Neon Ltd
- Petrol and Oil Distributors:
Ampol Petroleum Ltd
- Plastic Fabricators:
Lusterite Plastic Products Pty Ltd
- Poultry Processors:
Diamond Foods Ltd
- Retail and Whole Distributors:
Boans Ltd
Domestic Appliances and Co.
Elder Smith Goldsbrough Mort Ltd
Sandovers (Harris Scarfe and Sandovers) Ltd
Woolworths (W.A.) Ltd
- Roofing Contractors:
James Hardie and Co. (Sales) Pty Ltd
- Ship Builders and Repairers:
Southern Cross Slipways Pty Ltd
- Shop Fronts and Office Fitting Manufacturing:
Arcus Pty Ltd
Associated Shop Fitters Pty Ltd
H.L. Brisbane and Wunderlich Pty Ltd
W. Drabble Ltd
Modern Furnishing Co. Pty Ltd
Quality Shop Fitters
K. Silver and Sons
Western Glass Works Pty Ltd
- Smallgoods Manufacturers:
Watsons Foods Pty Ltd
- Swimming Pool Manufacturers and Equipment Suppliers:
Frank O'Neil Swimming Pools (W.A.) Pty Ltd
- Textile Manufacturers:
Joyce Bros (W.A.) Ltd
- Theatres:
Ace Theatres

Dated at Perth this 19th day of December, 1968.

BUILDING TRADES (GOVERNMENT) AWARD 1968.**No. 31A of 1966.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 4th day of January, 1996

J. CARRIGG.

Registrar.

Building Trades (Government) Award 1968.

No. 31 A of 1966.

1.—TITLE

This award shall be known as the Building Trades (Government) Award 1968 and it shall replace Award No. 25 of 1958 as amended.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
- 2A. Award Modernisation
- 2B. Structural Efficiency
3. Scope
4. Area
5. Term
6. Definitions
7. Contract of Service
8. Seniority
9. Wages
10. Payment of Wages
11. Leading Hands
12. Deduction of Union Subscriptions
13. Special Rates and Provisions
- 14A. Fares and Travelling Time (Other than Distant Work)
- 14B. Fares and Travelling—Plumbers
15. Apprentices
16. Hours
17. Rest Period
18. Shift Work
19. Overtime
20. Holidays
21. Annual Leave and Loading
22. Long Service Leave
23. Sick Leave
24. Leave to Attend Union Business
25. Trade Union Training Leave
26. Compassionate Leave
27. Maternity Leave
28. Jury Service
29. Distant Work
30. Location Allowance
31. Provision of Appliances
32. Protection of Employees Tools
33. Change Room
34. Records
35. Right of Entry
36. Posting of Award and Union Notices
37. Prohibition of Junior Employees
38. Mixed Functions
39. Introduction of Change
40. Board of Reference
41. Temporary Employees
42. Paid Leave for English Language Training
- Schedule "A"—List of Respondents
- Schedule "B"—Memorandums of Agreement
- Schedule "C"—Hospital Environment Allowance
- Schedule "D"—Parties Bound
- Appendix "A"—Asbestos Eradication
- Appendix "B"—Rates of Pay—Marine and Harbours Building Tradesmen (Construction)

Appendix "C"—Hours -Department of Marine and Harbours

Appendix "D"—Award Restructuring

2A.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.

(2) The parties commit themselves to the following principles as part of structural efficiency process and have agreed to participate in a testing process in accordance with the provisions of this clause.

- (a) Acceptance in principle that the new award skill level definitions will be more suitable for the needs of the parties sometimes more broadly based, in other matters more truly reflective of the different skill levels of the task performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.
- (b) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.
- (c) Co-operation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputations.

2B.—STRUCTURAL EFFICIENCY

- (1) (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
- (b) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

(2) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of Government instrumentalities and to enhance the career opportunities and job security of employees.

(3) The parties have established working parties for the testing and/trialling of various skill levels and to enable proper consultation with both employees and employers within government on matters consistent with the objectives of subclause (2) herein. The parties shall process any such matters through the working party.

(4) Measures raised for consideration consistent with subclause (3) herein shall be related to implementation of a new classification structure, any facilitative provisions contained in this award and matters concerning training.

(5) Without limiting the rights of either an employer or a Union to arbitration, any other measure designed to increase flexibility on a site or within an enterprise sought by any party shall be notified to the relevant working party and by agreement of the parties involved shall be implemented subject to the following requirements:

- (a) the changes sought shall not affect provisions reflecting National standards;
- (b) the working party will consider the implications of the proposed measures for existing on-site arrangements;
- (c) the majority of employees affected by the change at the site or enterprise must genuinely agree to the change;
- (d) the relevant Union or Unions must be a party to the agreement;
- (e) any agreement shall be subject, where appropriate, to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this award and take precedence over any provision of this award to the extent of any inconsistency.

(6) Award restructuring shall be given its wider meaning, and award restructure should not be confined to the restructuring of classifications but may extend to the review

of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis.

(7) The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of government instrumentalities, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (a) develop a more highly skilled workforce;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
- (c) removing barriers to the utilisation of skills acquired.

3.—SCOPE

(1) Subject to subclauses (2) and (3) of this clause this Award shall apply to all building trades employees classified in Clause 9.—Wages and apprentices and who are employed by the named respondents as listed in Schedule A.

(2) This Award shall not apply to employees in the Building Management Authority Construction Operations Division who are covered by the National Building Trades Construction Award 1975; the Plumbing Industry (Queensland & Western Australia) Award; and the Building Trades Construction Award No. 14 of 1978.

(3) This Award shall not apply to work coming within the scope of, nor to employees whose conditions of employment are regulated by, any other Award in force at the date of this Award, nor to work customarily performed by employees other than those bound by this Award.

4.—AREA

This Award shall operate throughout the State of Western Australia.

5.—TERM

The term of this Award shall be for a period of three years from the beginning of the first pay period commencing on or after the 7th day of September 1988.

6.—DEFINITIONS

(1) General:

(a) "Union" means—

The Australian Builders' Labourers' Federated Union of Workers—Western Australian Branch;

Construction, Mining and Energy Union of Australia, (WA Branch);

Operative Painters and Decorators' Union of Australia, West Australian Branch, Union of Workers;

Plumbers and Gasfitters Employees Union of Australia, West Australian Branch, Industrial Union of Workers;

The Operative Plasterers and Plaster Workers Federation of Australia (Industrial Union of Workers) Western Australian Branch; The Building Trades Association of Unions of Western Australia (Association of Workers).

(b) "Casual Employee" means an employee engaged for a period of less than one week (exclusive of hours of overtime worked).

(2) Bricklaying:

(a) "Bricklayer" means an employee engaged in bricklaying, firework (including kiln work), furnaces or furnace work of any description, setting cement bricks, cement blocks and cement pressed work, setting coke slabs or coke bricks or plaster partition blocks and brick cutting, or any other work which comes or which may be adjudged to come within the scope of brick work generally.

(b) "Stoneworker" means a person who does all or any of the following classes of work whether hammer dressed or sawn—

- (i) Foundation work;
- (ii) building random rubble encoursed or buildingsquared rubble in courses or regular

coursed rubble and dressing quoins or shoddies in connection with any such work; but this definition shall not of itself be taken to prejudice or effect the right of any other classes of tradesmen or employees to do any class or kind of work they have hitherto been accustomed to do.

(3) Builders Labouring:

(a) "Builders Labourer" means an employee engaged—

(i) As a scaffolder, a rigger, a dogman, a gear hand, a hod carrier, a mortar mixer or a drainage worker employed in connection with building operations; or

(ii) to wheel to and from the lift, or to fill boxes with materials to be lifted with winch, hoist, elevator or crane required for servicing bricklayers, plasterers or masons or to control any such winch or hoist, or to control a trowelling machine; or

(iii) in underpinning and timbering basements, in the rough finishing of the surfaces for granolithic floors, in the bagging off or the broom finishing of concrete surfaces, in the preparation of granolithic surfaces but not the finishing thereof unless that work is otherwise referred to herein, in the erection of steel stanchions, girders and principals, in the erection of steel structural work when such work is part of the building contractor's contract and under his direct control, on furnace work and bakers' ovens, in mixing, preparing and delivering of materials used hot such as bitumen, trinidad, and other similar patented materials, in the setting and jointing of pipes for sewerage or storm water drainage, in the timbering of shafts, pits or wells in or around buildings, in the mixing of plastic materials and the cleaning up of floors and woodwork after the application of such materials, in preparing or bending or placing into position steel reinforcements in concrete in connection with building operations, in using a jack hammer in demolishing and removing buildings, in mixing, preparing or delivering or packing of concrete in connection with the erection of structures or buildings, in clearing excavating or levelling off sites for buildings when such work is under the building contractor's contract and under his direct control, or in road construction and in connection with approaches to buildings inside the building line (other than road construction work governed by any award of the Western Australian Industrial Commission); or

(iv) in general labouring not provided for herein when such work is part of the building contractor's contract and under his direct control.

(b) "Assistant Powder Monkey" means a builder's labourer assisting under the direct supervision of a powder monkey in placing and firing explosive charges excluding the operation of explosive powered tools.

(c) "Assistant Rigger" means a builder's labourer assisting under the direct supervision of a rigger in erecting or placing in position the members of any type of structure (other than scaffolding and aluminium alloy structures) and for the manner of ensuring the stability of such members, for dismantling such structures or for setting up cranes or hoists other than those attached to scaffolding.

(d) "Direct Supervision" means in relation to paragraphs (b) and (c) of this subclause, that the powder monkey or the rigger, as the case may be, must be present on the job to guide the work during its progress.

(e) "Concrete Finisher" means a builder's labourer, other than a concrete floater, who is engaged in the hand finishing of concrete work.

- (f) "Concrete Floater" means a builder's labourer engaged in concrete work and using a wooden or rubber screeder or mechanical trowel or wooden float or engaged in bagging off or broom finishing.
- (g) "Drainer" means a builder's labourer directly responsible to his employer for the correct and proper laying of sewerage and drainage pipes.
- (h) "Leading Hand" means an employee who is given by the employer or his agent the responsibility of directing or supervising work in accordance with Clause 11.
- (i) "Scaffolder" means a builder's labourer engaged in the work of erecting or altering or dismantling scaffolding of all types.

(4) Carpentry and Joinery:

- (a) "Carpenter and Joiner" means an employee engaged upon work ordinarily performed by a carpenter and joiner in any workshop establishment, yard or depot, or on site (including dams, bridges, jetties or wharves).

Without limiting the generality of the foregoing, such work may include:

- (i) The erection and/or fixing work in metal;
 - (ii) (aa) The marking out, lining, plumbing and levelling of prefabricated form work and supports thereto;
 - (bb) the erection and dismantling of such form work but without preventing builders' labourers from being employed on such work.
 - (iii) the fixing of asbestos products, dry fixing of fibre plaster materials and the fixing of building panels, wall board and plastic material;
 - (iv) the erection of curtain walling;
 - (v) the setting out and laying of wood blocks or parquetry or wooden mosaic flooring; and
 - (vi) the erecting of prefabricated buildings or section of buildings constructed in wood, prepared in factories, yards or on site.
- (b) "Detail Worker" means a carpenter and joiner who sets out and works upon staircases, bar, kitchen or office fittings or any similar detail work from architects' plans or blue prints.
 - (c) "Setter Out" means a carpenter and joiner who sets out work (other than wood blocks or parquetry flooring) for three or more other carpenters and joiners.

(5) Painting, Signwriting and Glazing:

- (a) "Painter" means an employee who applies paint or any other preparation used for preservation or decorative purposes—
 - (i) to any building or structure of any kind or to any fabricated unit forming or intended to form part of any building or structure; or
 - (ii) to any machinery or plant.

The term includes any employee engaged in the hanging of wallpapers or substitutes therefor or in glazing, graining, gilding, decorating, applying plastic relief, putty glazing, or marbling and any employee who strips off old wallpapers or who removes old paint or varnish or who is engaged in the preparation of any work for painting by an employee otherwise covered by this award or in the preparation of any materials required for that painting, but does not include an employee other than one who is engaged as a painter under this award, who is employed on work on which only one coat of paint or any other preparation used for preservative purposes is to be applied.

- (b) "Glazier" means an employee who—
 - (i) fits and fixes leadlights and stained windows into prepared positions; or
 - (ii) fits and fixes glass or any of its kindred products, including vitrolite, into any place

prepared for its reception or cuts such glass or such other products; or

- (iii) cuts glass or any of its kindred products including vitrolite, for any purpose.
- Provided that nothing in this definition shall apply to work done by shop salesmen, picture frame or furniture makers or by any other employee who at the date of this Award is bound by any award of the Western Australian Industrial Relations Commission or any industrial agreement made under the provisions of the Industrial Relations Act, 1979.
- (c) "Signwriter" means an employee who may prepare his own backgrounds and does any of the following work:

- (i) Lettering of every description, by brush, spray or any other method on any surface or material (other than the surface of a roadway);
- (ii) pictorial or scenic painting by brush, spray or any other method on any surface or material.
- (iii) designing for windows, posters, show window and theatre displays, honour rolls, illuminated addresses, neon signs, stencils, display banners or cut-out displays;
- (iv) gilding, ie. the application of gold, silver, aluminium or any metal leaf to any surface;
- (v) cutting out, laying out and finishing of cut-out displays of all descriptions; or
- (vi) screen process work, ie., the designing, setting up and operation for duplication or multiplication of signs on any material, whether of paper, fabric, metal, wood, glass, or any similar material. Provided however, that nothing contained in this definition, nor in this award, shall be deemed to prevent the employment of ticket writers at the rates of wage and subject to the conditions prescribed by the Ticket Writing Award No. 29 of 1958 as amended or replaced from time to time.

(6) Plastering:

"Plasterer" means an employee engaged or usually engaged on plastering work which shall mean:—

- (a) All internal and external plastering and cementing whether manual or mechanical means be used, including hard wall plaster and texture work where the materials used in such texture work consist only of plaster or cement or both;
- (b) the fixing of wood lathing and metal lathing or any similar or other substitute which may be used as a ground for plastering work;
- (c) the fixing of precast plaster or any other kind of plaster required to be finished off with plastered joints;
- (d) the fixing of pressed cement work and ornaments and plaster partition blocks;
- (e) plastering in sewers, septic tanks, water channels and relining of pipes;
- (f) the fixing of plain and ornamental tiles on walls or floors;
- (g) the top dressing of concrete work finished in cement, granolithic or patent colouring, and all cement composition work and plain or fancy paving, except such work as is included in the definition of a builder's labourer unless such work is done by an employee who is engaged or employed as a plasterer;
- (h) the fixing and laying of cork or substitutes such as solomit in cool chambers and in refrigeration chambers; or
- (i) the working of flintcote where used with sand, cement or granulated cork or sawdust but plastering work shall not include:—
 - (i) work authorised to be done by employees under any award or industrial agreement; or
 - (ii) work done by plumbers.

(7) Plumbing:

“Plumber” means an employee engaged or usually engaged in executing any general plumbing, ship plumbing, gas fitting, pipe fitting, lead burning, sanitary, heating and domestic engineering, industrial, commercial, medical, scientific and chemical plumbing. Without limiting the generality of the foregoing such work shall include the following:

- (a) The fixing of all soil, wastes and vent pipes to sanitary fixtures in galvanised mild steel, copper, brass, cast iron, plastic, P.V.C., sheet metal, asbestos, lead, glass or any other materials that may supersede the aforementioned.
- (b) Glazed earthenware pipes and fittings, fibrolite pipe and fittings, concrete pipe and fittings, plastic, P.V.C. pipe and fittings, and any other drainage materials that may be introduced in connection with precast concrete septic tanks, or any other manufactured septic tank which has been passed by the Health Department of Western Australia. Soak wells, french drains, leech drains, grease traps and all forms of effluent disposal.
- (c) The installation of all types of sanitary fixtures such as water closets, hand basins, sinks, urinals, slop hoppers, bidets, troughs and pan washers in stainless steel, sheet metal, plastic, P.V.C., cast iron or any other materials that may supersede those materials normally used by the plumber.
- (d) The fixing of all water supply pipes in galvanised mild steel, copper, brass, cast iron, plastic, P.V.C., fibrolite, stainless steel, concrete, hydraulic, aluminium, asbestos, lead or any other materials that may supersede those materials normally used from mains to buildings, swimming pools, display fountains, drinking fountains, ejectors, supply tanks, water filters, water softeners, glass washers, fire services including valves and all piping for sprinkler work, cooling towers and spray ponds used for industrial, manufacturing, commercial or any other purpose.
- (e) The installation of all types of hot water and heating systems including room heaters, sterilizers, calorifiers, condensation equipment, pumps, condensers and all piping for same in power houses, distributing and booster stations, bottling, distilling and brewery plants in connection with solid fuel, solar, fuel oil, gas (L.P. town and natural), electric (excluding electrical connections), all piping for power or heating purposes either by water, steam, air for heating, ventilating and air conditioning systems and any other equipment used in connection with medical, industrial, commercial, housing, scientific and chemical work.
- (f) All piping, setting and hanging of units and fixtures for air conditioning, cooling, heating, refrigeration, ice making, humidifying, dehumidifying, the installation of chilled water units including pumps and condensers, the setting and piping of instruments, measuring devices, thermostatic controls, gauge boards and other controls used in connection with power, heating, refrigeration, ventilating, air conditioning in manufacturing, mining and industrial work.
- (g) All pneumatic, compressed air and gas lines used in connection with above, oxygen or similar gases used for medical purposes and all piping, valves and fittings thereto.
- (h) The installation of centrifugal, propellor or other exhaust fans, duct work, fume cupboards, registers, dampers, in sheet metals, plastics, P.V.C., stainless steel, copper, aluminium or other materials that may supersede the aforementioned.
- (i) The installation of irrigation and reticulation services in material used by the plumbers, mild steel, copper, brass, cast iron, plastic, P.V.C., asbestos, lead or any other materials that may supersede the aforementioned.

(j) All gas and arc welding, brazing, lead burning, soldered and wiped joints, expanding joints used in connection with the plumber.

(k) The installation of all plumbing, pipe work and fittings in ships, aeroplanes, mobile or transportable homes etc.

(l) The fitting and fixing of guttering, downpipes, ridging, rain heads, fascia capping and all other work associated with housing, commercial and industrial undertakings in galvanised iron, copper, aluminium, cast iron, P.V.C., fibreglass, stainless steel, asbestos, sheet metal, zinc, galvanised corrugated iron, patent steel decking, aluminium decking, copper decking, corrugated asbestos, galvanised iron sheeting, fibreglass, plastic sheeting and moulds, fitting of patent roof outlets such as “Fulgo” in ventilators, skylights and such.

(m) The installation of all laboratory, research and scientific plumbing and fixtures including radio active plumbing etc.

(8) Stonemasonry:

(a) “Stonemason” means an employee who cuts by hand or fixes all classes of natural stone that has to be cut to a mould or template, or which has to be proven by a square or straight edge or set to a level or line.

The term includes an employee who fixes manufactured stone to the facade of a building.

(b) “Natural Stone” includes granite, trachite, slate, bluestone, limestone, marble and sandstone.

(9) “Special Class Tradesman” means a tradesman Carpenter and/or Joiner, Bricklayer, Plasterer or Stonemason who is engaged on work of restoration, renovation, preservation, or reconstruction of historical or “National Trust” type buildings, the performance of which requires the use of complex high quality trade skills and experience which are not generally exercised in normal construction work.

For the purpose of this definition complex and high quality trade skills and experience shall be deemed to be acquired by the tradesman:

(a) having had not less than 12 months’ on-the-job experience of such skilled work; and

(b) having, by satisfactory completion of a prescribed post trade course, or other approved course, or the achievement of knowledge and competency by other means, including the on-the-job experience in paragraph (a) herein, as will enable the tradesman to perform such work unsupervised where necessary and practical, to the required standard of workmanship.

For the purpose of this definition, the following are deemed to be prescribed post trade courses and recognised throughout the locality of this award—

Diploma in Building (Western Australia).

7.—CONTRACT OF SERVICE

(1) Subject to the provision of this clause the contract of service shall be by the week and shall be terminable by one weeks notice or by the payment of one weeks pay in lieu of such notice on either side.

(2) (a) An employee, if engaged, and on presenting himself for work to commence employment is not required, shall be entitled to at least eight hours’ work or payment therefore at ordinary rates and to payment of the appropriate allowance prescribed by Clause 14—Fares and Travelling Time of this award.

(b) This subclause shall not apply if an employee is not required by reason of inclement weather, in which case the provisions of Clause 16—Inclement Weather of the Building Trades Award No. 31 of 1966 shall apply.

(3) In the case of an employee with not less than six months’ continuous service with the one employer, the contract of service shall be by the week and shall be terminable by one week’s notice or by the payment of one week’s pay in lieu of such notice on either side.

(4) One hour’s notice on either side shall be sufficient to terminate the employment of a casual employee.

(5) The employer shall be under no obligation to pay for any day or portion of a day not worked on which the employee is required to present himself for duty, except when such absence from work is due to illness and comes within the provisions of Clause 23—Sick Leave of the award.

(6) This clause does not affect the right to dismiss for misconduct, and in such cases wages shall be paid up to the time of dismissal only.

(7) The employer shall be entitled to deduct payment for any day or portion of a day on which the employee cannot be usefully employed because of any strike by the Association of Unions or any of the unions affiliated with it or by any workers employed by any of the respondents to this award or by any other association or union or through the breakdown of the employer's machinery or any stoppage of work by any cause which the employer cannot reasonably prevent, with the exception of wet weather, in which case the decision as to whether it is too wet to work shall rest with the officer in charge of the job, if available, and, in his absence the Foreman.

8.—SENIORITY

(1) An employee with more than nine months' continuous service as a tradesman shall be entitled to the application of the "first on last off" principle in respect of any retrenchments. This principle shall only apply provided that the employee is capable of performing the class of work required in an efficient manner and has not been involved in any stoppage of work unauthorised by his employer, or in any refusal to carry out any lawful and practicable instruction. Any dispute in respect of the application of this clause shall be referred to the Board of Reference for determination.

9.—WAGES

It is a term of this award that the union undertakes for the duration of the Principles determined by the Commission Court Session in Application No. 985 of 1995 not to pursue any extra claims, award or overaward except when consistent with the State Wage Principles.

	On Engage-ment	First Arbitrated Safety Net Adjust-ment	Total Rate	After 1 year of service (Per Week)	First Arbitrated Safety Net Adjust-ment	Total Rate	After 2 years of service	First Arbitrated Safety Net Adjust-ment	Total Rate
	\$	\$	\$	\$	\$	\$	\$	\$	\$
(1) (a) Tradespersons: Bricklayers Stone-workers, Carpenters, Joiners, Painters, Signwriters, Glaziers, Plasterers and Stone-masons as defined in Clause 6 of this Award	429.60	8	437.60	434.50	8	442.50	439.00	8	447.00
(b) Special Class Tradesperson (as defined)	447.80	8	455.80	452.95	8	460.95	457.65	8	465.65
(c) Plumbers holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	444.85	8	452.85	449.80	8	457.80	454.30	8	462.30
(d) Builders Labourers:									
(i) Rigger, Drainer, Dogman	414.10	8	422.10	418.80	8	426.80	407.25	8	415.25
(ii) Scaffolder, Powder Monkey, Hoist or Winch Driver, Concrete Finisher, Steelfixer, including Tack Welder, Concrete Pump Operator	398.40	8	406.40	403.05	8	411.05	395.25	8	403.25
(iii) Bricklayer's Labourer, Plasterer's Labourer, Assistant Rigger, Demolition Workers (after 3 months' experience), Gear Hand, Pile Driver, Tackle Hand, Jackhammer Hand, Mixer Driver (concrete), Steel Erector, Aluminium Alloy Structural Erector, Gantry Hand or Crane Hand, Crane Chaser, Concrete Gang including Concrete Floater, Steel or Bar Bender to Pattern or Plan, Concrete Formwork Stripper, Concrete Pump, Hose hand	386.85	8	394.85	391.15	8	399.15	396.25	8	404.25
(iv) Builder's Labourer employed on work other than specified in classifications (i)-(iii)	357.80	8	365.80	362.05	8	370.05	356.80	8	364.80
(v) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.									

(2) Tool Allowance (Per Week)

(a) Bricklayers and Stoneworkers	13.00
(b) Plasterers	14.90
(c) Carpenters and Joiners	18.10
(d) Plumbers	18.10
(e) Painters and Sign-writers	4.50
(f) Glaziers	4.50
(g) Stonemasons: The employer shall supply all necessary tools for the use of stonemasons, except when engaged on building construction, when the worker,	

if required to supply his/her own tools, shall receive a tool allowance at the rate of \$1.43 per week.

NOTE 1: The tool allowance prescribed in paragraphs (a), (b), (c) and (d) of this subclause each include an amount of six cents for the purpose of enabling the employees to insure their tools against loss or damage by theft or fire.

NOTE 2: The abovenamed allowances shall not be paid where the employer supplies an employee with all necessary tools.

(3) Allowance for Lost Time: Thirteen days' sick leave and follow the job (per week):

An employee whose employment is terminated through no fault of his/her own and who has not completed nine

months' continuous service with his/her employer shall, for each week of continuous employment with that employer, immediately prior to his/her termination of employment be paid the lost time allowance prescribed hereunder less any payments made to him/her in respect of sick leave during that employment—

	\$
(a) Bricklayers, stoneworkers, carpenters, joiners, painters, glaziers, signwriters, plasterers, plumbers and stonemasons	36.57
(b) Special Class Tradesperson (as defined)	38.40
(c) Registered Plumbers	37.99
(d) Builders Labourers	
(i) Classifications (i) to (iii) inclusive	35.85
(ii) Classifications (iv) to (ix)	33.72
(iii) Classification (x)	32.60
(iv) Classification (xi)	30.35

NOTE: In the event of any increase or decrease in the wages and other allowances prescribed in this clause, except the tool allowances, the amounts prescribed in this subclause shall be increased or decreased by an amount equal to 9.7% of that increase or decrease.

(4) Disabilities Allowance (Per Week): \$15.99

- (a) Subject to the provisions of paragraph (b), of this subclause an allowance of \$15.99 shall be paid to all employees excepting employees who are employed for the major portion of any week in or about a permanent maintenance depot or who are usually employed in or about the employer's business when an employee coming within the exception is engaged on the erection or demolition of a building exceeding 250 square feet in floor area.
- (b) Employees who are directed to work temporarily in or about a permanent maintenance depot and who immediately prior to being so directed were in receipt of the allowance for a period of not less than three months shall be paid two-thirds of the allowance prescribed herein.

(5) Casual Employees

A casual employee shall be paid a loading of 20 per cent in addition to the rates prescribed by this clause.

(6) The rates prescribed in subclause (1) of this clause shall be increased or decreased, as the case may be, to give effect to any decision of the Australian Conciliation and Arbitration Commission to alter wage rates uniformly in awards under its jurisdiction on general economic or productivity grounds.

(7) Plumbing Trade Allowance

Plumbers shall be paid an allowance at the rate of \$12.32 per week to compensate for the following classes of work and in lieu of the relevant amounts in Clause 13.—Special Rates and Provisions of this award whether or not such work is performed in any one week. When working outside the categories listed hereunder, a plumber shall receive the appropriate rates provided for in the said Clause 13.—Special Rates and Provisions.

(a) General Plumber:

- (i) clearing stoppages in soil or waste pipes, or sewer drain pipes, also repairing and putting same in proper order;
- (ii) work in wet places;
- (iii) work requiring a swing scaffold, swing seat or rope;
- (iv) dirty or offensive work;
- (v) work in any confined space;
- (vi) work on a ladder exceeding eight metres in height;
- (vii) work in and around abattoirs.

(b) Mechanical Services Plumber:

- (i) handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool, or

other recognised insulation material of a like nature or working in the immediate vicinity so as to be affected by the use thereof;

- (ii) work in a place where the temperature has been raised by artificial means to between 46° and 54° Celsius or exceeding 54° Celsius;
 - (iii) work in a place where fumes of sulphur or other acid or other offensive fumes are present;
 - (iv) dirty or offensive work;
 - (v) work in any confined space;
 - (vi) work on a ladder exceeding eight metres in height;
 - (vii) work in and around abattoirs.
- (c) Roof Plumber:
- (i) work in the fixing of aluminium foil insulation on roofs or walls prior to the sheeting thereof;
 - (ii) use of explosive powered tools;
 - (iii) work requiring use of materials containing asbestos or to work in close proximity to employees using such materials shall be provided with, and shall use, all necessary safeguards as required by the appropriate occupational health authority including the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus);
 - (iv) dirty or offensive work;
 - (v) work requiring a swing scaffold, swing seat or rope;
 - (vi) work on a ladder exceeding eight metres in height;
 - (vii) work in and around abattoirs.

10.—PAYMENT OF WAGES

(1) Employees wages will be paid fortnightly into a nominated account of either an approved Building Society, Credit Union or Bank and employees will not be allowed time off to collect their pay advice slips during normal working hours.

(2) When an employee is discharged before the usual pay day he shall be paid his wages when he ceases work or it shall be forwarded to his address within seven days by registered post at the employer's risk.

(3) Subject to subclauses (1) and (2) hereof, where an employee is required to spend time in waiting for wages or attending the employer's office on a subsequent day, he shall be paid at the ordinary rate of pay for the time so spent, in addition to any fares incurred.

Provided that this subclause shall not apply where such waiting or attending was due to an under-payment caused by a genuine mistake or by a genuine dispute as to the amount due.

11.—LEADING HANDS

(1) Any employee referred to in Clause 9.—Wages of this award or a leading hand defined in paragraph (h) of subclause (3) of Clause 6.—Definitions of this award, who is placed in charge for not less than one day of—

- (a) not less than three and not more than ten other employees referred to in Clause 9.—Wages shall be paid at the rate of \$25.97 per week extra;
- (b) more than ten and not more than twenty other employees referred to in Clause 9.—Wages shall be paid at the rate of \$34.73 per week extra;
- (c) more than twenty other employees referred to in Clause 9.—Wages shall be paid at the rate of \$43.50 per week extra.

(2) Any leading hand defined in paragraph (h) of subclause (3) of Clause 6.—Definitions being a licensed scaffolder, who, in compliance with the provisions of the Construction Safety Act, 1972, and the regulations made thereunder, is employed or engaged in the supervision of the erection or demolition of scaffolding or gear on any scaffold exceeding or likely to exceed 6.1 metres in height from the horizontal base, shall be

paid the rate prescribed in paragraph (a) of subclause (1) hereof when placed in charge of less than three other employees referred to in clause 9.—Wages.

(3) The rates herein prescribed shall be deemed to form part of the ordinary rate of wage of the workers concerned for all purposes of this Award.

12.—DEDUCTION OF UNION SUBSCRIPTIONS

(1) The employer shall deduct normal subscriptions as equal amounts each pay period.

(2) Payroll Deduction Authority forms shall be completed by employees. Where the employer requires a standard procuracy form, that form shall be used.

(3) Where required by the employer or union, the Union Secretary, or person acting in his/her stead, shall countersign all forms and forward them to the employer's paymaster.

(4) (a) The employer shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the employee's period of employment, except as provided in subclause 5 of this Clause or until the Authority is cancelled in writing by the employee.

(b) Where the Payroll Deduction Authority form authorises the employer to deduct union subscriptions in accordance with the rules of the Union, the Union shall notify the employer in writing of the level of union subscription to be deducted. The employer shall implement any change to union subscriptions no later than one month after being notified by the Union except where the Union nominates a later date.

(5) (a) The collection of any nomination fee, arrears, levies or fines are not the responsibility of the employer.

(b) Where a deduction is not made from an employee in any pay period, either inadvertently or as a result of an employee not being entitled to wages sufficient to cover the subscription, it shall be the employee's responsibility to settle the outstanding amount with the Union direct.

(6) The employer shall not make any deduction of subscriptions from an employee's termination pay on termination of service, other than normal deductions for the preceding pay period.

(7) The employer shall forward contributions deducted, together with supporting documentation, to the relevant union party to this award at such intervals as are agreed between the employer and the Union.

13.—SPECIAL RATES AND PROVISIONS

(1) Conditions respecting Special Rates:

(a) The special rates prescribed in this award shall be paid irrespective of the times at which work is performed and shall not be subject to any premium or penalty conditions.

(b) Where more than one of the above rates provides payments for disabilities of substantially the same nature then only the highest of such rates shall be payable.

(2) Swing Scaffold:

(a) An employee employed—

(i) on any type of swing scaffold or any scaffold suspended by rope or cable or bosun's chair or cantilever scaffold, or

(ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height 6.1 metres or more above the nearest horizontal plane,

shall be paid \$2.53 for the first four hours or part thereof and 51 cents for each hour thereafter on any day in addition to the rates otherwise prescribed.

(b) A solid plasterer when working on a swing scaffold shall be paid an additional 11 cents per hour.

(c) No apprentice with less than two years' experience shall use a swing scaffold or bosun's chair.

(d) Provided that no allowance shall be payable for working on such scaffolds when used under bridges or jetties unless the height of the scaffold above the water exceeds 0.9 metres.

(3) Insulation:

An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool or other recognised insulation material of a like nature or working in the immediate vicinity so as to be affected by the use thereof shall be paid 43 cents per hour part thereof in addition to the rates otherwise prescribed.

(4) Working in a dust laden atmosphere in a joiner's shop where dust extractors are not provided in or such atmosphere caused by the use of materials for insulating, deafening or plugging work (as, for instance, pumice, charcoal, silicate of cotton, or any other substitute) or from earthworks, 43 cents per hour extra.

(5) Confined Space:

An employee required to work in a confined space, being a place the dimension or nature of which necessitates working in a cramped position or without sufficient ventilation, shall be paid 43 cents per hour or part thereof in addition to the rate otherwise prescribed.

(6) Sewer Work:

An employee engaged in repairs to sewers shall be paid 33 cents per hour or part thereof in addition to the rates otherwise prescribed.

(7) Sanitary Plumbing Work:

A plumber doing sanitary plumbing work on repairs to sewer drainage or waste pipe services in any of the following places—

(a) Infectious and contagious disease hospitals or any block or portion of a hospital used for the care or treatment of patients suffering from any infectious or contagious disease.

(b) Morgues:

shall be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed.

(8) Ship Plumbing:

A plumber doing work on a ship of any class—

(a) Whilst under way; or

(b) In a wet place being one in which the clothing of an employee necessarily becomes wet to an uncomfortable degree or one in which water accumulates underfoot; or

(c) In a confined space; or

(d) In a ship which has done one trip or more in a fume or dust laden atmosphere, in bilges, or when cleaning blockages in soil pipe or waste pipes or repairing brine pipes, shall be paid 50 cents per hour or part thereof in addition to the rate otherwise prescribed.

(e) A plumber carrying out pipe work in a ship of any class under the plates in the engine and boiler rooms and oil fuel tanks shall be paid \$1.03 per hour or part thereof in addition to the rates otherwise prescribed.

(9) Well Work:

A plumber or labourer required to enter a well nine metres or more in depth for the purpose in the first place of examining the pump, pipe or any other work connected therewith, shall be paid \$1.80 for such examination and 65 cents per hour extra thereafter for fixing, renewing or repairing such work.

(10) Permit Work:

Any licensed plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid \$10.85 for that week in addition to the rates otherwise prescribed.

(11) Plumbers on Sewerage Work:

Plumbers or apprentices in their third, fourth or fifth year, on work involving the opening up of house drains or waste pipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a minimum of \$1.79 per day or part thereof in addition to the prescribed rate.

(12) Height Money:

An employee required to work on a chimney stack, spire, tower, air shaft, cooling tower, water tower exceeding fifteen metres in height shall be paid for all work above fifteen metres, 36 cents per hour thereof with an additional 36 cents per hour or part thereof for work above each further fifteen metres in addition to the rates otherwise prescribed.

(13) Furnace Work:

An employee engaged in the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work or on underpinning shall be paid 92 cents per hour or part thereof in addition to the rates otherwise prescribed.

(14) Hot Work:

- (a) An employee required to work in a place where the temperature has been raised by artificial means to between 46° Celsius and 54° Celsius shall be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed, or in excess of 54° Celsius shall be paid 43 cents per hour or part thereof in addition to the said rates.
- (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of twenty minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(15) Cold Work:

- (a) An employee required to work in a place where the temperature is lowered by artificial means to less than 0° Celsius shall be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of twenty minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

(16) Swanbourne and Graylands: Employees required to work at the Swanbourne and Graylands Hospitals controlled by the Mental Health Service shall be paid at the rate of 36 cents per hour in addition to the prescribed rate.

(17) Flintcote: Plasterers using flintcote shall be paid 36 cents per hour or part thereof except when flintcote is applied by hawk and trowel to walls and ceilings when the rate shall be 61 cents per hour extra in addition to the prescribed rate.

(18) Dirty Work:

- (a) An employee employed on excessively dirty work which is more likely to render the employee or his/her clothes dirtier than the normal run of work, shall be paid 36 cents per hour extra in addition to the prescribed rate (with a minimum payment of four hours when employed on such work).
- (b) This shall not apply to an employee in receipt of the allowance prescribed in subclause (4) of Clause 9.—Wages of this award nor to a worker in receipt of the allowance prescribed in subclause (27) hereof.

(19) Stonemason on Wall:

A stonemason working on the wall (cottage work and foundation work in coastal stone excepted) shall be paid 36 cents per hour thereof in addition to the rates otherwise prescribed.

(20) Setter Out:

A setter out (other than a leading hand) in a joiner's shop shall be paid \$3.39 per day in addition to the rates otherwise prescribed.

(21) Detail Employee:

A detail employee (other than a leading hand) shall be paid \$3.39 in addition to the rates otherwise prescribed.

(22) Spray Painting—Painter:

- (a) Lead paint shall not be applied by a spray to the interior of any building.

- (b) All employees (including apprentices) applying paint by spraying, shall be provided with full overalls and head covering and respirators by the employer.

- (c) Where from the nature of the paint or substance used in spraying, a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substance used by an employee in spray painting, the employee shall be paid a special allowance of 92 cents per day.

(23) Lead Paint Surfaces:

- (a) No surface painted with lead paint shall be rubbed down or scraped by a dry process.
- (b) Width of Brushes: All brushes shall not exceed 127 millimetres in width and no kalsomine brush shall be more than 177.8 millimetres in width.
- (c) Meals not to be taken in paint shop. No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.

(24) Spray Application—Painters:

A painter engaged on all applications carried out in other than a properly constructed booth approved by the Department of Labour and Industry shall be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(25) An employee who is a qualified first aid person and is appointed by his/her employer to carry out first aid duties in addition to his/her usual duties shall be paid an additional rate of \$1.20 per day.

(26) Toxic Substances:

- (a) An employee required to use toxic substances or materials of a like nature shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.
- (b) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the union and the employer.
- (c) An employee using toxic substances or materials of a like nature shall be paid 43 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 33 cents per hour extra.
- (d) For the purposes of this subclause all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.

(27) Abattoirs:

An employee, other than a plumber in receipt of the plumbing trade allowance, employed in an abattoir shall be paid such rate as is agreed upon between the parties, or, in default of agreement, the rate determined by the Board of Reference.

(28) Fumes:

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer.

(29) Asbestos:

Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (ie. combination overalls and breathing equipment or similar apparatus) such employees shall be paid 43 cents per hour whilst so engaged.

(30) Explosive Powered Tools:

An operator of explosive powered tools, being an employee qualified in accord with the laws and regulations of the State of Western Australia to operate explosive powered tools, who is required to use an explosive

powered tool shall be paid 83 cents for each day on which he/she used a tool in addition to the rates otherwise prescribed.

(31) Wet Work:

An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(32) Cleaning Down Brickwork:

An employee required to clean down bricks using acids or other corrosive substances shall be supplied with gloves and be paid 33 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(33) Bagging:

An employee engaged upon bagging brick or concrete structures shall be paid 33 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(34) Bitumen Work:

An employee handling hot bitumen or asphalt or dripping materials in creosote shall be paid 43 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(35) Scaffolding Certificate Allowance:

A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Labour and Industry and is required to act on that certificate whilst engaged on work requiring a certified person shall be paid 36 cents per hour or part thereof in addition to the rates otherwise prescribed in this award but this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(36) Dry Polishing or Cutting of Tiles:

An employee required to dry polish tiles with a machine or to cut tiles with an electric saw shall be paid 43 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(37) Secondhand Timber:

Where, whilst working with second-hand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber, he/she shall be entitled to an allowance of \$1.20 per day on each day upon which his/her tools are so damaged, provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job in order that the claim may be proved.

(38) Roof Repairs:

An employee engaged on repairs to roofs shall be paid 39 cents per hour or part thereof in addition to the rates otherwise provided in this award.

(39) Computing Quantities:

An employee, other than a leading hand, who is required to compute or estimate quantities of materials in respect of the work performed by others shall be paid \$2.53 per day or part thereof in addition to the rates otherwise prescribed in this award.

(40) Loads:

Where bricks are being used the employee shall not be required to carry:

- (a) More than 40 bricks each load in a wheelbarrow (or a scaffold) to a height of 4.6 metres from the ground.
- (b) More than 36 bricks each load in a wheelbarrow over a height of 4.6 metres on a scaffold.

The type of wheelbarrow shall be agreed upon with the union.

(41) Grinding Facilities:

The employer shall provide adequate facilities for the employees to grind tools either at the job or at the employer's premises and the employees shall be allowed time to use the same whenever reasonably necessary.

(42) First Aid Outfit:

On each job the employer shall provide sufficient supply of bandages and antiseptic dressings for use in case of accidents.

(43) Water and Soap:

Water and soap shall be provided in each shop or on each job by the employer.

(44) (a) The employer shall supply a safety helmet for each of his/her employees requesting one on any job where, pursuant to the regulations made under the Construction Safety Act, 1972, an employee is required to wear such helmet.

(b) Any helmet so supplied shall remain the property of the employer and during that time it is on issue the employee shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(45) Provision of Boiling Water:

The employer shall, where practicable provide boiling water for the use of his/her employees on each job at lunch time.

(46) Sanitary Arrangements:

The employer shall comply with the provisions of section 102 of the Health Act, 1911.

(47) Attendants on Ladders:

No employees shall work on a ladder at a height of over 6.1 metres from the ground when such ladder is standing in any street, way or lane where traffic is passing to and fro, without an assistant on the ground.

(48) Electrical Sanding Machines:

The use of electrical sanding machines for sanding down paint work shall be governed by the following provisions:

- (a) The weight of each such machine shall not exceed 5.9 kilograms.
- (b) Every employer operating any such machine shall endeavour to ensure that each such machine, together with all electrical leads and associated equipment, is kept in a safe condition and shall if requested so to do by any employee but not more often than once in any four weeks cause the same to be inspected under the provisions of the Electricity Act and the regulations made thereunder.
- (c) Employers shall provide and supply respirators of a suitable type, to each employee and shall maintain same in an effective and clean state at all times.
Where respirators are used by more than one employee, each such respirator shall be sterilised or a new pad inserted after use by each such employee.
- (d) Employers shall also provide and supply goggles of suitable type provided that the goggles with celluloid lenses shall not be regarded as suitable.
- (e) All employees shall use the protective equipment supplied when using electrical sanding machines of any type.

(49) Dam Walls:

Adequate precautions shall be taken by all employers for the safety of workers employed on the retaining walls of dams. Any dispute as to the adequacy of precautions taken shall be referred to the Board of Reference.

(50) The Secretary or any authorised officer of the union shall have the right to visit any job for the purpose of ascertaining whether work is being performed in accordance with the provisions of the Construction Safety Act, 1972, and any regulations made thereunder. Should he/she be of the opinion that the work being carried out is not in accordance with those provisions the Secretary or any authorised officer of the union shall inform the employer and the employees concerned accordingly and may report any alleged breach of Act or the regulations to the Chief Inspector of Construction Safety.

(51) Where the employer provides transport to and from the job the conveyance used for such transport shall be provided with suitable seating and weatherproof covering.

(52) An employee engaged on work at Fremantle Prison shall be paid 36 cents per hour extra.

(53) Any dispute which may arise between the parties in relation to the application of any of the foregoing special rates and provisions may be determined by the Board of Reference.

(54) Building tradespersons engaged solely on outside work at Homeswest shall be given one winter jacket per year to be replaced on a fair wear and tear basis.

14A.—FARES AND TRAVELLING TIME
(OTHER THAN DISTANT WORK)

(1) Each employee required on any day to report directly to the job as distinct from the permanent depot to which such employee is attached (or where a permanent depot does not exist the Head Office of the employer shall be regarded as the permanent depot) and any employee referred to in paragraph (b) of subclause (5) of Clause 9.—Wages—shall be paid the following allowance to compensate for excess fares and travelling time from the employee's home to his place of work and return—

- (a) Within a radius of 50 km from such depot \$11.30 per day.
- (b) Subject to the provisions of subclause (2) hereof, work performed at places beyond a radius of 50 km from the permanent depot shall be deemed to be distant work, unless the employer and the employees, with the consent of the union, agree in any particular case that the travelling allowance for such work shall be paid under this clause in which case an additional allowance of 58 cents per kilometre shall be paid for each kilometre in excess of the 50 kilometre radius;

but an employee who is usually employed at his employer's principal place of business shall not be entitled to the foregoing allowance when required to start work at some other place unless he thereby incurs fares in excess of those incurred in travelling to and from his usual place of employment.

(2) Notwithstanding the foregoing, excepting paragraph (b) of subclause (1) hereof where such has application, the following provisions in lieu of subclause (1) hereof shall apply to work carried out outside a radius of 50 kilometres from the General Post Office, Perth—

- (a) All employees required on any day to report directly to the job as distinct from the permanent depot to which such employee is attached (or where a permanent depot does not exist the main Post Office in the town in which a temporary depot is situated shall be regarded as the permanent depot) and the employee is thereby obliged to incur costs and travelling time both reasonably in excess of that which would normally be incurred in travelling to and from such depot, the allowances prescribed in subclause (1) hereof shall be payable.
- (b) This provision shall not apply in respect of any job where the employer has established a camp at or near the site of the work, and such camp is available to the worker in accordance with the camp provisions referred to in the "distant work" clause, provided that where such camp is more than one kilometre from the job and the employer does not provide free transport to and from the job, the worker shall be paid the allowance prescribed in sub-clause (1) hereof.
- (c) Notwithstanding the foregoing, and in lieu thereof, on construction or maintenance work carried out by the Commissioner of Main Roads or branches of the Building Management Authority (other than the Architectural Division), workers under this award shall be allowed the same conditions as are prescribed by award or agreement for the majority of employees of the industry in which they are employed.

(3) Where transport to and from the job is provided by the employer from and to his depot or such other place more convenient to the employee as mutually agreed upon between the employer and the employee and such travelling is not covered by paragraphs (b) and (c) of subclause (2), half the above rates shall be paid.

(4) Where the employer provides transport to and from the job the conveyance used for such transport shall be provided with suitable seating and weatherproof covering.

(5) For travelling during working hours from and to the employer's place of business or from one job to another, a worker shall be paid by the employer at ordinary rates. The employer shall pay all fares and reasonable expenses in connection with such travelling. Provided that if an employer requests the worker to use his own vehicle, the employer shall pay a car allowance of not less than 62 cents per kilometre for each kilometre the worker travels in response to such request.

14B.—FARES AND TRAVELLING—PLUMBERS

When required by the employer, employees shall start and/or cease work on the job site at the usual commencing and finishing times within which ordinary hours may be worked and shall be paid the following allowance:

- (1) Travel in own time and/or from work site: An employee who is required to travel in his own time to or from the work site within the defined radius from the respective centre (as defined) shall receive an allowance of one-quarter of an hour per day calculated at ordinary time rates travelling time in addition to the amount of fares as defined for each day on which he presents himself for work on the job. However, where the employer provides or offers to provide transport with suitable seating accommodation free of charge from an agreed picking up place to his place of work the fares shall not be payable.
- (2) Travel beyond defined radius: When working on jobs beyond the defined radius from the centre (as defined) the fares as defined and one-quarter of an hour's travelling time plus an allowance for travelling time calculated at the ordinary time rate of pay for the time required to travel to the job site and back from and to the defined radius and calculated at speed not exceeding the legal speed limit with a minimum payment of a quarter of an hour for each such journey. Where an employee provides his own transport, an additional allowance of 12 cents per kilometre shall be payable for the distance involved in travelling beyond the defined radius and return thereto, which shall compensate for any fares incurred by public transport.
- (3) Transport during working hours: Where an employee is required by an employer to travel to any other job site during the course of his daily engagement he shall be paid all fares necessarily incurred, except where transport is provided by the employer to and from such site, and all time spent in such travel shall be regarded as time worked.

Provided that where an employer requests an employee to use his own car to effect such a transfer and such employee agrees to do so the employee shall be paid an allowance at the rate of 62 cents per kilometre.

- (4) Commencing and finishing at workshop: In the case of an employee who is normally required to report for and finish work at his employer's workshop and is transported to and from any job by his employer no allowance shall be paid.
- (5) Definitions—
 - (a) Radius and Fares—The radius shall be 50 kilometres and the fares shall be \$7.60 per day.
 - (b) Centre for employment—
 - (i) The employer's normal base establishment or workshop; or
 - (ii) The G.P.O. of Perth for all employers whose base establishment or workshop is within the defined radius from the said G.P.O.; or
 - (iii) The local Post Office closest to the employer's establishment or workshop beyond the defined radius of the Perth G.P.O.; or
 - (iv) In the case of employees sent to distant work (as defined) the place at which such employees are domiciled with the approval of their employer, for the distant work.

- (v) An employer having selected (i), (ii) or (iii) as the centre shall not change without one month's prior notice to each employee.

15.—APPRENTICES

(1) Subject to the provisions of this clause the Apprenticeship Regulations, 1972 (hereinafter referred to as the "apprenticeship regulations") applicable to carpentry and joinery, plumbing, painting, signwriting and glazing apprentices and the Building Trades Apprenticeship regulations (hereinafter referred to as the "building trades apprenticeship regulations") applicable to bricklaying, stonemasonry and plastering apprentices are incorporated in and form part of this award.

(2) Subject to regulation 39 (2) of the "apprenticeship regulations" of, as the case may be, regulation 13 (b) of the "building trades apprenticeship regulations" the maximum number of apprentices to be taken by an employer shall be as follows—

- (a) Carpentry and joinery—
One apprentice to every two or fraction of two journeymen provided the fraction shall not be less than one.
- (b) Plumbing—
One apprenticeship to every two or fraction of two journeymen provided the fraction shall not be less than one.
- (c) Painting, signwriting or glazing—
One apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.
- (d) Bricklaying—
One apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.
- (e) Stonemasonry—
One apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.
- (f) Plastering—
One apprentice to every three or fraction of three journeymen provided the fraction shall not be less than one.

(3) Except as hereinafter provided every agreement of apprenticeship other than to the plumbing trade shall be for a period of four years unless, with the approval of the Commission, or, as the case may be, the Building Trades Apprenticeship board, that period is reduced or deemed to have been commenced prior to the date of the agreement, provided that—

- (a) Where the apprentice has completed the 11th year of schooling and has obtained the Achievement Certificate, the High School Certificate or Junior Certificate of the Public Examinations Board in such subjects as the appropriate Apprenticeship Advisory Board or, as the case may be, the Building Trades Apprenticeship Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to three and a half years; and
- (b) Where the apprentice has completed the 12th year of schooling and has obtained the High School Certificate or Leaving Certificate of the Public Examinations Board in such subjects as the appropriate Apprenticeship Advisory Board or, as the case may be, the Building Trades Apprenticeship Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to three years.

(4) No apprentice shall be taken to the carpentry and joinery trade except where specifically decided otherwise by the Carpenters and Joiners' Apprenticeship Board unless he has completed three years at High School (or the 10th year of schooling) or has evidence to show that by subsequent study an equivalent educational level has been reached.

(5) Except as hereinafter provided every agreement of apprenticeship to the plumbing trade shall be for a period of four years unless with the approval of the Commission that period is reduced or deemed to have commenced prior to the date of agreement provided that—

- (a) Where the apprentice has completed the 10th year of schooling and has obtained the Achievement Certificate, High School Certificate or Junior Certificate of the Public Examinations Board in such subjects as the Plumbers' Apprenticeship Advisory Board determines and has the vocational aptitude for the trade concerned, the period of apprenticeship shall be four years; and
- (b) Where the apprentice has completed the 11th year of schooling and has obtained the Achievement Certificate, the High School Certificate or Junior Certificate of the Public Examinations Board in such subjects as the Plumbers' Apprenticeship Advisory Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to three and a half years; and
- (c) Where the apprentice has completed the 12th year of schooling and has obtained the High School Certificate or Leaving Certificate of the Public Examinations Board in such subjects as the Plumbers' Apprenticeship Advisory Board determines and has the vocational aptitude for the trade concerned, he may be allowed a credit to reduce the period to three years.

(6) Any person under the age of 21 years who has satisfactorily completed an approved pre-apprenticeship course conducted by the Technical Education Division of the Education Department may be indentured as an apprentice to carpentry or joinery, bricklaying or plumbing on a three year term of apprenticeship.

In this subclause "approved" means approved by the Carpentry and Joinery Apprenticeship Advisory Board, the Building Trades Apprenticeship Board or the Plumbers Apprenticeship Advisory Board as the case may be.

(7) (a) Wage (per week)	Per cent of Tradesman's Rate
(i) Four year term—	%
First year	42
Second year	55
Third year	75
Fourth year	88
(ii) Three and a half year term—	
First six months	42
Next year	55
Next following year	75
Final year	88
(iii) Three year term—	
First year	55
Second year	75
Third year	88

For the purpose of this subclause "Tradesman's Rate means the sum of the basic wage and margin payable to an adult male fitter under the Engineering Trades (Government) Award No 29, 30 and 31 of 1961 and 3 of 1962 as amended.

(b) Disabilities allowance (per week)

Where an apprentice works in circumstances which would entitle a tradesman to the disabilities allowance prescribed in subclause (4) of Clause 9.—Wages, the following extra rate shall be paid to that apprentice—

- (i) Four year term (per cent of disabilities allowance per week)
- | | % |
|-------------|-----|
| First year | 40 |
| Second year | 72 |
| Third year | 95 |
| Fourth year | 100 |
- (ii) Three and a half year term (per cent of disabilities allowance per week)

	%
First six months	40
Next year	72
Next following year	95
Final year	100
(iii) Three year term (per cent of disabilities allowance per week)	
First year	58
Second year	95
Third year	100

(c) Tool Allowance (per week)

Apprentices shall not be entitled to a tool allowance in their first and second year, but shall be entitled to the same amount as is payable to tradesmen (if any) in the third and subsequent years of apprenticeship.

(8) The employer shall be under no obligation to teach an apprentice to carpentry and joinery any work in connection with metal ceilings where that work is not performed by such employer.

(9) The employer shall provide each apprentice to painting with a putty knife, stripper and duster during his first year of apprenticeship.

(10) (a) An apprentice to painting or signwriting shall not be registered in accordance with the provisions of this award until a certificate to the effect that he does not suffer any disability by reason of colour blindness has been lodged with the Registrar.

(b) An apprentice to painting or signwriting shall undertake a vocational aptitude test.

(11) Subject to regulation 25 of the "apprenticeship regulations" or, as the case may be, regulation 15 (a) and (b) of the "building trades apprenticeship regulations" the period during which an apprentice is to attend vocational classes or classes of instruction shall be—

(a) in the case of an apprentice to bricklaying, carpentry and joinery, painting, signwriting, or glazing—

seven weeks in each of the first and second school years in his apprenticeship and four weeks in the next school year in continuous periods or one or more weeks except that an apprentice referred to in subclause (6) hereof shall attend classes for four weeks in each of the school years in his apprenticeship unless he is required to attend a Government or other approved technical school where the Technical Education Division of the Education Department does not have the necessary facilities for such classes in which case he shall be deemed to be covered by paragraph (b) of this subclause.

(b) in the case of an apprentice to stonemasonry or plastering—

eight hours per week for the first and second school years in his apprenticeship and eight hours per fortnight for the next school year except that an apprentice referred to in subclause (6) of the clause shall attend such classes for eight hours per fortnight for the first and second school years in his apprenticeship.

(c) in the case of an apprentice to plumbing—

eight hours per week for the first and second school years in his apprenticeship and eight hours per fortnight for the next school year except that an apprentice referred to in subclause (6) of this clause shall attend such classes for eight hours per fortnight for the first and second years in his apprenticeship.

(12) If, through no fault of his own, an apprentice fails to attend a period of training in any week, fortnight or year as prescribed that period shall be made up during the final year of his apprenticeship if the employer and the Technical Education Division so arrange.

(13) Subject to regulation 28 of the "apprenticeship regulations" or, as the case may be, regulation 15 (1) of the "building trades apprenticeship regulations" an apprentice from any district in a country area where an appropriate technical class is not established shall attend an approved technical centre for two weeks' training each year without loss of pay.

(14) On the completion of the probationary period an apprentice shall be supplied with tools as selected by the foreman up to the value of—

Carpentry and Joinery—	\$
Joiners Shop	166.90
Other	181.70
Plumbing	157.20
Painting, Signwriting and Glazing	50.70
Bricklaying	112.90
Plastering	124.60

(15) All time lost through sickness shall be paid for in accordance with Clause 23.—Sick Leave of this award which shall apply to apprentices in lieu of regulation 35 of the "Apprenticeship regulations" or, as the case may be, regulation 9 of the "building trades apprenticeship regulations".

16.—HOURS

(1) Except as provided elsewhere in this Award and the ordinary working hours shall be an average of hours thirty-eight per week to be worked in accordance with the following provisions:

1.1 Four Week Cycle. The ordinary working hours shall be worked in a 20-day four-week cycle, Monday to Friday inclusive, with 19 working days of eight hours each, between the hours of 7.00 a.m. and 6.00 p.m., with 0.4 of one hour on each day worked accruing as an entitlement to take the fourth Monday in each cycle as a day off paid for as though worked.

or

1.2 The ordinary working hours shall be 76 worked over 9 days per fortnight exclusive of Saturdays and Sundays between the hours of 7.00 a.m. to 6.00 p.m. with the tenth day to be taken as an unpaid rostered day off.

By agreement between the Unions and the employer, the daily hours of work will be of equal duration for the 9 working days or alternatively may vary to suit the requirements of the employer.

(2) Where such agreed rostered days off prescribed by subclause (1) fall on a Public Holiday as prescribed in Clause 20.—Holidays, the next working day shall be taken in lieu of the rostered day off unless an alternate day in that four week cycle or nine day fortnight is agreed in writing between the employer and employee.

(3) Except as provided for elsewhere in this Award, where employees work according to the provisions of subclause (1.1) above, each day of paid leave taken and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.

(4) Except as provided elsewhere in this Award, an employee who has not worked or is not regarded by reason of subclause (3) above as having worked a complete 19 day four week cycle as prescribed in subclause (1.1) above shall receive pro rata accrued entitlements for each day worked in such cycle, payable for the rostered day off.

(5) Meal Break:

There shall be a cessation of work and of working time, for the purpose of a meal on each day, of not less than 30 minutes, to be taken between noon and 1.00 p.m.

(6) Early start:

Provided that by agreement between the employer and his/her employees and the appropriate Union the working day may begin at 6.00 a.m. or at any other time between that hour and 8.00 a.m. and the working time shall then begin to run from the time so fixed, with a consequential adjustment to the meal cessation period.

17.—REST PERIOD

(1) Subject to the provisions hereinafter contained, a rest period of seven minutes from the time of ceasing to the time of resumption of work shall be allowed each morning.

This interval shall be counted as time off duty without deduction of pay and shall be arranged at a time and in a manner to suit the convenience of the employer. Morning tea may be taken by workers during this interval but the period of seven minutes shall not be exceeded under any circumstances.

(2) Workers engaged on essential emergency work or on some process in course (e.g. concreting) may be required to take the prescribed tea break at such time and in such manner as considered necessary by the officer in charge of the job, or in his absence, by the foreman.

18.—SHIFT WORK

Shift work may be worked, but before doing so the association party to this award shall be notified.

Liberty is reserved to the parties to apply in respect of rates and conditions to apply to any such shift work.

19.—OVERTIME

(1) Subject to the provisions of Clauses 16.—Hours, and 18.—Shift Work, an employee who commences work between midnight and 6.00 a.m. shall be paid at the rate of double time until his usual starting time and subject thereto all work performed outside the normal limits of the hours of labour on any day shall be paid for at the rate of time and one half for the first two hours and double time thereafter except that all work on a Sunday shall be paid for at the rate of double time.

(2) Call Out:

Any employee who has left the premises at which he is employed and is recalled to work after the usual ceasing time:

- (a) shall be paid for at least three hours at overtime rates; and
- (b) time reasonably spent in getting to and from work shall be counted as time worked.
- (c) An employee required to work on a day observed as a rostered day off pursuant to Clause 16.—Hours, shall be re-rostered for another day off within ten (10) working days, in lieu of overtime rates prescribed in this clause. A rostered day will be the first or the last working day of the week unless another day is agreed between the employer and employee. Where an employee is called out on a rostered day off and works for less than one complete day the employee shall be paid in accordance with the provisions of this subclause.

(3) If an employee is required to work during the recognised meal period so that the commencement of the meal period is postponed for more than half an hour, that employee shall receive payment at double time rates until he gets his meal.

Provided that where it is necessary for work to continue uninterrupted, a lunch break of not less than 30 minutes shall be allowed between the hours of 11.15 a.m. and 1.30 p.m. to workers engaged on such work.

(4) Subject to subclause (3) hereof if an employee who is required to work during the recognised meal period does not in consequence obtain during the shift the full continuous meal period, or loses any portion of the meal period, that employee shall be paid at double time rates for the period not obtained or any portion lost.

(5) The expression "recognised meal periods" means the period customarily observed as the meal period between fixed times on the job, or at the depot, as the case may be, except where the time of commencement of the customary period is altered by mutual consent of the employer and the employees, in which case the altered times shall be the basis of any rights under subclauses (3) and (4) hereof.

(6) Any employee who is required to continue working for more than two hours after his usual knock-off time on any day shall be supplied by the employer with a reasonable meal, or in lieu of such meal, shall be paid an allowance of \$7.30 for a meal.

Provided that this subclause shall not apply to a worker who has been notified on the previous day that he would be required to work such overtime.

(7) (a) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) An employee (other than a casual worker) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not at least 10 consecutive hours off duty between those times shall, subject to paragraph (c) of this subclause, be released after completion of such overtime until he has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of his employer, such an employee resumes or continues work without having had such 10 consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period and he shall then be entitled to be absent until he has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(d) An employee required to work on a day observed as a rostered day off pursuant to Clause 16.—Hours shall be re-rostered for another day off within ten (10) working days, in lieu of overtime rates prescribed in this Clause. A re-rostered day will be the first or the last working day of the week unless another day is agreed between the employer and employee. Provided that where an employee is required to work on a rostered day off for less than one complete day, then the employee should be paid overtime in accordance with the call out provisions.

(8) No apprentice under the age of 18 years shall be required to work overtime or shift work unless he so desires. No apprentice shall, except in an emergency, work or be required to work overtime or shift work at times which would prevent his attendance at Technical School, as required by any statute, award or regulation applicable to him.

(9) When an employee, after having worked overtime and/or shift for which he has not been regularly rostered, finishes work at a time when reasonable means of transport are not available the employer shall provide him with conveyance to his home or the nearest public transport.

(10) An employer may require any employee to work reasonable overtime.

20.—HOLIDAYS

(1) (a) The following days or days observed in lieu shall, subject as hereinafter provided be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in the subclause.

(b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(c) When any of the days mentioned in paragraph (a) falls on a rostered day off, the following working day shall be observed in lieu of the rostered day off or at a mutually convenient time within ten (10) working days in the case of shift workers.

(2) (a) Wherever any holiday falls on an employee's ordinary working day and the employee is not required to work on such day he shall be paid for the ordinary hours he would have worked on such day if it had not been a holiday.

(b) If any employee is required to work on a holiday he shall be paid for the time worked at the rate of double time and a half. Provided that in lieu of the foregoing provisions of this paragraph and subject to agreement between the employer and the employee, work done on any day prescribed as a holiday under this award shall be paid for at the rate of time and a half and the employee shall, in addition be allowed a day's leave

with pay to be added to his annual leave or be taken at some subsequent date if the employee so agrees.

(3) When an employee is off duty owing to leave without pay or sickness, including accidents on or off duty, except time for which he is entitled to claim sick pay, any holiday falling during such absence shall not be treated as a paid holiday.

Where the employee is on duty or is available on the working day immediately preceding a holiday or resumes duty or is available on the working day immediately following a holiday, as prescribed in this clause, the employee shall be entitled to a paid holiday on all such holidays.

(4) A casual employee shall not be entitled to payment for any holiday referred to in this clause.

21.—ANNUAL LEAVE AND LOADING

(1) Except as hereinafter provided a period of 152 hours' annual leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his employer after a period of twelve months' continuous service with such employer.

(2) (a) "Ordinary Wages" for an employee other than a shift worker shall mean the rate of wage the employee has received for the greatest proportion of the calendar month prior to his taking the leave.

(b) "Ordinary Wages" for a shift worker shall mean the rate of wage the shift worker would receive under Clause 18—Shift Work of the award according to the employee's roster or projected roster including Saturday and Sunday shifts.

(3) (a) A seven day shift worker, i.e. a shift worker who is rostered to work regularly on Sundays and holidays shall be allowed one week's leave in addition to the leave to which he is otherwise entitled under this clause.

(b) Where an employee with twelve months continuous service is engaged for part of a qualifying twelve monthly period as a seven day shift worker, he shall be entitled to have the period of annual leave to which he is otherwise entitled under this clause increased by one-twelfth of a week for each completed month he is continuously so engaged.

(4) If any award holiday falls 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 period one day being an ordinary working day for each holiday observed as aforesaid.

(5) When work is closed down for the purpose of allowing annual leave to be taken, employees with less than a full year's service shall only be entitled to payment during such period for the number of days leave due to them.

Provided that nothing herein contained shall deprive the employer of his right to retain such workers during the close down period as may be required.

(6) If after one month's continuous service in any qualifying twelve 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 2.92 hours pay at his ordinary rate of wage in respect of each completed week of continuous service in that qualifying period except that, in the case of an employee referred to in subclause (3) of this clause he shall be paid 3.65 hours pay at the rate in respect of each completed week of continuous service.

(7) In addition to any payment to which he may be entitled under subclause (6) of this clause, an employee whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period, shall be given payment in lieu of that leave unless—

- (a) he has been justifiably dismissed for misconduct; and
- (b) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(8) An employee may be rostered off and granted annual leave with payment of ordinary wages as prescribed prior to his having completed a period of twelve months' continuous service, in which case should the services of such employee terminate or be terminated prior to the completion of twelve months' continuous service, the said employee shall refund to

the employer the difference between the amount received by him for wages in respect of the period of his annual leave and the amount which would have accrued to him by reason for the length of his service up to the date of the termination of his services.

(9) (a) Subject to paragraph (b) of this subclause, when computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is on annual leave and/or holidays. Provided that no deduction shall be made for any approved period an employee is absent from duty through sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through accident sustained in the course of employment shall not be considered breaks in continuity of service, but the first six months only of any such period shall count as service for the purpose of computing annual leave.

(10) Annual Leave Loadings—

(a) Day Workers: An employee proceeding on annual leave shall be paid, in addition to the ordinary payment for such leave, a loading of 17 1/2% calculated on the award rate of pay with respect to a maximum of four weeks' leave.

(b) Provided that the maximum loading payment shall not exceed the amount set out in the Australian Bureau of Census and Statistics Publication for "average weekly earnings per male employed unit" in Western Australia for the September quarter immediately preceding the date the leave became due.

(c) Shift Workers: A shift worker who is in receipt of an additional weeks' leave provided for in accordance with subclause (3) (a) of this clause, shall receive where the payment on annual leave, including shift and weekend penalties as defined in subclause (2) (b) is less than 20% in addition to the classified rate of pay prescribed in Clause 9—Wages for five weeks' leave, a loading which will produce an amount equal to 20% in addition to the award rate of pay for a maximum of five weeks. Provided that the payment shall not exceed five-fourths of the amount referred to in subclause (b) hereof, but this limitation will not affect an employee's entitlement to any additional payment by way of shift or weekend penalties under subclause (2) (b) of this clause should those penalties exceed 20%.

The loading prescribed by this subclause shall apply to proportionate leave on termination.

(11) By agreement between the employer and employee annual or annual and accumulated leave may be taken in not more than two periods but neither of such periods shall be less than two weeks.

(12) In taking annual leave, if an employee's entitlement expires part way through a day, the employee shall have the option of resuming duty for that full day or take the balance of the day as approved leave without pay.

(13) Any annual leave entitlement accumulated to an employee as at April 25, 1982 shall be adjusted in hours in the ratio of 38 to 40.

(14) The provisions of this clause, shall not apply to casual employees.

22.—LONG SERVICE LEAVE

(1) The conditions governing the granting of long service leave to full time Government wages employees generally shall apply to employees covered by this award.

(2) For the purposes of subclause (1) of this clause "13 weeks' leave" shall mean 494 hours' leave.

(3) Any long service leave accrued to an employee as at April 25, 1982 shall be adjusted in hours in the ratio of 38 to 40.

(4) In taking leave if an employee's leave entitlement expires part way through a day, the employee shall have the option of resuming duty for that full day or take the balance of the day as approved leave without pay.

23.—SICK LEAVE

(1) (a) An employee shall be entitled to payment for non-attendance on the grounds of personal ill health or injury for one sixth of a week for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the employee leaves the service of the employer, in the event of the employee being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in paragraph (1)(a) hereof in any accruing year shall be allowed to accumulate and may be taken to in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advise other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No employee shall be entitled to the benefit of this clause unless he produces proof to the satisfaction of the employer or his representative of such sickness provided that the employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 21—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 21—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Worker's Compensation Act nor to employees who illness or injury is the result of the employee's own misconduct.

(7) The provisions of this clause do not apply to casual employees.

(8) Any sick leave accrued to an employee as at April 25, 1982 shall be adjusted in hours in the ratio of 38 to 40.

24.—LEAVE TO ATTEND UNION BUSINESS

(1) (a) The employer shall grant paid leave during ordinary working hours to an employee,

(i) who is required to give evidence before any Industrial Tribunal;

(ii) who as a union nominated representative of the employees is required to attend negotiations and/or conferences between the union and employer;

(iii) when prior agreement between the union and employer has been reached for the employee to attend official union meetings preliminary to negotiations or industrial hearings;

(iv) who as a union nominated representative of the employees is required to attend joint union/management consultative committees or working parties.

(b) The granting of leave pursuant to paragraph (a) of this subclause shall only be approved,

(i) where an application for leave has been submitted by an employee a reasonable time in advance;

(ii) for the minimum period necessary to enable the union business to be conducted or evidence to be given;

(iii) for those employees whose attendance is essential;

(iv) when the operation of the organisation is not being unduly affected and the convenience of the employer impaired.

(2) (a) Leave of absence will be granted at the ordinary rate of pay;

(b) The employer shall not be liable for any expenses associated with an employee attending to union business.

(c) Leave of absence granted under this Clause shall include any necessary travelling time in normal working hours.

(3) (a) Nothing in this Clause shall diminish the existing arrangements relating to the granting of paid leave for union business.

(b) An employee shall not be entitled to paid leave to attend union business other than as prescribed by this Clause.

(c) The provisions of this Clause shall not apply to special arrangements made between the parties which provide for unpaid leave for employees to conduct union business.

(4) The provisions of this Clause shall not apply when an employee is absent from work without the approval of the employer.

25.—TRADE UNION TRAINING LEAVE

(1) Subject to the provisions of this Clause:

(a) The employer shall grant paid leave of absence to employees who are nominated by their union to attend short courses conducted by the Australian Trade Union Training Authority.

(b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the parties.

(2) An employee shall be granted up to a maximum of five days paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five days and up to ten days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten days.

(3) (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a public holiday or rostered day off (including a rostered day off as a result of working a 38 hour week) falls during the duration of a course, a day off in lieu of that day will not be granted.

(4) Subject to subclause (3) of this clause shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

(5) The granting of leave pursuant to the provisions of subclause (1) of this clause is subject to the operation of the organisation not being unduly affected and to the convenience of the employer.

(6) (a) Any application by an employee shall be submitted to the employer for approval at least four weeks before the commencement of the course, provided that the employer may agree to a lesser period of notice.

(b) All applications for leave shall be accompanied by a statement from the relevant union indicating that the employee

has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the authority which is conducting the course.

(7) A qualifying period of 12 months in Government employment shall be served before an employee is eligible to attend courses or seminars of more than a half day duration. An employer may, where special circumstances exist, approve an application to attend a course or seminar where an employee has less than 12 months Government service.

(8) (a) The employer shall not be liable for any expenses associated with an employee's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

26.—COMPASSIONATE LEAVE

An employee shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or step child, be entitled on notice, of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

Provided that payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with his roster or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday

For the purpose of this clause the words "wife" and "husband" shall include a person who lives with the employee as a de facto wife or husband.

27.—MATERNITY LEAVE

(1) 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 unpaid maternity leave provided that she has had not less than 12 months' continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave—

- (a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) 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.
- (c) An employee shall give not less than four 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.
- (d) 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 (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) 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 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 (7), (8), (9) and (10) hereof—

(4) Variation of Period of Maternity Leave—

- (a) 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 he leave is to be lengthened.
- (b) 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.

(5) Cancellation of Maternity Leave—

- (a) 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.
- (b) 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 four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave—

- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child the—
 - (i) 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
 - (ii) 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.
- (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any 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.
- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.
- (d) 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(3), to the position she held immediately before such transfer.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks.

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

(8) 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 the award.

(9) Termination of Employment—

- (a) 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.
- (b) 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.

(10) Return to Work After Maternity Leave

- (a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding an maternity leave or, in the case of any employee who was transferred to a safe job pursuant to subclause (3), 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 the position most closely comparable in status and wage to that of her former position.

(11) Replacement Workers

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) 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.
- (c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under his 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.
- (d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) 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.

28.—JURY SERVICE

An employee required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect to his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked inclusive of time worked for accrual purposes as prescribed in Clause (16) had he not been on jury service.

An employee shall notify his employer as soon as possible of the date upon which he is required to attend jury service. Further, the employee shall give his employer proof of his attendance, the duration of such attendance, and the amount received in respect of such jury service.

29.—DISTANT WORK

(1) Food and Accommodation Allowance

- (a) On any job where it is reasonably necessary that a worker should live and sleep away from his normal place of residence, the following camping provisions

shall apply, or the employer shall be responsible for providing reasonable food and accommodation or shall pay any expenses reasonably incurred by the employee in providing such food and accommodation.

- (b) (i) Where an employee is engaged as a regular employee of the permanent depot or workshop to which he has been transferred or engaged, his normal place of residence shall be deemed to be the place where he resides whilst working at or in the vicinity of such depot or workshop.
- (ii) The normal place of residence of employee being a regular employee of the Main Roads Department shall be deemed to be the recognised centre of the district in which he is employed or to which he has been permanently transferred.
- (iii) Subject to the preceding provisions of this paragraph an employees normal place of residence shall be deemed to be the place at which he was engaged.
- (iv) In the case of an employee transferred as referred to in placitum's (i) and (ii) of this paragraph, if an employee is a married man who desires his family to accompany him and because of lack of suitable accommodation in the vicinity of the depot, or as the case may be in the district centre, cannot do so, the parties may agree or, in default of agreement, the Board of Reference may determine an amount to cover food and accommodation expenses.
- (c) (i) An employee who is obliged under paragraph (a) of this subclause to camp at or reasonably close to the site of the work and is not provided free with food and accommodation referred to in the said paragraph, shall be paid an allowance of \$43.98 per week or \$1.61 per day for any period of employment less than one week. This allowance shall be reduced by \$21.98 per week, or 97 cents per day where the aforesaid rate applies in all cases where the employer at his own costs provides the employee with both a proper mess room and the cooking of the employees food.
- (ii) The weekly rate of \$43.98 and the aforementioned deduction of \$21.98 shall apply notwithstanding that employee may return to his home at weekend.
- (iii) Where the employer provides a mess and cooking staff the deduction referred to in placitum (i) of this paragraph shall be made, unless otherwise agreed, notwithstanding that an employee may not avail himself of the mess facilities.
- (iv) The weekly allowance for an employee working north of latitude 26 degrees and camped 20 miles or more from the nearest town shall be increased to \$11.28 in cases where the employee is obliged to batch.
- (d) A deduction of \$1.35 per day may be made in respect of any employee coming under the provisions of paragraph (c) of this subclause for any absence coming within the provision of subclause (3) hereof, or for any absence of the employee on leave without pay.
- (e) When satisfactory accommodation, other than tents or huts is made available by the employer, the foregoing allowances may be reduced in the case of any

Provided that such employee does not absent himself without just cause from the job for any of the ordinary working hours or reasonable overtime required in such week otherwise a deduction of \$1.35 per day may be made for each non working day and ordinary working day not fully worked in that week up to the maximum allowance prescribed.

- (iii) Where the employer provides a mess and cooking staff the deduction referred to in placitum (i) of this paragraph shall be made, unless otherwise agreed, notwithstanding that an employee may not avail himself of the mess facilities.
- (iv) The weekly allowance for an employee working north of latitude 26 degrees and camped 20 miles or more from the nearest town shall be increased to \$11.28 in cases where the employee is obliged to batch.
- (d) A deduction of \$1.35 per day may be made in respect of any employee coming under the provisions of paragraph (c) of this subclause for any absence coming within the provision of subclause (3) hereof, or for any absence of the employee on leave without pay.
- (e) When satisfactory accommodation, other than tents or huts is made available by the employer, the foregoing allowances may be reduced in the case of any

employee, irrespective of the time spent in that accommodation, when the camp location is fixed for a period of six months or longer. The amount of such reduction shall be agreed upon by a representative of the respondent concerned and the union, or in the event of no agreement it shall be determined by the Board of Reference.

- (f) Pitching and Striking Camp—In cases where the nature of the work necessitates the pitching of a temporary camp, and when such camp is shifted to suit the requirements of the work, then the employer shall allow full pay for the actual time reasonably taken in striking and pitching camp and the erection of bunks. The employer or his representative shall decide as to what is a reasonable time for the striking and pitching, and payment shall be made accordingly. In the event of any dispute arising under this subclause, the same may be decided by a Board of Reference.
- (g) All other camping provisions shall be similar where reasonably practicable to those provided in Clause 20—Camp standards and Amenities of the AWU Construction, Maintenance and Services (W.A. Government) Award 1987.

(2) Fares and Travelling Allowances to and from Distant Work

- (a) For the purpose of this subclause, the employer and the union, of which the employees concerned are members, or its representative may, by an agreement in writing signed by or on behalf of the parties, from time to time, fix for any particular job to which paragraph (a) of subclause (1) hereof refers a minimum period of engagement or a minimum period and a further period of engagement. If in any particular case the union concerned consents, such an agreement may be made between the employer and the individual employee and in circumstances in which, because of the place at which the employee is engaged or because the requisite time is not available, it is impracticable to obtain such consent from the union, such an agreement may be made between the employer and the individual employee without the union's consent but, in that latter case, the agreement so made shall be conditional upon the union subsequently approving thereof. Should an employer desire such a minimum period of engagement or such a minimum and a further period of engagement to be fixed but fail to reach agreement with the union thereon: or should the union refuse to approve of a conditional agreement made between the employer and an individual employee as hereinbefore provided the matter shall be referred to the Board of Reference, which shall thereupon fix such a minimum period of engagement or such a minimum and further period of engagement as the case may be. Any agreement made under the provisions of this paragraph, or any period fixed by the Board of Reference, shall not be regarded as varying in any way Clause 7.—Contract of Service but shall be merely for the purpose of determining the application of the succeeding paragraphs of this subclause.
- (b) Subject to the provisions of this subclause the employer shall pay all costs incurred by an employee in travelling to and from a job to which paragraph (a) of subclause (1) hereof refers from and to the place of engagement. Such costs shall be limited to fares, which shall include sleeping berth accommodation, where such is reasonably necessary, transport of tools, meal money at the rate of \$2.10 for each ordinary meal actually and reasonably required and paid for by the employee during such travelling and payment for travelling time (which shall include time waiting for transport connections and also ordinary working hours not worked after the employee has arrived at the job destination and made himself available for work) at ordinary time rates with a maximum of eight hours for any one day.

Provided that any employee who is dismissed for misconduct, or who, within one week of commencing work, is dismissed for incompetence shall forfeit all rights under this subclause and any costs already incurred under this subclause by the employer in respect of that employees travel to the job shall, to the extent that the same have not been satisfied by deductions from his wages made by the employer under paragraph (d) of this subclause, where that paragraph is applicable, remain a debt due from the employee to the employer and the amount thereof shall be retainable or recoverable by the employer from the employee in the same way as the debt referred to in subclause (d) of this clause.

- (c) The employee's fare from the place of engagement to the job shall be paid by the employer and the remainder of the costs incurred in travelling to the job, to which an employee is entitled under paragraph (b) of this subclause, shall be paid to the employee as soon as practicable after commencing work.
- (d) In any case in which a minimum period of engagement has been fixed in accordance with the provisions of paragraph (a) of this subclause, the employer may deduct from the employee's wages, by instalments, at a reasonable weekly rate, spread over the minimum period, an amount equal to the sum paid to the worker pursuant to paragraph (c) of this subclause but the aggregate amount of any such deductions shall be repaid by the employer to the employee if and when he completes the minimum period of engagement. If, in any such case, the employee without just cause does not continue in his employment in a proper manner until the completion of the minimum period of engagement, the difference between the amount paid to the employee under paragraph (c) of this subclause, and the aggregate amount of the deductions from his wages for the time being made under this paragraph, shall remain as a debt owing by the employee to the employer and to the extent of any such debt any wages due to the employee at the time the employment ends may be retained by the employer in settlement or part settlement of such debt, and if such wages are insufficient to settle the debt in full, the balance of such debt may be recovered by the employer from the employee in any court of competent jurisdiction.
- (e) Subject to the proviso to paragraph (b) of this subclause, an employee shall be entitled to be paid the costs incurred in respect of the return travelling from the job to his place of engagement referred to in paragraph (b) of this subclause—
 - (i) if no minimum period of engagement has been fixed in accordance with the provisions of paragraph (a) of this subclause, when the employment finishes or so soon thereafter as such costs can be determined;
 - (ii) if a minimum period of engagement has been fixed in accordance with the provisions of paragraph (a) of this subclause but no further period has been so fixed, only if and when the employment finishes (or so soon thereafter as such costs can be determined) after the employee has completed the minimum period of engagement; or
 - (iii) if both a minimum period and a further period of engagement has been fixed in accordance with the provisions of paragraph (a) of this subclause, only if and when the employment finishes (or so soon thereafter as such costs can be determined) after the employee has completed the minimum and further period of engagement.

Provided that any employee who is dismissed for misconduct, or who, within one week of commencing work, is dismissed for incompetence shall forfeit all rights under this subclause and any costs already incurred under this subclause by the employer in respect of that employees travel to the job shall, to the extent that the same have

not been satisfied by deductions from his wages made by the employer under paragraph (d) of this subclause, where that paragraph is applicable, remain a debt due from the employee to the employer and the amount thereof shall be retainable or recoverable by the employer from the worker in the same way as the debt referred to in subclause (d) of this clause.

- (f) Notwithstanding the provisions of paragraphs (d) and (e) of this subclause, in any case in which the employee has failed to complete the minimum period of engagement, or the minimum and further period of engagement in which there exists special circumstances which, in the opinion of the employer, or in the event of a dispute as to the sufficiency of such special circumstances, in the opinion of the Board of Reference, are sufficient to justify repayment of all or some part of the aggregate amount of deductions made by the employer from the wages of the employee or to justify the payment to the employee of all or some part of the costs incurred in returning from the job to his place of engagement, as the case may be, then that amount or those amounts, the repayment or payment of which is so thought to be justified, shall be repaid or paid to the employee by the employee, so soon after the employment finishes as such amount or amounts can be determined.
- (g) In any case in which an employee is dismissed by the employer before completing the minimum period or the minimum and further period of engagement, unless such dismissal be for misconduct or unless it occurs within one week of the employee commencing work and is because of the employees incompetency, the employee shall for the purpose of this subclause be deemed to have completed the minimum period, or the minimum and further period of engagement, as the case may be.

(3) Return of Employee During Course of Employment.

- (a) Employees transferred to or engaged on temporary jobs of more than four months' duration away from their normal place of residence shall, if the employee elects to return to his normal place of residence at the weekend after three months continuous service away from his normal place of residence in the employ of the one employer and thereafter at the end of each three monthly period, be paid a second-class return rail or road bus fare on the pay day which immediately follows the date on which he returns to the job, unless travelling facilities are provided. This shall not apply where the employee has visited his normal place of residence at the employer's expense during the three monthly period or where the employees employment is to be terminated within 28 days of a three monthly period or to employees employed north of latitude 26 South.
- (b) When an employee has been engaged by the one employer for six months to work at a distant place from which it is not practicable to return to his normal place of residence at the end of three months he shall at the end of six months excepting where the employment is to be terminated within 28 days of such six months be granted one day's leave without pay to enable him to return to his normal place of residence during such "long" weekend, and unless travelling facilities are provided, he shall be paid a second-class return rail or road bus fare on the pay day which immediately follows the date on which he returns to the job:

Provided that an employee on jobs in the area of the State north of latitude 26deg South shall after working continuously for an employer for six months without returning to his normal place of residence be paid an additional three day's pay and after working for an employer continuously for 12 months excepting where the employment is to be terminated within 28 days of such 12 months be granted two days' leave without pay and be paid his return air fares between the job and his

normal place of residence on the pay day immediately following his return to the job:

Provided further that for any specified job in the area north of latitude 26deg South any other arrangement acceptable to the employees may be substituted for the foregoing provision with the consent of the union and the employer.

(4) Employees Using Own Vehicles

If it is so agreed between the parties, an amount equal to the fares which would have been reasonably incurred under subclause (2) or subclause (3) hereof may be paid to an employee who travels in any kind of conveyance of his own.

30.—LOCATION ALLOWANCE

(1) Employees working in the districts of the State described in subclause (2) of this clause shall be paid the allowance prescribed for that district.

(2) The boundaries of the districts shall be:

District:

1. The area within a line commencing on coast; thence east along latitude 28 degrees to a point north of Tallering Peak; thence due south to Tallering Peak; thence south-east to Mt. Gibson and Burracoppin; thence to a point south-east at the junction of latitude 32 degrees and longitude 119 degrees; thence south along longitude 119 degrees to coast.
2. That area within a line commencing on the south coast at longitude 119 degrees then east along the coast to longitude 123 degrees; then north along longitude 123 degrees to a point on latitude 30 degrees thence west along latitude 30 degrees to the boundary of No. 1 District.
3. The area within a line commencing on coast at latitude 26 degrees; thence along latitude 26 degrees to longitude 123 degrees; thence south along longitude 123 degrees to the boundary of No. 2 District.
4. The area within a line commencing on the coast at latitude 24 degrees; thence east to the South Australian Border; thence south to the coast; thence along the coast to longitude 123 degrees; thence north to the intersection of latitude 26 degrees; thence west along latitude 26 degrees to the coast.
5. That area of the State situated between the latitude 24 degrees and a line running east from Carnot Bay to the Northern Territory Border.
6. That area of the State north of a line running east from Carnot Bay to the Northern Territory Border.

(3) The weekly allowance payable to employees working in the districts of the State described in subclause (2) of this clause are as follows:

District	\$
1	Nil
2	7.00
3	9.80
4	15.50
5	30.90
6	37.80

Provided that the allowances prescribed in Column "A" shall operate from the beginning of the first pay period commencing on or after 1st January, 1986.

(4)

COLUMN I DISTRICT	COLUMN II STANDARD RATE \$ per week	COLUMN III EXCEPTIONS TO STANDARD RATE Town or Place	COLUMN IV RATE \$ per week
6	50.40	Nil	Nil
5	41.20	Fitzroy Crossing Halls Creek Turner River Camp Nullagine Liveringa (Camballin)	51.60

COLUMN I DISTRICT	COLUMN II STANDARD RATE \$ per week	COLUMN III EXCEPTIONS TO STANDARD RATE Town or Place	COLUMN IV RATE \$ per week
		Marble Bar	
		Wittenoom	
		Karratha	48.60
		Port Hedland	45.10
4	20.70	Warburton Mission	55.90
		Carnarvon	19.50
3	13.10	Meekatharra	20.70
		Mount Magnet	
		Wiluna	
		Laverton	
		Leonora	
		Cue	
2	9.30	Kalgoorlie	3.10
		Boulder	
		Ravensthorpe	12.40
		Norseman	
		Salmon Gums	
		Marvel Loch	
		Esperance	
1	Nil	Nil	Nil

Note: In accordance with subclause (4) of this clause employees with dependants shall be entitled to double the rate of district allowance shown.

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after 1 January 1991.

(5) (a) A married male employee whose spouse is not employed by the Government shall be paid double the weekly allowance expressed herein for the district or town in which he is employed.

(b) An employee, other than a married male employee, who supplies proof that he or she is the main support of relatives or dependants resident within the State shall be paid double the weekly allowance expressed herein for the district or town in which he or she is employed.

(c) Provided that until the beginning of the first pay period commencing on or after July 1, 1980 the allowance referred to in this subclause shall be 150 percent of the weekly allowance in lieu of the double allowance prescribed herein.

(d) In no circumstances shall the weekly allowances paid to a married couple by Government employers exceed double the allowance prescribed herein nor be less than that amount.

(6) The rates of allowance prescribed herein shall be adjusted every 12 months in accordance with variations in the "Consumer Price Index" for Perth for the period ending December 31st each year. The adjustment to the rates shall be effective from the beginning of the first pay period to commence on or after 1st day of January in each year.

(7) Where an employee is on annual leave, he shall be paid for the period of such leave the district allowance to which he would ordinarily be entitled.

(8) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he shall only be paid district allowance for the period of such leave he remains in the district in which he is employed.

(9) Liberty is reserved to the union to make application to amend this clause with respect to towns which attract allowances different from that applying generally to that district.

(10) Nothing in this clause shall operate so as to reduce the district allowance being paid at the date of this order to any employee.

(11) Where an employee is provided with free board and lodging by the employer the allowances prescribed herein shall be reduced to two-thirds of the full allowance.

31.—PROVISION OF APPLIANCES

(1) Builders' Labourers—Employers shall provide all necessary plant and tools free of charge.

(2) Carpenters—The employer shall provide the following tools when they are required on the job:

Dogs and clamps of all descriptions, bars of all descriptions, augers of all sizes, bits not ordinarily used in a brace, all hammers except claw hammers, glue pots and brushes, dowel plates, trammels, hand and thumb screws, soldering irons, spanners from three-quarters of an inch upwards, and all power driven tools and machines and drill bits used in machines on construction jobs.

(3) Painters—The employer shall provide all tools in connection with the painting trade, excepting putty knife, strippers, scissors, duster, paperhanging brush, roller, two lining fitches, a two-foot rule, hammer and hacking knife.

(4) Signwriters—Signwriters shall provide themselves with a full set of pencils and fitches, rest stick, wash leather and a two-foot rule.

(5) Plasterers—The employer shall supply all floating rules, darbies, trammels, centres, buckets and sieves. Stands for plasterers' mortar boards not less than two feet six inches from the ground or where practicable and safe from a scaffold level shall be provided for the plasterer by the employer when requested.

(6) Plumbers—

(a) The following tools shall be provided by the employer:

Metal pots, plumbing irons, mandrils, long dum-mies, stocks and dies for iron and brass pipes, cutters, all tongs over twelve inches, vices, hack saw blades, taps and chisels for brick and concrete; and the employer shall also supply all tools required for work to be performed on wrought iron and lead pipes over two inches in diameter and a worker shall supply only the usual kit bag of tools.

(b) Plumbers shall supply themselves with all the tools set out hereunder:

1-24oz. claw hammer; 1-gimpy hammer; 1-ball pein hammer; 1-cross pein hammer; 1-18 inch pinch bar; 1-1/2 in. hand drill; 1-set twist drills, 1/16 in. to 1/2 in. inclusive; 1-ratchet wood brace; 1-set wood bits (rough cut) 1/4 in., 5/16 in., 1/2 in., 3/4 in., 1 in., 1-1/4 in., 1-10 in. wood rasp; 1-12 in. half round file; 1-10 in. round file; 1-plugging chisel; 1-set star drills 1/4 in, 3/8 in., 1/2 in., 3/4 in.; 1-set screwdrivers 6 in., 8 in., 12 in.; 1-multi-pliers; 1-gas pliers; 1-18 in. stilson wrench; 1-14 in. stilson wrench; 1-14 in. footprints; 1-10 in. footprints; 1-12 in. crescent spanner; 1-8 in. crescent spanner; 1-12 in. straight tin snips; 1-weiss snips; 1-steel compass 9 in; 1-mitre square 8 in.; 1-soldering head or 24 oz. soldering iron; 1-24 in. spirit level; 1-line level; 1-100 ft. nylon line; 1-plumb bob and line; 1-prick punch; 1-rivet set; 1-grooving tool; 1-flat lead dresser; 1-lead bossing mallet; 1-bench bolt; 1- flaring block and drift 1/2 in., 3/4 in., 1 in., 1-1/2 in. copper tube bending spring; 1-3/4 in. copper tube bending spring; 1-hacksaw; 1-gauging trowel; 1-nail bag; 1-12 ft. tape (steel); 1- keyhole saw set; 1-set cold chisels 4 in., 6 in., 8 in., 12 in.; 1-set wood chisels 1/2 in., 3/4 in., 1/in.; 1-tool box and lock; 1-hand saw 26 in.

(7) Bricklayers—The employer shall supply scrutch combs and blades when required.

(8) (a) A worker in receipt of a tool allowance shall provide himself with all necessary tools kept in suitable condition for the performance of his work (other than those tools to be provided by the employer in accordance with this clause).

(b) An employee who fails to provide all such tools when required shall be guilty of a breach of this award and shall not be entitled to the tool allowance prescribed in Clause 9.—Wages until he complies with this clause.

(9) (a) The employer shall supply all tools required for work to be performed by apprentices.

(b) Where the employer supplies the apprentice with the usual kit of tools, other than those prescribed by this clause to be otherwise supplied by the employer, the employer shall be entitled to deduct any tool allowance payable under clause 9(2) until the amount expended on the initial purchase has

been recovered or the indenture completed whichever occurs first.

(c) Where an apprentice successfully completes their indenture and has acquired the usual kit of tools as set out in this clause, the apprentice shall be entitled to retain that tool kit without deduction as their property.

32.—PROTECTION OF EMPLOYEES' TOOLS

(1) Carpenters and Joiners—The employer shall provide a waterproof and reasonable secure place where the employees' tools (when not in use) may be locked up apart from the employer's plant or material.

(2) Other Employees—The employer shall, when practicable, provide a reasonably secure place on each job for the safekeeping of the employees' tools when not in use.

(3) The employer shall indemnify an employee in respect of any tools of the employee stolen if the employer's failure to comply with this clause is a material factor in contributing to the stealing of the tools.

33.—CHANGE ROOM

Where no other reasonably suitable place is available, the employer shall (unless it is impracticable to do so) provide on each job, a suitable and convenient change room where the employees may change their clothes. The change room shall not be used for storing lime, cement or other similar materials.

34.—RECORDS

(1) The wages sheets of the employer shall be open for inspection at head office by the secretary or other duly accredited representative of the union upon reasonable notice being given of his desire to inspect same.

(2) Where it is not reasonably practicable for the employee to inspect the pay sheet, the wages envelope shall set out the ordinary wages, overtime and all deductions.

35.—RIGHT OF ENTRY

The Secretary or any other duly accredited representative of the union shall have the right to enter any place or any premises where employees are employed at any time during normal working hours or when overtime is being worked, for the purpose of interviewing employees, checking on wage rates, award breaches or safety conditions or regulations so long as they do not unduly interfere with the work being performed by any employee during work time, and provided that they present themselves, with their authority as prescribed by this Award, to a representative of site management prior to pursuing their union duties on site.

A representative of the union shall be a duly accredited representative if he is the holder for the time being of a certificate signed by the secretary of that organisation and bearing the seal of that organisation in the following form, or in a form not materially differing therefrom:

This is to certify that (Name of Organisation) is a duly accredited representative of the abovenamed organisation for all purposes of this award made under the Industrial Relations Act 1979.

(Seal) Secretary

Specimen signature of Holder

(Strictly not transferable)

36.—POSTING OF AWARD AND UNION NOTICES

No employer shall prevent an official of the union from posting a copy of this award or any union notice in a suitable place on any job.

37.—PROHIBITION OF JUNIOR EMPLOYEES

(1) Except as provided in subclause (2) hereof, the employment of junior employees (except apprentices) on any work which, if performed by an adult employee, would be subject to the provisions of this Award, is prohibited unless the consent of the appropriate union is in each case first obtained. If any junior employee (except an apprentice) is so employed, such employee shall be paid not less than the wage of an adult performing similar work.

(2) A junior employee engaged on work for which an apprenticeship is provided for in this award and who is not registered as a probationer pursuant to regulation 5 of the Apprenticeship Regulations, shall be paid not less than the

wage prescribed in Clause 9.—Wages for adult employees performing similar work.

Provided that this subclause shall not apply to any employee engaged with a view to apprenticeship. Such an employee shall be entitled to the rate prescribed by this award for an apprentice in his first year.

38.—MIXED FUNCTIONS

An employee engaged for more than two hours during one day on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for such day. If for two hours or less during one day he shall be paid the higher rate for the time worked.

39.—INTRODUCTION OF CHANGE

Employer's duty to notify

(a) (i) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.

(ii) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

Employer's duty to discuss change

(b) (i) The employer shall discuss with the employees affected and their union or unions, inter alia, the introduction of the changes referred to in subclause (a) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their unions in relation to the changes.

(ii) The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause (a) hereof.

(iii) For the purposes of such discussion, the employer shall provide to the employees concerned and their union or unions, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to his/her/its interests.

40.—BOARD OF REFERENCE

(1) The Commission hereby appoints, for the purpose of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to Section 48 of the Industrial Relations Act, 1979.

(2) The Board of Reference is hereby assigned the function of determining any dispute between the parties in relation to any matter which under this award may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

41.—TEMPORARY EMPLOYEES

(1) An employer may engage employees on a temporary basis for fixed periods of time on occasions of peak workload normally performed by employees subject to the following:

(a) Each person employed as a temporary member of the wages staff shall be employed under a written agreement specifying, among other things, the duration of employment and fixed separation date, although in the case of urgent or unforeseen work the employees involved may be given another period of employment to cover the necessary extra period (with a separate written agreement).

(b) The relevant union/s shall be supplied with a copy of each temporary employment agreement.

(2) A temporary employee shall be paid a wage rate equivalent to that applicable to a permanent employee performing the same duties of the same classification and in

addition be entitled to all other conditions prescribed by the award other than subclause (1) of Clause 7.—Contract of Service and Clause 27.—Maternity Leave, of this award.

42.—PAID LEAVE FOR ENGLISH LANGUAGE TRAINING

(1) Leave during normal working hours without loss of pay shall be granted to employees from a non English Speaking Background, who are unable to meet standards of communication to advance career prospects, or who constitute a safety hazard or risk to themselves and/or fellow workers, or are not able to meet the accepted production requirements of that particular occupation or industry, to attend English training conducted by an approved and authorised Authority. The selection of employees for training will be determined by consultation between the employer and the appropriate union(s).

(2) Leave will be granted to enable employees selected to achieve an acceptable level of vocational English proficiency. In this respect the tuition content with specific aims and objectives incorporating the pertinent factors at subclause (3) hereof shall be agreed between the Employer, the Union(s), and the Adult Migrant Education Service or other approved Authority conducting the training.

(3) Subject to appropriate needs assessment participation in training will be on the basis of minimum 100 hours per employee per year.

The agreed desired proficiency level will take account of the vocational needs of an employee in respect of communication, safety, welfare and productivity within his/her current position as well as those positions to which he/she may be considered for promotion or redeployment. It will also take account of issues in relation to training, retraining and multiskilling, award restructuring, industrial relations and safety provisions, and equal opportunity employment legislation.

SCHEDULE A.—LIST OF RESPONDENTS

Minister for Works
 Minister for Health
 Minister for Education
 Minister for Lands
 Minister for Agriculture
 Minister for Conservation and Land Management
 Minister for the Environment
 Minister for Minerals and Energy
 Minister for Water Resources
 Rottenest Island Board
 Royal Perth Hospital
 Princess Margaret Hospital
 Queen Elizabeth II Medical Centre
 Fremantle Hospital
 King Edward Memorial Hospital
 State Housing Commission
 Rural and Industries Bank
 Department of Marine and Harbours
 Commissioner for Main Roads
 Zoological Gardens Board
 Totalisator Agency Board
 Curtin University
 Western Australian Meat Commission
 Kings Park Board
 Western Australian College of Advanced Education
 Murdoch University
 Art Gallery of Western Australia
 Alcohol and Drug Authority
 Perth Dental Hospital
 Metropolitan Market Trust
 Water Authority of Western Australia

SCHEDULE "B" MEMORANDUM OF AGREEMENT

The following provisions relating to Hours of Work are agreed between the parties.

- (1) That notwithstanding the provisions of the Award the ordinary hours of work may be varied in accordance with the following, provided that the average weekly hours worked do not exceed 38 hours.

1.1 Provided that for employees employed at the Education Department, due to the operational requirements of the employer, employees will accumulate the rostered days off which will be taken as days in lieu during school vacation periods or another mutually agreed period. The employer and employee will mutually agree as to when the days in lieu of the rostered days off will be taken however, such leave will be taken subject to the routine maintenance requirements of the employer.

All leave in lieu of the rostered days off will be taken as full day credit entitlements. An employee will not be entitled to such leave on a pro rata credit basis.

Any dispute concerning the taking of leave in lieu of the rostered days off will be referred to a meeting of the employer and the Union concerned.

Should an employee be required to work during such periods of leave no overtime will be paid and the employee by agreement with the employer will be re-rostered off duty at a mutually convenient period.

- (2) Employees working the twenty day work cycle shall accrue an entitlement of 0.4 of one hour per day whilst on sick leave towards his rostered day off. However, his sick leave entitlement will be debited by 8 hours.

- (3) Worker's Compensation—20 Day Work Cycle:

- (i) Where an employee is on workers' compensation for periods for less than one complete 20 day work cycle, such employee will accrue towards and be paid for the succeeding rostered day off following such leave;
- (ii) An employee will not accrue rostered days off for periods of workers' compensation where such period of leave exceeds one or more complete 20 day work cycles;
- (iii) Where an employee is on workers' compensation for less than one complete 20 day work cycle and a rostered day falls within the period, the employee will not be re-rostered for an additional day off.

- (4) Any annual leave, sick leave or long service leave entitlement accumulated to an employee as at the date of commencement of the 38 hour week shall be adjusted in hours in the ratio of 38 to 40.

- (5) For employees working the 20 day work cycle there will be no rostered days off duty applicable to employees whilst on leave without pay, nor shall any credit accumulate for such periods of leave.

- (6) As a result of the introduction of the new working hours, there will be no entitlement to payment for time accrued towards a rostered day off on either termination or dismissal, nor will there be any requirement to accumulate a full credit prior to being entitled to a rostered day off. All part time and casual employees will be paid for hours actually worked.

- (7) For employees working the 20 day work cycle overtime provisions will not apply until after 8 hours have been worked on each day.

- (8) Shift Work: Monday to Friday shift penalties apply to employees who are required to work on the rostered day off.

- (9) Stand By: Should stand by rates be applicable on an employees' rostered day off duty, then payment will be at the Monday to Friday rate.

- (10) Payment of Allowances and Overtime for Rostered 'Day Off': Allowances included in the Award shall be paid in accordance with the following—

10.1 Weekly allowances as prescribed in the Award shall not be reduced.

10.2 Where, to meet the needs to the employer, the employee is required to work for the whole day on his/her rostered 'day off', no overtime will be paid and

that employee will be re-rostered for another day off duty within ten (10) working days or for the Main Roads Department within the following fortnightly work cycle. A re-rostered day will be the first or last working day of the week unless another day is agreed between the employer and the employee. The work referred to in this subclause relates to a whole day's work. Should an employee be called out for less than one day then payment will be made in accordance with the Award provisions for call out on a Monday to Friday.

(11) Agreed Trade Offs in Implementing the 38 Hour Week:

- (i) There will be no wash up time prior to knocking off work for the day, however, employees may be permitted by their supervisors to wash after completing particularly dirty assignments as would normally be the case.
- (ii) There will be no afternoon tea break.
- (iii) Employees will be paid fortnightly either by cheque or into a bank account, building society, or approved credit union.

Provided that in the case of employees at the Perth Dental Hospital the following trade-offs will apply:

- (i) There will be no wash up time prior to knocking off work for the day, however, staff may be permitted by their supervisors to wash after completing particularly dirty assignments as would normally be the case.
- (ii) There will be no afternoon tea break.
- (iii) As there is a requirement to secure the hospital on additional holidays granted to public servants these holidays will be taken by employees in lieu of the rostered day off.
- (iv) Payment will be made fortnightly into a bank account.

Provided that in the case of employees at the Royal Perth Hospital, King Edward Memorial Hospital, Fremantle Hospital, Sir Charles Gairdner Hospital, the following trade offs will apply:

- (i) There will be no wash up time prior to knocking off work for the day, however, staff may be permitted by their foreman to wash after completing particularly dirty assignments as would normally be the case.
- (ii) There will be no afternoon tea break.
- (iii) There will be no time off for collecting pays during normal working hours.

Provided that in the case of employees of the Western Australian Meat Commission the following trade offs will apply:

- (i) There will be no afternoon tea break.
- (ii) Wash up time will be reduced from 15 minutes to 4 minutes.
- (iii) There will be no time off for collecting pays during normal working hours.

Provided that in the case of employees at the Health Department the following trade offs will apply:

- (i) There will be no wash up time prior to knocking off work for the day, unless an employee has been on a job that entitles him to dirt money.
- (ii) There will be no afternoon tea break.

Provided that in the case of employees at the Main Roads Department the following trade offs will apply:

- (i) One tea break per day.
- (ii) There will be no wash up time prior to knocking off the work for the day, however employees may be permitted by their foreman to wash after completing particularly dirty assignments as would normally be the case.
- (iii) By agreement between the employer and employee annual leave or annual and accumulated annual leave may be taken in not more than two periods but neither of such periods shall be less than two weeks.
- (iv) Employees will be paid fortnightly by cheque or into a bank account, building society or approved credit union.

Provided that in the case of the Albany Port Authority employees at the Geraldton Port Authority the following trade offs will apply:

- (i) There will be no afternoon tea break.
- (ii) There will be no time off for collecting pays during normal working hours.

Provided that in the case of employees of the Western Australian College of Advanced Education the following trade offs will apply:

- (i) There will be no afternoon tea break.
- (ii) Employees will be required to commence and finish work at the work place and not the workshop.
- (iii) There will be no wash up time however, staff may be permitted by their supervisors to wash up after completing particularly dirty assignments as would normally be the case.

Provided that in the case of employees at the Department of Agriculture the following trade offs will apply:

- (i) There will be no wash up time prior to knocking off work for the day, however, staff may be permitted by their foreman to wash after completing particularly dirty assignments as would normally be the case.
- (ii) There will be no afternoon tea break.
- (iii) There will be no time off for collecting pays during normal working hours.

Provided that in the case of employees at the Zoological Gardens Board the following trade offs will apply:

- (i) There will be no wash up time prior to knocking off work for the day, however, staff may be permitted by their foreman to wash after completing particularly dirty assignments as would normally be the case.
- (ii) There will be no afternoon tea break.

Provided that in the case of employees at the Sate Batteries Branch of the Mines Department, the following trade offs will apply:

- (i) There will be no wash up time prior to knocking off work for the day, however, staff may be permitted by their foreman to wash after completing particularly dirty assignments as would normally be the case.
- (ii) There will be no afternoon tea break.
- (iii) There will be no time off for collecting pays during normal working hours.

Provided that in the case of employees at the Metropolitan Market Trust the following trade offs will apply:

- (i) There will be no afternoon tea break.
- (ii) The morning tea break will be taken in accordance with Clause 18—Rest Period of the Award.

Provided that in the case of employees at the Art Gallery of Western Australia, the following trade offs will apply:

- (i) Only 5 minutes a day will be allowed within the normal working hours for bench clean up duty.
- (ii) The morning tea break will be taken in accordance with Clause 18—Rest Period, of the Award.
- (iii) There will be no afternoon tea break.
- (iv) There will be no time off for collecting pays during normal working hours.

Provided that in the case of employees at Curtin University the following trade offs will apply:

- (i) There will be no afternoon tea break.
- (ii) There will be no time off for collecting and cashing of pay cheques during normal working hours. Arrangements will be made on the campus for employees to collect and cash pay cheques during the lunch break.
- (iii) Buses transporting employees to the work place on the campus will leave prior to commencement time.

Provided that in the case of employees at Homeswest the following trade offs will apply:

- (i) There will be no afternoon tea break.
- (ii) The morning tea break will be taken in accordance with Clause 28—Rest Period.

- (iii) Employees will be paid fortnightly either by cheque or into a Bank account, Building Society or approved Credit Union. Where employees are paid by cheque the cheque will be either posted to the employee or the employee will be responsible for collecting the cheque in his own time.

SCHEDULE C—HOSPITAL ENVIRONMENT ALLOWANCE

Notwithstanding the provisions of Clause 13.—Special Rates and Provisions of this Award, the following allowances shall be paid to maintenance employees employed at hospitals listed hereunder—

1. (a) For work performed in a hospital environment—\$9.37 per week.
- (b) For disabilities associated with work performed in—
 - Difficult access areas;
 - Tunnel complexes;
 - Areas with great temperature variation:—\$3.26 per week.
 - Princess Margaret Hospital
 - King Edward Memorial Hospital
 - Sir Charles Gairdner Hospital
 - Royal Perth Hospital
 - Fremantle Hospital
2. For work performed in a hospital environment—\$6.31 per week.
 - Kalgoorlie Hospital
 - Osborne Park Hospital
 - Albany Hospital
 - Bunbury Hospital
 - Geraldton Hospital
 - Mt Henry Hospital
 - Northam Hospital
 - Swan Districts Hospital
 - Perth Dental Hospital
3. For work performed in a hospital environment—\$4.48 per week.
 - Bentley Hospital
 - Derby Hospital
 - Narrogin Hospital
 - Port Hedland Hospital
 - Rockingham Hospital
 - Sunset Hospital
 - Armadale Hospital
 - Broome Hospital
 - Busselton Hospital
 - Carnarvon Hospital
 - Collie Hospital
 - Esperance Hospital
 - Katanning Hospital
 - Merredin Hospital
 - Murray Hospital
 - Warren Hospital
 - Wyndham Hospital
4. The monetary amounts prescribed in this Schedule shall be adjusted in accordance with any decision of the Commission in Court Session which alters wage rates generally following movements in the Consumer Price Index and which is subsequently reflected by amendment to the allowances contained in Clause 13.—Special Rates and Provisions of the Building Trades (Government) Award No. 31A of 1966.

SCHEDULE D—PARTIES BOUND

The following organisations are parties to this award:

- The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch
- Building Trades Association of Unions of Western Australia (Association of Workers)
- The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

APPENDIX A

ASBESTOS ERADICATION

(1) Application

This Appendix shall apply to employees engaged in the process of asbestos eradication on the performance of work within the scope of this award.

(2) Definition

Asbestos eradication is defined as work on or about buildings, involving the removal or any other method of neutralisation of any materials which consist of, or contain asbestos.

(3) Control

All aspects of asbestos work will meet as a minimum standard the provisions of the National Health and Medical Research Council codes, as varied from time to time, for the safe demolition/removal of asbestos based materials.

Without limiting the effect of the above provision, any person who carried out asbestos eradication work shall do so in accordance with the legislation/regulations prescribed by the appropriate authorities.

(4) Operation

This Appendix shall come into operation from the first pay period to commence on or after May 2, 1984.

(5) Rate of Pay

In addition to the rates prescribed in this Award, an employee engaged in asbestos eradication (as defined) shall receive \$1.12 per hour worked in lieu of Special Rates prescribed in Clause 13 with the exception of subclauses (2), (14), (15), (24) and (37) of Clause 13 of this award.

(6) Protection of Employees

Respiratory Protection

Respiratory protective equipment, conforming to the relevant parts of the appropriate Australian Standard (i.e. 1716 "Specification of Respiratory Protective Devices") shall be worn by all personnel during work involving eradication of asbestos.

(7) Other Conditions

The conditions of employment, rates and allowances, except so far as they are otherwise specified in this appendix, shall be the conditions of employment, rates and allowances of the award as varied from time to time.

This appendix shall not apply to employees engaged on this removal of asbestos ceiling insulation and renovation work on houses owned by the United States Navy at Exmouth and who are receiving the allowance prescribed on 23 February by Mr Commissioner Coleman Print F4597.

APPENDIX C

HOURS—DEPARTMENT OF MARINE AND HARBOURS

(1) Application

This appendix shall apply to employees employed by the Department of Marine and Harbours in the classifications of work outlined in Clause 9.—Wages of the award.

The provision of this appendix are designed specifically to cater for the peculiar circumstances of the Maritime Industry.

Where the provisions of this appendix cover existing award provisions the provisions of this appendix shall prevail for employees of the Department of Marine and Harbours only.

Where the provisions of this appendix do not cover existing provisions within the award, then the award provision shall continue to apply.

(2) Operation

This appendix shall come into operation on and from 31st July 1990.

(3) Meal Break

There will be a cessation of work and of working time for the purpose of a meal on each day. Such meal break shall not be less than 30 minutes nor more than one hour.

The meal break shall be taken as agreed between the employees concerned and the appropriate manager provided that an employee will not be compelled to work beyond 5 hours without a meal break.

The normal meal break prescribed herein shall occur between the hours of 12 noon and 2.00pm.

(4) Early Start

Provided that by agreement between the employees concerned and the appropriate manager the working day may begin at 6.00am or at any time between that hour and 8.00am and the working time shall then begin to run from the time so fixed, with a consequential adjustment to the meal cessation period.

APPENDIX D

AWARD RESTRUCTURING

(1) Application

- (a) This appendix shall apply to all respondents to this award and their employees other than the Hon Minister for Works.
- (b) Where the provisions of this appendix conflict with provisions elsewhere in the award, the provisions of the appendix shall apply to the extent of the inconsistency.
- (c) This appendix shall come into effect from the first pay period on or after the 17th November 1993.

(2) Objective

- (a) The parties to this award are committed to the outcomes envisaged by the Australian Industrial Relations Commission and the Western Australian Industrial Relations Commission through the operation of successive structural efficiency principles.
- (b) The objective of the new classification structure is to assist in carrying out fundamental reform in relation to the way employees are engaged, receive training and are encouraged to form a commitment which has the opportunity to provide them with a career path.
- (c) The parties acknowledge that the purpose of such initiatives is to increase productivity and efficiency so that it can continue to make a substantial contribution to the prosperity of Western Australia and provide workers with more varied, fulfilling and better paid jobs.
- (d) For the new classification structure to be effective major initiatives are required in the way employees gain skills. The parties are committed to maintaining the integrity of competency based training, the award classification definitions and nationally approved competency standards. In so doing the parties to this award reaffirm their commitment to maintaining the integrity of structured trade training.

(3) Guidelines for Implementation

- (a) The appendix shall operate and be available for introduction in Western Australia for all streams defined.
- (b) The parties shall implement this appendix through consultative mechanisms appropriate to the size, structure and needs of the enterprise. Where possible, and by consent, the parties shall establish consultative committees comprising equal numbers of employee and employer representatives. Matters raised for consideration of the consultative mechanism shall be related to implementation of the new classification structure, the facilitative provisions contained in this award and matters concerning training.
- (c) No employee's ordinary award rate of pay shall be reduced as a result of the translation and reclassification provided for in this appendix.

(4) Translation and Transitional Assessment

(a) Translation

- (i) Employees will transfer to the new classification structure in accordance with the following:
 - (aa) All employees covered by this award who come under classifications covered by paragraph (1)(a) of Clause 9.—Wages shall move across to level 4 of the new classification structure, prior to undertaking an initial reclassification process.
 - (bb) Those employees covered under paragraphs (1)(b) and (1)(c) of Clause 9.—Wages shall move across to level 5 of the new classification structure, prior to undertaking an initial reclassification process.
 - (cc) Employees currently employed under subparagraphs (1)(d)(i), (ii) and (iii) of Clause 9.—Wages shall move across to Level 3 of the new classification structure.
 - (dd) Employees currently employed under subparagraphs (1)(d)(iv), (v), (vi), (vii), (viii) and (ix) of Clause 9.—Wages shall move across to Level 2 of the new classification structure.
 - (ee) Employees currently employed under subparagraph (1)(d)(x) of Clause 9.—Wages shall move across to Level 1 of the new classification structure.
 - (ff) Employees currently employed under subparagraph (1)(d)(xi) of Clause 9.—Wages shall move across to New Entrant Level of the new classification structure.
- (ii) Existing allowances related to work performed and/or responsibilities are to be reviewed as part of the classification/reclassification process. Where the work performed and/or responsibilities are contemplated in the definition for the classification/reclassification as determined in a particular case such allowances are to be abolished or phased out as appropriate.

(b) Initial Reclassification

- (i) Initial translation to the new structure for all employees covered under this award shall have a common operative date effective from the 17th day of November 1993.
- (ii) The process of initial reclassification will be agreed to by the employer and the relevant unions, with the documentation being based on the nationally determined building industry definitions and skill levels, as endorsed by the National Training Board.
- (iii) A consultative committee will be established at workplaces, as agreed between the employer and the unions, in order to process applications for initial reclassification and for ongoing reclassification. An agreed initial appeal mechanism as provided for in subclause (6) Classification Disputes hereof will be available for initial reclassification. When reclassifying, all relevant on and off the job prior learning and skills development will be taken into consideration.

(c) Reclassification

In the event of a claim for reclassification to a higher level under the new structure on the ground that such employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground, the following principles shall apply:

- (i) The parties confirm that an agreed disputes avoidance procedure shall be followed.

- (ii) (aa) Agreed competency standards shall be established by the parties in conjunction with the relevant National and State Training Authorities for all levels in the new classification structure before any claims for reclassification are processed.
- (bb) However, if at individual enterprises the relevant union or unions and the employer agree, a set of interim reclassification guidelines may be adopted. In the event of such guidelines being adopted, they will be used for reclassification purposes only and shall be superseded by national competency standards when they are available.
- (cc) An agreed accreditation authority may test the validity of an employee's claim for reclassification.
- (dd) Reclassification to any higher level shall be contingent upon such additional work being available and required to be performed by the employer.
- (5) Engagement and Reclassification
- (a) Workers from level 2 to level 9 inclusive shall be employed in either the Structural, Fitout and Finish or Services streams.
- (i) The purpose of streams is not to create demarcations but to facilitate appropriate combinations of training.
- (ii) Employees shall work across streams provided that the appropriate training, where required, has been provided.
- (b) The employer shall tell each employee upon engagement the field of work for which he/she has been engaged. Subsequent to engagement an employer and an employee may agree that the employee shall be engaged in another field of work. Where there is a dispute over the proper classification of an employee, the dispute shall be referred to the relevant consultative committee.
- (6) Classification Disputes
- (a) It is recognised that from time to time disputes may arise as to the proper classification of an employee. In the event that a dispute as to the proper classification or reclassification of an employee does arise the dispute settlement procedure as agreed by the relevant Peak Committee will be implemented.
- (b) In determining the appropriate classification of an employee, full regard will be paid to:
- (i) The nature and skill requirements of the position to be filled.
- (ii) The skill level and certification of the employee.
- (iii) The experience and qualifications of the employee in:
- (aa) relevant indicative tasks nominated in this appendix; and/or
- (bb) fields of work against which an employee is accredited.
- (7) Rates of Pay
- Employees shall be paid the following rates of pay in accordance with the level to which they are classified.
- (a) Wage Rates
- | Level | Percentage Relativity to Level 4 | Rates \$ | Safety Net Adjustment \$ | Total Weekly Rate \$ |
|-------------|----------------------------------|----------|--------------------------|----------------------|
| New Entrant | 78 | 335.10 | 16 | 351.10 |
| 1 | 82 | 352.30 | 16 | 368.30 |
| 2 | 87 | 375.50 | 16 | 391.50 |
| 3 | 92 | 397.00 | 16 | 413.00 |
| 4 | 100 | 429.60 | 16 | 445.60 |
- Level 5 105 451.10 16 467.10
- Level 6 110 472.60 16 488.60
- Level 7 115 494.00 16 510.00
- Level 8 120 515.50 16 531.50
- Level 9 125 537.00 16 553.00
- (b) (i) In addition to the rates contained in paragraph (a) of this subclause, employees designated in classification levels to 7 inclusive shall receive an all purpose industry allowance of \$10.30.
- (ii) This allowance shall be paid in two instalments as follows:
- (aa) \$5.20 of the allowance shall be paid after the first twelve months of government service; and
- (bb) the remaining \$5.10 shall be paid on 24 months of government service.
- (c) (i) The rates of pay in this Appendix include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.
- (ii) The rates of pay in this Appendix include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.
- (8) Training
- The parties to this award recognise that in order to increase productivity and efficiency a greater commitment to training and skill development is required.
- (a) The parties to this award recognise that in order to increase the efficiency and productivity of the public sector and to ensure mobility within the industry generally, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
- (i) Developing a more highly skilled and flexible workforce.
- (ii) Providing employees with career opportunities through appropriate training to acquire additional skills.
- (iii) Removing barriers to the utilisation of skills acquired.
- (b) Following proper consultation in accordance with subclause (3) hereof or through the establishment of a training committee, the employer shall develop a training programme consistent with:
- (i) The current and future skill needs of the enterprise.
- (ii) The size, structure and nature of the operations of the enterprise.

- (iii) The need to develop vocational skills relevant to the enterprise and the building and construction industry through courses conducted by accredited educational institutions and providers.
- (c) Where it is agreed that a training committee be established, such training committee shall be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities. For example:
- (i) Formulation of a training programme and availability of training courses and career opportunities to employees.
 - (ii) Dissemination of information on the training programme and availability of training courses and career opportunities to employees.
 - (iii) Recommendation of individual employees for training and reclassification.
 - (iv) Monitoring and advising management and employees regarding the ongoing effectiveness of the training.
- (d) (i) Where as a result of consultation in accordance with subclause (3) hereof or through a training committee and with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to paragraph (b) hereof should be undertaken by an employee, such training may be either on or off the job. Provided that if the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.
- (ii) Any costs associated with enrolment and the purchase of prescribed text books, excluding those which are available in the employer's technical library, incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall be on an annual basis, subject to the presentation of reports of satisfactory progress.
 - (iii) Travel costs incurred by an employee undertaking training in accordance with this subclause, which exceed those normally incurred in travelling to and from work, shall be reimbursed by the employer.
- (e) All issues of paid training leave, including quantum and training consultative committees, shall be reviewed between the parties after twelve months' operation. The unions reserve the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking training to meet the needs of an individual enterprise and the building industry.
- (9) Classification Structure
- (a) General
 - (i) Existing employees who are to be transferred into the new classification structure shall do so in accordance with the terms of subclause (4) hereof.
 - (ii) Each classification level builds upon the previous level so that the value of an employee to the industry and his/her employer increases as the employee progresses through the structure. Skills are built up in a sequential manner through job learned skills and structured training and the new industry training framework endorsed by the NBCITC reflects this.
 - (b) Building and Maintenance Worker—New Entrant Level
 - (i) B.M.W.—New entrant is an employee who has not undertaken any industry accredited training but who may be undertaking the industry induction course approved by the NBCITC covering the following matters:
 - (aa) Background to the industry.
 - (bb) General work orientation.
 - (cc) Employer/Employee responsibilities.
 - (dd) Workplace health and safety.
 - (ee) Effective communications.
 - (ff) Introduction to tools and equipment.
 - (gg) Manual handling.
 - (hh) Basic levelling.
 - (ii) Introduction to plan reading.
 - (jj) Site organisation.
 - (ii) An employee at this level performs proceduralised tasks under direct supervision in a safe manner and in co-operation with other employees to the level of his/her training.
 - (iii) Subject to the employee having the appropriate training, the following are indicative tasks which the employee at this level may perform:
 - (aa) Waste management.
 - (bb) Performing basic construction duties.
 - (cc) Exercising some judgement.
 - (dd) On a daily basis, learning skills at the workplace under appropriate supervision.
 - (ee) Manually transporting materials.
 - (ff) Directly assisting more experienced employees.
- (c) Building and Maintenance Worker—Level 1
- B.M.W. Level 1 is an employee who has successfully completed an accredited induction course of one module and has three months' continuous service in the industry. An employee who has met this requirement will qualify for a Construction Industry Skills Certificate Level 1.
- An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:
- (i) Workers under routine supervision either autonomously or in a team environment.
 - (ii) Has an established work orientation.
 - (iii) Is responsible for the quality of his/her own work subject to supervision.
 - (iv) Works in a safe manner being aware of the effects his/her work may have on others regarding occupational health and safety.
 - (v) Solves rudimentary problems within his/her area of work.
 - (vi) Assists more experienced workers in a number of functions.
 - (vii) Has a basic understanding of the construction process.
 - (viii) Interacts harmoniously with employees of other companies on site.
 - (ix) Anticipates and adapts to a constantly changing work environment.
- Subject to the employee having the appropriate training, the following are indicative of the tasks which the employee at this level may perform:
- (aa) General construction work including jackhammering.
 - (bb) Concrete cutting, pouring concrete, carrying materials.
 - (cc) Operating a dump cart.
 - (dd) Assisting a trades person.
 - (ee) Stripping concrete form work.
 - (ff) Using small power tools.

(d) Construction Building and Maintenance Worker Level 2

An employee at this level will be engaged in one of the three streams as defined:

- structures
- fitout and finish
- services.

An employee to be classified at this level will have fulfilled one of the criteria outlined in level 1 as well as having successfully completed either of the following which leads to the employee obtaining a Construction Industry Skills Certificate Level 2.

Will have successfully completed a structured training programme in an accredited advanced stream skills course (consisting of six modules) which will include stream specialisation established in accordance with standards set by the NBCITC;

or

Will have gained equivalent skills and successfully completed a competency test approved by the NBCITC covering the same material included in the course referred to above and have a minimum of fifteen months' service in the industry.

An employee at this level is engaged to exercise the depth and scope of skills indicated below:

- (i) Is responsible for the quality of his/her own work.
- (ii) Is a competent operative who works individually or as part of a team.
- (iii) Understands and applies occupational health and safety requirements so as not to injure themselves or create hazards for other workers.
- (iv) Exercises discretion within his/her level of skill and training.
- (v) Works from detailed instructions and procedures in written, spoken or diagrammatic form.
- (vi) Applies a range of general construction skills.
- (vii) Has a general understanding of the construction process in his/her stream.
- (viii) Can use equipment and machinery to his/her level of training.
- (ix) Operates under general supervision.
- (x) Able to identify basic faults in materials and equipment.
- (xi) Is able to interact harmoniously with employees of other companies on site.
- (xii) Is able to anticipate and adapt to a constantly changing work environment.

Subject to the employee having the appropriate training where required, the following are indicative tasks which the employee at this level may perform:

- (aa) Scaffolding.
- (bb) Steelfixing.
- (cc) Concrete placing.
- (dd) Hoist Driving.
- (ee) Concrete batch planting operating.
- (ff) Spotting for earth machines.
- (gg) Storeperson duties.
- (hh) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(e) Building and Maintenance Worker—Level 3

An employee at this level will be engaged in one of the three streams as defined:

- structures
- fitout and finish
- services.

An employee to be classified at this level will have fulfilled one of the criteria outlined in level 1 and one of the criteria outlined in level 2 as well as having successfully completed either of the following which leads to the employee obtaining a Construction Industry Skills Certificate Level 3.

Will have undertaken a structured training programme in an accredited advanced stream skills course (consisting of eight modules) which will include areas of specialisation which are established in accordance with standards set by the NBCITC;

or

Will have gained equivalent skills and successfully completed a competency test approved by the NBCITC covering the same material included in the course referred to above and have a completed 27 months' experience in the industry.

An employee at this level is engaged to exercise the depth and scope of skills to the level of his/her training indicated below:

- (i) Works from complex instructions and procedures.
- (ii) Applies quality control techniques to his/her own work.
- (iii) Assists with the provision of on-the-job training to a limited degree.
- (iv) Has a detailed knowledge of the construction process in his/her stream and a basic level of understanding of processes in other streams.
- (v) Measures accurately for his/her areas of operation.
- (vi) Utilises appropriate work techniques and operates machinery and equipment required at this level.
- (vii) Has the capacity for self directed application and can plan a range of consecutive functions.
- (viii) Exercises significant discretion in his/her work area.
- (ix) Assists to co-ordinate work in a team environment or works individually under routine supervision.
- (x) Implements basic fault finding skills and is able to solve problems at his/her level of operation.
- (xi) Can operate in a range of intermediate specialist skills and/or work across a broader range of functions in an entire stream or streams.
- (xii) Interacts harmoniously with employees of other companies on site.
- (xiii) Anticipates and plans for constant changes to the work environment.

Subject to the employee having the appropriate training where required, the following are indicative tasks which the employee at this level may perform:

- (aa) Bitumen spraying.
- (bb) Concrete finishing by use of powered equipment.
- (cc) Operating trench digging equipment.
- (dd) Operating air compressors.
- (ee) Using winches.
- (ff) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(f) Building and Maintenance Worker Level 4 (100%)

An employee at this level will be employed in one of the three streams as defined:

- structures
- fitout and finish
- services.

An employee to be classified at this level will have fulfilled one of the criteria outlined in level 1, one of the criteria outlined in level 2 and one of the criteria outlined in level 3 as well as having successfully completed the following, leading to the employee obtaining a Construction Industry Skills Certificate Level 4.

Will have successfully completed a structured training programme in a group of nine modules of specialisation of which six must be related to the stream for which the employee is engaged. The modules will be to standards established and endorsed by the NBCITC;

or

Will have a recognised trade certificate, or its equivalent;

or

Will have gained equivalent skills and completed a competency test approved by the NBCITC covering the same material in the course referred to above including the appropriate areas of specialisation.

An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:

- (i) Exercises good interpersonal and communication skills.
- (ii) Exercises discretion within his/her level of training.
- (iii) Operates under routine supervision either individually or in a team environment.
- (iv) Is capable of detailed measurement techniques.
- (v) Applies quality control techniques to his/her own work.
- (vi) Reads, interprets and applies plans, sketches and diagrams.
- (vii) Performs tasks safely and identifies hazards within his/her sphere of work.
- (viii) Performs from his/her own initiative and is able to control his/her own work schedule.
- (ix) Provides informal on-the-job guidance to other employees to a limited degree.
- (x) Has an understanding of the construction process in his/her stream.
- (xi) Interacts with and assists employees of other companies on site.
- (xii) Anticipates and plans for constant changes to the work environment.

Subject to the employee having the appropriate training where required, the following are indicative tasks which the employee at this level may perform:

- (aa) Activities generally associated with tasks carried out by an employee who has completed an apprenticeship or accredited trade recognition certificate.
- (bb) Specialised materials handling.
- (cc) Crushing plant operation.
- (dd) Paving.
- (ee) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(g) Building and Maintenance Worker Level 5 (105%)

An employee at this level will be employed in one of the three streams as defined:

- structures
- fitout and finish
- services.

An employee to be classified at this level will have completed an additional three modules of specialisation within the stream for which he/she has been employed or have gained equivalent skills and completed a competency test approved by the NBCITC.

An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:

- (i) Exercises skills attained through the completion of nationally accredited training prescribed for this classification.
- (ii) Exercises discretion within the level of his/her training.
- (iii) Performs discretion tasks within the level of his/her training.
- (iv) Works under general supervision either individually or in a team environment.
- (v) Provides guidance, assistance and on-the-job training as part of a work team.
- (vi) Has a sound understanding of the construction process involved in his/her stream
- (vii) Has a knowledge of occupational health and safety requirements appropriate to his/her level of training.
- (viii) Reads, interprets and applies information from plans.

Subject to the employees having the appropriate training where required, the following are indicative tasks which the employee at this level may perform:

- (aa) Duties normally associated with the functions of the special class tradesmen.
- (bb) Letter cutting.
- (cc) Operates large drilling machines.
- (dd) Operates complex plant.
- (ee) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(h) Building and Maintenance Worker Level 6 (110%)

An employee at this level will be employed in one of the three streams as defined:

- structures
- fitout and finish
- services.

An employee to be classified at this level will have completed an additional three modules of specialisation within the stream for which he/she has been employed or have gained equivalent skills and completed a competency test approved by the NBCITC.

An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:

- (i) Exercises skills attained through the completion of nationally accredited training prescribed for this classification.
- (ii) Exercises discretion within the level of his/her training.
- (iii) Provides guidance as part of a work team.
- (iv) Assists in the provision of structured training in conjunction with supervisors and trainers.
- (v) Understands and implements quality control techniques.
- (vi) Works under limited supervision either individually or in a team environment.
- (vii) Reads, interprets and applies information from plans.

- (viii) Solves technical problems within his/her sphere of work.

Subject to the employee having the appropriate training where required the following are indicative tasks which the employee at this level may perform.

- (aa) Supervises maintenance of equipment.
- (bb) Identifies and prepares information relating to variations.
- (cc) Carving.
- (dd) Operates large and complex plant.
- (ee) Schedule and plan work activity.
- (ff) Has detailed knowledge of Australian Standards applying to his/her sphere of work.
- (gg) Recognises hazards associated with his/her sphere of work.
- (hh) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(i) Building and Maintenance Worker Level 7 (115%)

An employee to be classified at this level will have completed an additional three modules of specialisation within the stream for which he/she has been employed or have gained equivalent skills and completed a competency test approved by the NBCITC.

An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:

- (i) Exercises skills attained through the completion of nationally accredited training prescribed for this classification.
- (ii) Provides guidance as part of a work team.
- (iii) Understands and is able to implement quality control techniques.
- (iv) Works under limited supervision either individually or in a team environment.
- (v) Assists in the planning and/or guiding of the work, quality and safety of others.
- (vi) Researches, evaluates and implements solutions to problems within his/her own sphere of work.
- (vii) Reads, interprets and applies information from plans.

Subject to the employee having the appropriate training where required the following are indicative tasks which the employee may perform:

- (aa) Prepares and delivers instructions to team members.
- (bb) Plans and schedules work.
- (cc) Orders equipment within defined requisition limits.
- (dd) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(j) Building and Maintenance Worker Level 8 (120%)

An employee to be classified at this level will have completed an additional 1.5 modules of specialisation within the stream for which he/she has been employed or have gained equivalent skills and completed a competency test approved by the NBCITC.

An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:

- (i) Exercises skills attained through the completion of nationally accredited training prescribed for this classification.

- (ii) Exercises discretion within his/her level of training.

- (iii) Provides guidance as part of a work team.

- (iv) Understands and implements quality control techniques.

- (v) Works under limited supervision either individually or in a team environment.

- (vi) Reads, interprets and applies information from plans.

Subject to the employee having the appropriate training where required the following are indicative tasks which the employee may perform:

- (aa) Diagnoses and solves technical or organisational problems.

- (bb) Researches, prepares and presents complex reports.

- (cc) Participates in the development of quality control and occupational health and safety programmes.

- (dd) Participates in the implementation of relevant training.

- (ee) Possesses effective written and verbal communication skills of a level sufficient to communicate detailed information and produce reports.

- (ff) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(k) Building and Maintenance Worker Level 9 (125%)

An employee to be classified at this level will have completed an additional 1.5 modules of specialisation within the stream for which he/she has been employed or have gained equivalent skills and completed a competency test approved by the NBCITC.

An employee at this level is engaged to exercise the depth and scope of skills, to the level of his/her training indicated below:

- (i) Exercises skills attained through the completion of nationally accredited training prescribed for this classification.

- (ii) Provides guidance and assistance as part of a work team.

- (iii) Prepares reports of a technical nature on specific work issues.

- (iv) Implements quality control techniques to a higher level than BMW8.

- (v) Reads, interprets and applies information from plans.

Subject to the employee having the appropriate training where required the following are indicative tasks which the employee may perform:

- (aa) Exercises skills attained through the completion of nationally accredited training prescribed for this level.

- (bb) Uses information from plans to diagnose and solve problems related to his/her sphere of work.

- (cc) Identifies any deviations from plans and sketches.

- (dd) Identifies and documents variations to original plans to the extent required to make cost comparisons.

- (ee) Schedules and plans work for a team and provides brief reports on the progress and quality of work.

- (ff) Assists in designing training programmes for implementation.

- (gg) Applies high level quality control techniques.

- (hh) Possesses high level interpersonal and communication skills.
- (ii) Additional duties which the employee will be skilled to carry out as a result of undergoing broadly based structured training or acquiring on-the-job skills.

(10) Definitions

- (a) "NBCITC" means the National Building and Construction Industry Training Council.

The NBCITC shall be the recognised authority (for the purposes of this appendix) responsible for developing competency standards for consideration and endorsement by the National Training Board and the provision of advice and assistance to State and Territory training authorities in respect of matters relating to training in the industry and callings covered by this award, including but not limited to:

- competency standards
- curriculum development
- training courses
- articulation and accreditation requirements both on and off the job
- on-the-job training guidelines
- assessment and certification arrangements.

In relation to the development of standards for this award the NBCITC may consult with other bodies or committees of a like nature to ensure that consistent standards are maintained across industries. The NBCITC shall designate those fields of work that constitute the streams contained herein.

- (b) "Streams" or "Skill Streams" means a broad grouping of skills related to a particular phase or aspect of production.
- (c) "Fields of Work" means a defined grouping of logically related skills based on an efficient organisation of work. The principle purpose of fields of work is to facilitate the development of training modules specifically tailored to encourage full practical utilisation of skills.
- (d) "Structures Stream" includes all fields of work principally concerned with the erection of new structures of buildings (including demolition and pre-construction) up until, but not including, the fitout and finishing stage of construction and does not extend beyond the scope of this award.
- (e) "Fitout/Finishing Stream" includes all fields of work principally concerned with fitout and finishing activities relating to newly constructed or existing buildings or structures, and does not extend beyond the scope of this award.
- (f) "Services Stream" includes all related skills involved in the provision of services to newly constructed or existing buildings or structures, and does not extend beyond the scope of this award.
- (g) "Industry Accredited Course" or "Nationally Accredited Course" is a course which has been constructed to reflect a group of standards which the NBCITC has endorsed as being appropriate combinations of skills to be available to the industry.
- (h) "Module". One module equates to 40 nominal training hours.
- (i) "Supervision". This application recognises a hierarchy of levels of supervision which are as follows:
 - (i) "Direct Supervision" applies to a person who:
 - (aa) receives detailed instructions on the tasks to be performed and is subject to progress checks as to those tasks; and
 - (bb) has his/her tasks reviewed on completion.
 - (ii) "Routine Supervision" applies to a person who:
 - (aa) receives instructions on the task to be performed as to unusual or difficult

features of those tasks; or when new procedures are involved receives instructions as to the method of approach; and

- (bb) is normally subject to progress checks, however such checks are usually confined to unusual or difficult aspects of the tasks assigned; and
 - (cc) has his/her assigned tasks reviewed on completion; and
 - (dd) has the technical knowledge to enable him/her to perform his/her task usually without specific instructions.
- (iii) "General Supervision" applies to a person who:
- (aa) receives general instructions, usually covering only the broader technical aspects of the work; and
 - (bb) may be subject to progress checks but such checks are usually confined to ensuring that, in broad terms, satisfactory progress is being made; and
 - (cc) has his/her assignments reviewed on completion; and
 - (dd) although technically competent and well experienced there may be occasions on which the person will receive more detailed instructions.
- (iv) "Limited Supervision" applies to a person who:
- (aa) receives only limited instructions normally confined to a clear statement of objectives; and
 - (bb) has his/her work usually measured in terms of the achievement of stated objectives; and
 - (cc) is fully competent and very experienced in a technical sense and requires little guidance in the performance of work.

CSBP & FARMERS AWARD 1990 AWARD.**No. A19 of 1989.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 3th day of January, 1996

J. CARRIGG,

Registrar.

CSBP & Farmers Award.

No. A 19 of 1989.

1.—TITLE

This award shall be known as the CSBP & Farmers Award 1990.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. Area and Scope

4. Term
5. Deleted
6. Definitions
7. Contract of Employment
8. Continuity of Service
9. Wages
10. Classifications
11. Service Pay
12. Day Worker Hours
13. Shift Work Hours
14. Overtime
15. Public Holidays
16. Annual Leave
17. Sick Leave
18. Special Rates and Allowances
19. Protective Equipment and First Aid Allowance
20. General Conditions
21. Car and Travelling Allowance
22. Distant Work
23. Location Allowance
24. Introduction of Change
25. Redundancy
26. Payment of Wages
27. Time and Wages Record
28. Maternity Leave
29. Bereavement Leave
30. Long Service Leave
31. Superannuation
32. Higher Duties
33. Elderly Employees
34. Junior Employees and Students
35. Apprentices
36. Tool Kits—Minimum Standards
37. Representative Interviewing Employees
38. Posting of Award and Union Notices
39. Employee Relations Procedure
40. Utilisation of Contractors
41. Jury Service
42. Part-Time Employees
43. Second Tier Agreement
44. Workers' Compensation
45. Liberty to Apply
 - Schedule A—Parties to the Award
 - Schedule B—Implementation Agreement
 - Schedule C—Respondent Unions

3.—AREA AND SCOPE

(1) This award shall apply to the employees referred to in Clause 9—Wages employed by CSBP and Farmers Ltd., Western Australia and Australian Gold Re-Agents Pty. Ltd. and the respondent unions.

(2) This award shall wholly replace the Superphosphate and Chemical Employees Award No. A15 of 1986 as amended in total, and the Building Trades Award No. 31 of 1966 as amended and consolidated, the Metal Trades (General) Award No. 13 of 1965 as amended and consolidated, the Engine Drivers (General) Award No. 21A of 1977 as amended and consolidated, in so far as those awards applied to employees referred to in subclause (1) of this clause.

(3) Except as provided in clause 43, this award shall also replace all agreements between the employer and the respondent unions, whether the agreements are registered in the Commission or unregistered agreements.

(4) This Award shall not apply to employees who are predominantly engaged in the driving of motor vehicles off the employer's premises and who are engaged in the callings set out in the Transport Workers' (General) Award No. 10 of 1961 as amended and consolidated or any award made in supersession of the Transport Workers' (General) Award.

4.—TERM

The term of this award shall be for a period of 2 years commencing from the first pay period after 2 February, 1990.

6.—DEFINITIONS

“Accrued Day(s) Off” means the day(s) off accruing to an employee resulting from the operation of the thirty eight (38)

hour week as prescribed in subclause (3) of clause 12—Day Worker Hours.

“Afternoon Shift” means a shift commencing between 12.00 noon and 6.00 p.m.

“Award” means the CSBP & Farmers Award 1990.

“Casual” means an employee engaged by the hour and whose expected duration of employment is less than one (1) month.

“Commission” means the Western Australian Industrial Relations Commission established pursuant to the Industrial Relations Act, 1979.

“Continuous Shift Employee” shall mean an employee who may be rostered to work a day, afternoon or night shift on any of the seven (7) days of the week.

“Day” means from 12 midnight to 12 midnight.

“Day Shift” means a shift commencing between 6.30 a.m. and 12 noon.

“Day Worker” means an employee employed on work Monday to Friday between the hours of 6.30 a.m. to 6.00 p.m..

“Employee” means a person employed in any of the classifications in clause 10 of this award.

“Employer” shall mean CSBP & Farmers Ltd. or Australian Gold Re-Agents Pty. Ltd.

“Junior Employee” means an employee less than eighteen (18) years of age.

“Maintenance Trades” means an employee classified as Maintenance Trades Group 1, 2, 3, 4 or 5 in clause 10 of this award.

“Metropolitan Area” means an area within a radius of fifty (50) kilometres from the Perth Railway Station.

“Night Shift” means a shift commencing between 6.00 p.m. and 4.00 a.m.

“Non-continuous shift worker” means an employee who may be rostered to work a day, afternoon or night shift on any weekday (Monday to Friday) but excludes a watchperson.

“Production and Maintenance Worker” means an employee classified as a Production and Maintenance Worker Group 1 to 8 in clause 10 of this award.

“Regular Employee” means an employee who is employed to assist with the ongoing requirements of the employer's business, and who is not a casual and/or seasonal employee.

“Respondent Union/s” means a union/s prescribed in Schedule C—Respondent Unions of this award.

“Roster” and/or “Shift Roster” means a roster and/or shift roster prepared by the employer and agreed by consultation with the employees.

“Seasonal Employee” means a Production and Maintenance worker specifically employed to assist with the seasonal production requirements of the employer's business.

“Sixth Shift” means a regular rostered shift where all hours of the shift are paid at overtime rates.

“Watchperson” means a Production and Maintenance worker appointed to perform the specific duties of a watchperson.

“Week” means any period of seven (7) consecutive days.

“Year” means a calendar year.

7.—CONTRACT OF EMPLOYMENT

- (1) (a) The contract of employment may be terminated by the appropriate period of notice prescribed in paragraph (c) of this clause by either the employer or the employee, given at any time, or by the payment or forfeiture of the appropriate period of notice prescribed in paragraph (c) of this clause in lieu of the period of notice.
- (b) The contract of employment shall terminate at the expiration of the period of notice given in accordance with paragraph (a) of this subclause.

- (c) The period of notice for termination by either the employer or the employee shall be as follows:

Period of Continuous Service	Period of Notice
During the 1st month	1 day
After one month	1 week

- (d) In addition to the period of notice prescribed in paragraph (c) of this subclause, where the employer gives notice to an employee who is over forty five (45) years of age at the time the notice is given, and the employee has not less than two (2) years' continuous service with the employer, the employee shall be entitled to one (1) additional week's notice.
- (e) Subject to the provisions of clause 17—Sick Leave and subclause (3) of this clause, where an employee fails to give the notice prescribed in paragraph (c) of this subclause or having given, or been given, such notice, the employee leaves before the notice expires, the employee forfeits monies the equivalent of ordinary wages for the required period of notice, and the employer may deduct such monies from the employee's wages or monies due to the employee on termination.
- (f) Notwithstanding the other provisions of this clause, the employer may terminate an employee by a combination of part of the period of notice prescribed in paragraphs (c) and (d) of this subclause and payment in lieu of the remainder of the period of notice prescribed in paragraphs (c) and (d) of this subclause.
- (g) In calculating payment in lieu of notice the employer shall pay the employee the ordinary wages for the period of notice had the employment not been terminated.
- (h) The notice prescribed in paragraphs (c) and (d) of this subclause shall not apply to employees:
- (i) engaged for a specific period;
 - (ii) engaged for a specific task and/or tasks; and
 - (iii) engaged as casual employees
- provided that the contract of employment of an employee:
- (iv) engaged for a specific period shall terminate at the completion of the specific period.
 - (v) engaged for a specific task and/or tasks shall terminate at the completion of the task and/or tasks.
 - (vi) engaged as a casual employee shall be terminated by one (1) hour's notice.
- (i) If after one (1) month of continuous service the employer gives notice of termination to an employee (other than a seasonal employee or an employee referred to in paragraphs 7(h)(iv) to (vi) hereof), that employee shall for the purpose of seeking other employment be entitled to be absent from work for up to a maximum of eight (8) ordinary hours without deduction of pay.
- (j) Notwithstanding any of the other provisions of this clause all employees shall serve a one (1) month probationary period of employment from the employee's date of commencement, and during or at the conclusion of this period the employee's employment may be terminated by notice pursuant to paragraph (c) of this subclause.

(2) The provisions of this clause shall not affect the right of the employer to dismiss an employee without notice for misconduct or other sufficient cause and an employee so dismissed shall be paid wages for the time worked up to the time of dismissal only.

(3) In the case of refusal or neglect of duty, or other misconduct or sufficient cause, the Works Manager may suspend an employee with pay for any period to provide time to enable an investigation to occur as to the continued employment or otherwise of an employee, or without pay for a maximum period of three (3) ordinary working days for disciplinary purposes as an alternative to termination of employment, provided that suspension without pay shall not

occur unless the Works Manager has evidence to warrant such action. In all circumstances any differences of opinion as to a suspension, may be dealt with under Clause 39—Employee Relations Procedure. This sub-clause shall not affect the right of the employer to dismiss an employee in accordance with the provisions of sub-clause (2) of this clause, and shall not effect the right of either the employer or the employee to give notice in accordance with the provisions of sub-clause (1) of this clause.

(4) The employer is entitled to deduct payment for any day or part thereof upon which any employee cannot usefully be employed because of any industrial action by any of the respondent unions or by any other association or union or through any breakdown of machinery or any stoppage of work by any cause which the employer cannot reasonably prevent, except where such stoppage is due to shortage of railway trucks.

(5) An employee not attending for duty shall, except as provided in clause 7—Contract of Employment, clause 16—Annual Leave, clause 30—Long Service Leave, clause 17—Sick Leave, clause 28—Maternity Leave, clause 29—Bereavement Leave and clause 41—Jury Service, shall lose pay for the actual time of such non-attendance.

(6) The practice of "last on, first off" in respect of the employer terminating employment of employees shall not apply to employees employed as either seasonal or casual employees or for a specific task or length of time pursuant to the terms of this award.

(7) The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee.

(8) (a) The employer shall advise employees in writing at the time of engagement whether their engagement is:

- (i) regular;
- (ii) casual;
- (iii) seasonal;
- (iv) Part-Time;
- (v) for a fixed period; or
- (vi) for a specific task or tasks.

(b) The terms and conditions of this award apply to all types of employment, unless otherwise provided in this award.

(9) It is a term and condition of employment and of the rights accruing under this award that an employee shall:

- (a) Perform work in accordance with all the provisions of this award.
- (b) Observe at all times regulations and rules in order to provide an orderly and safe working environment.

(10) It is a condition of employment that prior to commencement of employment all employees sign the letter of engagement.

8.—CONTINUITY OF SERVICE

(1) (a) For the purposes of this award, unless otherwise provided, continuity of service shall not be broken on account of:

- (i) Any absence from work where an employee is entitled to claim paid leave pursuant to this award, or entitled to weekly payments pursuant to the Workers' Compensation and Assistance Act 1981.
- (ii) Any absence which the employer agrees shall not break continuity of service.

Provided that in calculating continuous service under this award any time in respect of which an employee is absent from work shall not count as time worked, provided that time for which an employee is entitled to claim leave as prescribed by clause 7—Contract of Employment, clause 16—Annual Leave, clause 17—Sick Leave, clause 29—Bereavement Leave, clause 30—Long Service Leave, clause 15—Public Holidays and clause 41—Jury Service respectively of this award shall count as time worked.

- (b) Service by the employee with a business which has been transmitted from one employer to another and the employee's service has been deemed to be continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 67 of the Western Australian Industrial Gazette at pages 1091-1094 shall also constitute continuous service for the purpose of this clause.

(2) An employee who is re-employed by the employer within one (1) calendar year of the employee's previous termination from the employer shall have their previous service taken into account, as though their continuity of service had not been broken in respect of the following entitlements only:

- (a) Sick leave for the purposes of clause 17—Sick Leave of this award.
- (b) Annual leave loading for the purposes of clause 16—Annual Leave of this award.
- (c) Long service leave entitlement for the purposes of clause 30—Long Service Leave of this award.
- (d) Service pay entitlement for the purposes of clause 11—Service Pay of this award.

9.—WAGES

- (1) (a) The wage rates and classifications in this award are the result of a substantial restructuring of provisions in former awards which this award replaces. These provisions represent one of the means for providing improved efficiency and performance in the production and distribution operations of the employer.
- (b) The objective of the classification and wages provisions of this award is to provide the basis for an equitable career path opportunity for all employees aimed at providing a flexible and productive workforce which can with appropriate training efficiently meet the operational and maintenance needs of the employer. In addition the objective is to provide work and a working environment which is satisfying for employees.

(2) An employee in the classification and group specified shall be paid weekly as follows:

Production and Maintenance Worker	
Group 1	\$429.60
Group 2	\$437.90
Group 3	\$446.20
Group 4	\$457.20
Group 5	\$468.00
Group 6	\$478.80
Group 7	\$491.80
Group 8	\$504.20
Maintenance Trades	
Group 1	\$491.80
Group 2	\$504.20
Group 3	\$515.50
Group 4	\$527.90
Group 5	\$565.10

(3) An employee specifically appointed to be a leading hand or a leading operator in charge of four or more employees shall be paid the appropriate allowances as follows:

One to three employees (other than apprentices and employees performing the duties of trades assistant)	\$16.10 per week
Four to ten employees (including apprentices and employees performing the duties of trades assistant)	\$24.70 per week
Over ten employees (including apprentices and employees performing the duties of trades assistant)	\$31.80 per week

(4) A Production and Maintenance Worker Group 4 who is competent to perform the duties of a leading operator and who performs such duties as required, shall be paid the appropriate leading operator rate of pay except for the allowance prescribed by clause 9(3).

(5) A casual employee shall be paid at the classification and group specified plus a loading of twenty (20) per cent of the

ordinary rate in lieu of the entitlements provided under clause 15—Public Holidays, 16—Annual Leave, 17—Sick Leave, 28—Maternity Leave, 29—Bereavement Leave and 41—Jury Service, provided that where a casual employee works on a public holiday the employee shall receive the rates provided in clause 15(3) in addition to the loading provided herein.

10.—CLASSIFICATIONS

- (1) (a) Upon engagement, Production and Maintenance Workers and Maintenance Trades shall be classified in the group in which they are engaged to work.
- (b) An employee will be classified in a higher group where that employee has been trained and has met the assessment and competence criteria established for the higher group. Such re-classification will only be made where the employee is trained and capable of performing the relevant duties of the higher group to the required standard. Subject to clause 33—Elderly Employees, the grouping of employees is provisional on the employee remaining willing and able to perform the duties required in the group in which they are classified.
- (c) (i) The assessment of employees will be carried out by an employee nominated by the Works Manager who will normally be a supervisor but may be an employee suitably qualified in that trade or calling.
- (ii) At the employee's request re-examination will be carried out by a panel consisting of the supervisor, the employee's representative and a suitably qualified employee of the employee's choice with knowledge of the area of work and the Works Manager or the Works Manager's delegate.
- (d) Seasonal workers will be classified in accordance with the specific duties of a Group that they are required to perform from time to time, and will be paid accordingly.
- (e) The training of employees will be determined by work requirements and will wherever possible recognise an employee's career path.
- (f) The employer recognises that changes in work requirements may occur and that additional classifications may be required. The employer and unions may apply to the Commission for additional classifications to be inserted into this Award.

(2) Employees will be classified as follows:

- (a) Production and Maintenance Worker—Group 1 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 1 may be required by the employer to perform any general duties together with any, but not necessarily all, of the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 1

Bagger
Canteen Assistant
Cleaner Facilities
Gardener
Palletiser (Bunbury)
Pushing Over
Rail Truck Preparer
Shed Tunnel Cleaner
Sampling
Sample Room Attendant
Sort Farm Bags
Watchperson

- (b) Production and Maintenance Worker—Group 2 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 2 may be required by the employer to perform any but not necessary all of the duties listed hereunder.

In addition the Production and Maintenance Worker—Group 2 will perform those duties of a Production and Maintenance Worker—Group 1 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 2

Trades Assistant Maintenance (Class 1)
Autoclave Operator
Dressing Plant Operator (Bayswater)
Materials Reveal/Acid Export Operator
Sewing
Sheeter
Stores Assistant
Ute Driver
Gardener (Albany)

- (c) Production and Maintenance Worker—Group 3 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 3 may be required by the employer to perform any but not necessarily all of the duties listed hereunder. In addition the Production and Maintenance Worker—Group 3 will perform those duties of a Production and Maintenance Worker—Group 2 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 3

Forklift Driver
Trace Element Mixer
Weighbridge Operator
Weighbridge Operator Gateperson
Ammonia Worker
Atlas Grab Operator
Bulk Weigh Operator
Canteen Attendant
Chlorine Despatcher
Chlorine Drum Filler
Manual Loader
Mechanical Bag Loader
Palletiser Operator
Plant Cleaner
Stand-on Bobcat
Shunter
Truck Operator

- (d) Production and Maintenance Worker—Group 4 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 4 may be required by the employer to perform any but not necessarily all of the duties listed hereunder. In addition the Production and Maintenance Worker—Group 4 will perform those duties of a Production and Maintenance Worker—Group 3 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 4

Bobcat
Belt Repairer
Dressing Plant Operator
Front End Loader (Class 1)
Laboratory Assistant
Leading Hand Materials Reveal
OHT Crane Driver
Kwinana Plant Operator 2
Kwinana Plant Operator 3
Shotfirer
Storeperson
Tallyer
Trades Assistant Maintenance (Class 2)
Fibreglasser

- (e) Production and Maintenance Worker—Group 5 shall mean an employee classified as such who is engaged

on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 5 may be required by the employer to perform any but not necessarily all of the duties listed hereunder. In addition the Production and Maintenance Worker—Group 5 will perform those duties of a Production and Maintenance Worker—Group 4 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 5

Acid Plant Operator (Esperance, Albany, Geraldton)
Despatch Co-ordinator
Front End Loader (Class 2)
Leading Hand Operator—HAP
Mobile Crane Driver
Rubber Worker
Superphosphate Plant Operator—Country

- (f) Production and Maintenance Worker—Group 6 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 6 may be required by the employer to perform any but not necessarily all of the duties listed hereunder. In addition the Production and Maintenance Worker—Group 6 will perform those duties of a Production and Maintenance Worker—Group 5 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 6

Rigger

- (g) Production and Maintenance Worker—Group 7 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 7 may be required by the employer to perform any but not necessarily all of the duties listed hereunder. In addition the Production and Maintenance Worker—Group 7 will perform those duties of a Production and Maintenance Worker—Group 6 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 7

First Aid Emergency Services

Leading Operator Large Plants—Kwinana

- (h) Production and Maintenance Worker—Group 8 shall mean an employee classified as such who is engaged on work in connection with or incidental to the production and distribution operations of the employer. The Production and Maintenance Worker—Group 8 may be required by the employer to perform any but not necessarily all of the duties listed hereunder. In addition the Production and Maintenance Worker—Group 8 will perform those duties of a Production and Maintenance Worker—Group 7 related to the duties listed hereunder and for training purposes the duties of higher groups of Production and Maintenance Workers.

Duties—Group 8

- (i) Maintenance Trades—Group 1 shall mean an employee classified as such who is primarily engaged on maintenance and modification work in connection with or incidental to the production and distribution operations of the employer and who is a duly qualified tradesperson in any of the trades specified hereunder.

Trades—Group 1

Boilermaker/Welder
Carpenter
Fitter, Turner, Machinist
Leadburner

Mechanic
Painter
Plumber

- (j) Maintenance Trades—Group 2 shall mean an employee classified as such who is primarily engaged on maintenance and modification work in connection with or incidental to the production and distribution operations of the employer and who is a duly qualified tradesperson in any of the trades specified hereunder.

Trades—Group 2

Electrical Fitter
Instrument Fitter
Carpenter—Advanced Skills

- (k) Maintenance Trades—Group 3 shall mean an employee classified as such who is primarily engaged on maintenance and modification work in connection with or incidental to the production and distribution operations of the employer and who is a duly qualified tradesperson in any of the trades specified hereunder.

Trades—Group 3

Mechanical Fitter—Special Class

- (l) Maintenance Trades—Group 4 shall mean an employee classified as such who is primarily engaged on maintenance and modification work in connection with or incidental to the production and distribution operations of the employer and who is a duly qualified tradesperson in any of the trades specified hereunder.

Trades—Group 4

Electrical Fitter—Special Class
Instrument Fitter—Complex Systems

- (m) Maintenance Trades—Group 5 shall mean an employee classified as such who is primarily engaged on maintenance and modification work in connection with or incidental to the production and distribution operations of the employer and who is a duly qualified tradesperson in any of the trades specified hereunder.

Trades—Group 5

Electrical Fitter—Electronics
Instrument Fitter
Instrumentation and Controls

11.—SERVICE PAY

In recognition of continuous service with the employer, employees are entitled in addition to the wage rates specified in Clause 9, to service pay as follows—

	Flat Payment Per Week
(1) After 6 months' service	\$14.40
(2) After 12 months' service	\$16.00
(3) After 24 months' service	\$18.00
(4) After 36 months' service	\$20.10
(5) After 48 months' service	\$21.80

12.—DAY WORKER HOURS

- (1) (a) The ordinary hours of work shall be thirty eight (38) hours per week and shall be performed Monday to Friday and the spread of hours shall be between 6.30 a.m. and 6.00 p.m. The spread of hours may be altered by agreement between the employer and the employee/s concerned.
- (b) The ordinary hours of work shall not exceed eight (8) hours on any day and shall be consecutive except for a meal interval which shall not exceed one (1) hour; provided that
- an employee shall not be compelled to work for more than five (5) hours without a meal interval except where an alternative arrangement is agreed between the employer and the employee;
 - where an employee is required for duty during the employee's usual meal interval and the employee's meal interval is thereby postponed

for more than half an hour, the employee shall be paid at overtime rates pursuant to clause 14(1)(c)(i) of this award until the employee gets the meal interval.

- (c) There shall be a paid rest period of no more than eight (8) minutes in the mornings.

(2) The cycle of ordinary hours shall operate in the following manner:

- The cycle shall consist of nineteen (19) working days of eight (8) hours and one (1) accrued day off.
- Employees shall accrue 0.4 ordinary hours per ordinary working day toward their accrued day off.
- The accrued day off can be taken during the cycle before the credits have accumulated; provided that the employer may deduct monies in accordance with clause 26(6)(c) of this award.
- Employees shall have an average of twelve (12) accrued days off per annum.
- Accrued days off shall be taken in accordance with the accrued day off roster. The accrued day off roster may be changed by agreement between the employee and the employer.
- In exceptional circumstances, employees may exchange their accrued days off with other members of their work group. Such exchanges must suit the work arrangements and are subject to authorisation by the employer.
- The employer shall attempt to allocate accrued days off on Mondays or Fridays.

(3) If an accrued day off falls on a public holiday prescribed in clause 15 of this award, the accrued day off shall be taken, notwithstanding subclause (4) of this clause, on the nearest practicable working day as agreed. Provided that where a Friday or Monday immediately before are public holidays, employees whose accrued day off falls on the Friday shall take that accrued day off on the preceding Thursday and employees whose accrued day off falls on the Monday shall take that accrued day off on the next Tuesday.

(4) (a) Notwithstanding anything contained elsewhere in this clause, up to four (4) accrued days off per year may be deferred by the employer. Accrued days off will be deferred to meet the despatch and maintenance requirements at each location and as agreed by the supervisor. Employees engaged in despatch duties will have accrued days off deferred between March and June inclusive.

- (b) The deferred accrued days off shall be taken at a time agreed to by the employer and the employee. However, the accrued day off that normally falls closest to a period of annual leave shall be taken in conjunction with that period of annual leave.

(5) (a) The employer, with the agreement of the employee/s concerned, may substitute the day an employee is to take off, for another day in the case of a break down in machinery or failure or shortage of electric power or to meet the requirements of the employer's business or any emergency situation.

- (b) The employer and an employee may by agreement substitute the day the employee is to take off for another day.

(6) (a) Apprentices and employees who during working hours attend technical institutions in accordance with the requirements of their approved training course shall accrue 0.4 ordinary hours per day of such attendance toward their accrued day off.

- (b) If the accrued day off for employees referred to in sub-clause 6(a) hereof falls during a period of attendance at a technical institution pursuant to the requirements of their approved training course, the employer shall change the roster and offer an alternative day. The alternative accrued day off shall be taken as agreed.

(7) Nothing in this clause shall be construed to prevent the employer and the majority of employees in a section, sections, in a particular works or all works reaching and concluding an agreement to operate a different method of the thirty eight

(38) hour week in a section, sections, a particular works or all works.

13.—SHIFT WORK HOURS

- (1) (a) The provisions of this clause shall apply to non-continuous shift workers, continuous shift workers and watchpersons.
 - (b) Continuous shift work may be worked, and shifts shall rotate weekly, so that, as far as practicable employees shall have a fair share of day shifts.
- (2) (a) The ordinary hours of work shall be an average of thirty eight (38) hours per week worked in a cycle of one hundred and fifty two (152) hours worked over a period not exceeding twenty eight (28) consecutive days.
 - (b) (i) In the case of non-continuous shift work, ordinary hours shall be performed Monday to Friday.
 - (ii) In the case of continuous shift workers and watchpersons, ordinary hours may be performed on any day of the week.
 - (c) Where a shift commences at or after 11.00 p.m. on any day, the whole of that shift shall be deemed, for the purposes of this award, to have been worked on the following day.
 - (d) An employee on afternoon or night shift shall be paid fifteen percent (15%) extra for each shift worked. The shift penalty is not to be used for the calculation of overtime for Saturdays, Sundays or public holidays.
 - (e) Continuous shift workers shall be paid time and one half for ordinary time worked on Saturday and double time for ordinary time worked on Sunday.
 - (f) All ordinary time worked by watchpersons on Saturdays shall be paid at the rate of time and one quarter and all ordinary time worked on Sundays shall be paid at the rate of time and one half.
- (3) The cycle of ordinary hours shall operate in the following manner:
 - (a) The cycle shall consist of nineteen (19) working days of eight (8) hours (inclusive of a crib break which shall not exceed twenty (20) minutes) and one (1) accrued day off.
 - (b) Employees shall accrue 0.4 ordinary hours (exclusive of shift loadings) per shift toward their accrued day off. Accrual toward an accrued day off shall not apply to a sixth (6th) shift worked in any week in accordance with the roster or to overtime.
 - (c) Paragraphs (c), (d), (e), and (f) of subclause (2) of clause 12—Day Worker Hours shall apply for the purposes of this subclause.
 - (d) Generally accrued days off shall be day shifts rostered on Mondays to Fridays. If the employer rosters that day to fall on a day when the worker would normally be required to work afternoon or night shift, the accrued day off shall attract the shift penalty.
- (4) Continuous shift workers shall not be taken off rostered shift work for continuous periods of less than two (2) weeks, except by agreement.
 - (5) Where any particular process is carried out on shifts other than day shift, and less than three (3) consecutive afternoon or less than three (3) consecutive night shifts are worked on that process, then employees employed on such afternoon or night shifts shall be paid at overtime rates.
 - (6) Where a shift worker has worked afternoon and/or night shift for two (2) consecutive weeks and is required to continue working further night or afternoon shifts, the shift worker shall be paid twenty five percent (25%) extra for each further afternoon or night shift until such time as the shift worker is employed on day shift or day work; provided that a shift worker who elects to continue working further night or afternoon shifts in excess of two (2) consecutive weeks shall not be entitled to the addition of twenty five percent (25%) for such shifts.
 - (7) Where a continuous shift worker proceeds on annual leave as provided in subclause (4) of clause 16—Annual Leave and the roster for this period of leave includes two (2) accrued

days off, the roster may be varied so that only one (1) accrued day off falls during such leave.

(8) (a) Change of Shift System:

- (i) The employer may change any shift system in operation from time to time by agreement with the majority of employees concerned, but before doing so shall give two (2) months' notice of intention to the employees concerned.
 - (ii) Should the employees concerned disagree with the employer's intended change from one shift system to another, the employer will not act to implement that intended change without at least fourteen (14) days' notice in writing after the expiry of the two (2) month period pursuant to paragraph (i) of this subclause.
- (b) Change from one shift to another shift or from day work to continuous shift work or vice versa ("a transfer"):
- (i) When the employer transfers an employee, the employer shall give not less than one week's notice of that requirement or, where this is not possible, the notice to be given should not other than in urgent cases, be less than forty eight (48) hours. Provided that for employees other than relief operators where less than 48 hours notice is given the employee shall be entitled to payment at the appropriate overtime rates until the completion of the 48 hours notice period.
 - (ii) An employee who is transferred shall be allowed to cease work ten (10) hours prior to commencement of the rostered shift or day work without loss of pay for normal rostered hours.
 - (iii) Where an employee is transferred, and as a consequence is not provided with five (5) days work in the pay week when the transfer takes place, the employee shall receive the weekly rate of pay set out in clause 9 of this award, provided that where the roster from which the employee is being transferred provides for less than five (5) days work in the pay week then the employee shall be paid for the number of days determined by the original roster.

14.—OVERTIME

- (1) Overtime (except continuous shift work)
- (a) The provisions of this subclause apply to all employees other than those engaged on continuous shift work.
 - (b) Overtime shall be paid for work done in excess of or outside the ordinary working hours prescribed by clause 12—Day Worker Hours on any day Monday to Friday inclusive; provided that in the case of non-continuous shift workers and watchpersons overtime shall be paid for work in excess of the ordinary hours of work provided for in clause 13—Shift Work Hours.
 - (c) Overtime shall be paid for as follows:
 - (i) At the rate of time and one half for the first two (2) hours and double time thereafter, unless otherwise provided for in this award; and provided that this shall not apply in the case where clause 13(2)(b)(i)—Shift Work Hours applies.
 - (ii) For work done on Saturday after 12 noon or on Sundays at the rate of double time.
 - (iii) For work done on any day prescribed as a public holiday pursuant to clause 15—Public Holidays of this award at the rate of double time and one half.
 - (iv) For work done on Christmas day, Labour day and Good Friday—at the rate of treble time.
 - (d) In computing overtime each day shall stand alone but when an employee works overtime which continues beyond midnight on any day, the overtime worked after midnight shall be deemed to be part of

the previous day's work for the purpose of this paragraph.

- (e) The provisions of paragraph (c) of subclause (2) shall apply to non-continuous shift workers and watchpersons.
- (2) Overtime (continuous shift work)
- (a) The provisions of this subclause apply only to employees engaged on continuous shift work, unless otherwise provided elsewhere in this award.
- (b) (i) Subject to the provisions of paragraph (c) of this subclause all time worked in excess of or outside the ordinary working hours, or on a shift other than a rostered shift, shall be paid for at the rate of double time. This rate will also apply to a sixth (6th) shift.
- (ii) For the purposes of this subclause, ordinary working hours shall mean the ordinary hours of work provided for in clause 13—Shift Work Hours.
- (c) Time worked in excess of the ordinary working hours shall be paid for at overtime rates except where it is due to private arrangements between the employees themselves.
- (3) Overtime (general)
- (a) The provisions of this subclause apply to all employees, unless otherwise provided.
- (b) Any employee who is recalled to work to perform overtime on weekends or public holidays shall be paid a minimum of three (3) hours at the rate applicable for the day.
- (c) Except by agreement, employees shall not be required to commence overtime prior to 7.00 a.m. on weekends and public holidays except in the case of an emergency.
- (d) (i) When overtime work is necessary it shall, where reasonably practicable, be so arranged that an employee has at least ten (10) consecutive hours off duty for doing the work on successive days.
- (ii) An employee who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least ten (10) consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until the employee has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (iii) If, on the instructions of the employer, such an employee resumes or continues work without having had such ten (10) consecutive hours off duty, the employee shall be paid at double time until released from duty and shall then be entitled to be absent for such period of ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (iv) Where an employee (other than an employee engaged on continuous shift work) works overtime on a Sunday or a public holiday prescribed in clause 15 of this award preceding an ordinary working day, and where the employee performs three (3) hours or more of overtime duty, the employee shall, wherever reasonably practicable, be given ten (10) consecutive hours off duty before the employee's usual starting time on the next day. If this is not practicable, then the provisions of paragraph (ii) and (iii) of this subclause shall apply. However, if an employee, other than an employee working on shifts, who is recalled between midnight and 5.00 a.m. on a normal working Monday and between 2.00 a.m. to

5.30 a.m. Tuesday to Friday, after having had a ten (10) hour break from completing work on the previous day, will after completion of the call out, be entitled to take time off to the equivalent of time spent on the call out after the normal starting time.

- (e) When an employee is recalled to work after leaving the job, the employee shall be paid at least three (3) hours at overtime rates and reasonable time spent in travelling to and from work shall be included as time worked. Such employee shall be advised of the tasks to be performed at the time of contact. Other urgent tasks arising while the employee is on the job will also be performed, provided that where the tasks originally advised take more than three (3) hours to complete and the employee is requested to perform such urgent tasks, a minimum of an additional three (3) hours at overtime rates shall be paid.
- (f) When an employee is notified by the employer in writing to hold in readiness at the employee's place of residence or other agreed place of residence for a call to work after ordinary hours, the employee shall be advised of the duration and shall be paid at ordinary rates for the time the employee so holds in readiness.
- (g) An employee required to work overtime for more than one (1) hour immediately following the employee's rostered hours of work shall be supplied with a meal by the employer or be paid \$5.40 for a meal and, if five (5) hours of overtime or more is worked, a second or subsequent meal is required the employee shall be supplied with each such meal by the employer or be paid \$5.40 for each meal so required. Overtime meal breaks for employees other than shift workers are unpaid breaks.
- (h) (i) The employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.
- (ii) The assignment of overtime to an employee shall be based on specific work requirements and should as far as practicable be on a fair and equitable basis.
- (iii) The provisions of this clause do not operate so as to require payment of more than double time rates, or double time and one half rates on a holiday prescribed under clause 15 of this award, for any work, or treble time for Christmas Day, Labour Day or Good Friday except and to the extent that the provisions of clause 18—Special Rates and Allowances and paragraph 13(2)(d) of this award apply to that work.

15.—PUBLIC HOLIDAYS

(1) The following days or any other day substituted in lieu thereof by a State Act of Parliament or State Proclamation shall, subject to subclause (6) of this clause, be allowed as holidays without deduction of pay and shall be termed "public holidays" for the purpose of this award:

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2) (a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.
- (b) In each case in paragraph (a) of this subclause the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.
- (3) Subject to the provisions of subclause (6) of this clause, work done on public holidays shall be paid for at the rate of double time and one half, provided that Christmas Day, Labour Day and Good Friday shall be paid at the rate of treble time.

(4) Where—

- (a) a day is proclaimed as a public holiday or as a public half-holiday under section 7 of the Public and Bank Holidays Act 1972; and
- (b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be a whole holiday or, as the case may be, a half-holiday for the purposes of this award within the district or locality specified in the proclamation, and such holiday shall be a public holiday for the purpose of this award.

(5) The following provisions shall only apply to continuous shift workers:

- (a) If a public holiday falls on a rostered working day, an employee who works on that day may elect to take another day off in lieu of the public holiday.
- (b) The day off in lieu shall be taken whilst the employee is rostered on day shift, Monday to Friday, between the months of July and February or during the annual plant shut down or by agreement. The day off in lieu shall be taken as soon as practicable and paid for at ordinary rates or if not taken shall be payable on termination.
- (c) Subject to paragraph (d) hereof, where an employee elects to take a day off in lieu of the public holiday, then the work on the actual public holiday shall be paid for at time and a half, or on Christmas Day, Labour Day or Good Friday at double time.
- (d) When a public holiday coincides with a day when the employee is rostered to work a sixth shift then work performed on the public holiday shall be paid at the applicable rate and in addition the employee shall also receive for work performed on the public holiday eight hours pay at the employee's ordinary single time rate.
- (e) If a public holiday falls on a rostered day off, an employee shall be paid an additional day's pay at ordinary time.
- (f) If a public holiday falls on an accrued day off, the employee shall be allowed the nearest day off that is mutually agreed.
- (g) If a public holiday falls during a period of annual leave the provisions of subclause (5) of clause 16—Annual Leave of this award shall apply.

(6) When a prescribed public holiday falls on an employee's (other than a continuous shift worker's) accrued day off, subclause (3) of clause 12 of this award shall apply.

16.—ANNUAL LEAVE

- (1) (a) Except as hereinafter provided, a period of four (4) consecutive weeks' leave with payment of ordinary wages as prescribed in clause 9—Wages of this award shall be allowed annually to an employee by the employer for each period of twelve (12) months' continuous service with the employer.
- (b) For employees commencing after the commencement of this award, or by agreement with any existing employees, annual leave shall be calculated to 30 June each year for the purpose of this clause, and the entitlements under this clause shall be adjusted accordingly.
- (2) (a) An employee before going on leave shall be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave.
- (b) Subject to subclause (3) of this clause, an employee shall have the amount of wages to be received for annual leave calculated by including the following, where applicable:
 - (i) The rate applicable to the employee as prescribed in clause 9—Wages and the following allowances—First Aid, Emergency, Service Pay, Watertube Boiler, Firetube Boiler and Turbine Drivers Certificate and Location Allowance.
 - (ii) Subject to paragraph (a) of subclause (3) of this clause the rate prescribed for work in

ordinary time by clause 13—Shift Work Hours of this award according to the employee's roster or projected roster including Saturday and Sunday shifts.

- (3) (a) During annual leave an employee shall be paid:
 - (i) at the employee's normal rate of pay (not including shift loadings) plus a loading of 17.5 per cent of that rate; or
 - (ii) the amount that would have been paid to the employee for work in ordinary hours (including shift loadings), whichever is the greater of the two.
- (b) This subclause does not apply to payment for proportionate leave on termination.
- (4) (a) A continuous shift worker shall be allowed one (1) week's leave (being 38 hours) in addition to the leave to which the employee is otherwise entitled under this clause.
- (b) Where an employee is engaged for part of a qualifying twelve (12) month period as a continuous shift worker, the employee shall be entitled to have the period of annual leave to which the employee is otherwise entitled under this clause, increased by 1/52 of a week for each completed week the employee is continuously so engaged.
- (5) (a) Other than continuous shift workers, if any public holiday prescribed in clause 15—Public Holidays of this award falls 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 annual leave period, one (1) day, being an ordinary working day for each such holiday observed as aforesaid.
- (b) If a prescribed public holiday falls during a continuous shift worker's period of annual leave the employee may elect to be paid for such holiday in lieu of taking a day off.
- (6) (a) If, after one week of continuous service in any qualifying twelve (12) monthly period an employee lawfully leaves their employment or their employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.923 hours pay at the rate of wage prescribed by subclause (2) of this clause, divided by 38, in respect of each completed week of continuous service.
- (b) In addition to any payment to which the employee may be entitled under paragraph (a) of this subclause, an employee whose employment is terminated after the employee completed a twelve (12) month qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment as prescribed in subclauses (2) and (3) of this clause, in lieu of that leave or, in a case to which subclause (9) of this clause applies, in lieu of so much of that leave as has not been allowed, unless—
 - (i) the employee has been justifiably dismissed for misconduct; and
 - (ii) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.
- (7) Any time in respect of which an employee is absent from work, except time for which the employee is entitled to claim payment for sick leave or time spent on annual leave, long service leave, bereavement leave, jury service, or public holidays, or as prescribed by this award or other authorised paid leave, shall not count for the purpose of determining the employee's right to annual leave.
- (8) With the mutual consent of the employee and the employer, annual leave may be taken:
 - (a) In more than one (1) period, provided one (1) period shall be not less than two (2) weeks.
 - (b) Prior to twelve (12) months' continuous service, provided that the leave to be taken shall not exceed the period of leave an employee has accrued.

(9) In taking leave, if an employee's leave entitlement expires part way through a day, the employee may take the balance of the day as approved leave without pay. Such approved leave without pay shall count as service.

(10) In agreed circumstances, the employer will allow an employee to defer the taking of annual leave for up to two (2) years. This is not an automatic right or entitlement, provided that permission will not be unreasonably withheld.

(11) When an employee takes annual leave and long service leave in conjunction, annual leave shall be regarded as the first part of the leave.

(12) (a) Apprentices and employees attending Technical Institutions at the request of the employer during a period of annual leave shall be entitled to paid time off equivalent to their attendance at Technical College.

(b) This subclause shall only apply if the apprentice or employee supplies the employer with proof of attendance at Technical College.

(13) The time when annual leave is taken shall be determined by mutual agreement between the employer and the employee taking into account the seasonal nature of the industry.

17.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at the place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the provisions of this clause.

(i) Employee who actually works thirty eight (38) ordinary hours each week:

An employee whose ordinary hours of work are arranged so that the employee actually works thirty eight (38) ordinary hours each week shall be entitled to payment during such absence for the actual ordinary hours absent.

(ii) Employee who works an average of thirty eight (38) ordinary hours each week:

An employee whose ordinary hours of work are arranged so that the employee works an average of thirty eight (38) ordinary hours each week during a particular work cycle shall be entitled to pay during such absence calculated as follows:

duration of absence	x	appropriate weekly rate
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ordinary hours normally worked that day		5
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An employee shall not be entitled to payment for personal ill health or injury nor will the employee's sick leave entitlement be reduced if such ill health or injury occurs on an accrued day off taken in accordance with clause 12—Day Worker Hours of this award.

(b) Entitlement to payment shall accrue at the rate of one-twenty sixth (1/26th) of a week for each completed week of continuous service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than the employee's entitlement to paid sick leave, payment may be adjusted:

(i) at the end of that year of service; or

(ii) at the time the employee's services terminate, if before the end of that year of service;

to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence.

(3) To be entitled to payment in accordance with this clause the employee shall, as soon as reasonably practicable, advise

the employer of inability to attend for work because of illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within twenty four (24) hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two (2) days or less unless after two (2) such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven (7) days of resuming work and then only if the employee was confined to the place of residence or a hospital as a result of the employee's personal ill health or injury for a period of five (5) consecutive days or more and the employee produces a certificate from a registered medical practitioner that the employee was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if the employee is unable to attend for work on the working day next following the employee's annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time the employee proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of clause 16—Annual Leave of this award.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 16—Annual Leave of this award shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 67 of the Western Australian Industrial Gazette at pages 1091-1094 the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act, 1981.

18.—SPECIAL RATES AND ALLOWANCES

Subject to the following subclauses, where an employee performs such duties for two (2) hours or more a day as would entitle the employee to a special rate or allowance provided hereunder the employee shall be paid that special rate or allowance for the employee's ordinary hours of duty for that day. Provided that if an employee working overtime performs such duties for two (2) hours or more as would entitle the

employee to a special rate or allowance provided hereunder the employee shall be paid that special rate or allowance for the whole period of overtime.

(1) Height

Employees, other than employees appointed to perform the specific duties of a rigger, required to work on a scaffold, or a roof at a height of 4.6 metres or more above ground or the nearest horizontal surface shall be paid a flat allowance of 22 cents per hour or part thereof.

(2) Watertube Boiler, Firetube Boiler and Turbine Drivers Certificates

Employees engaged as Production and Maintenance Workers at Kwinana and who in accordance with the requirements of the Occupational Health, Safety and Welfare Act 1984 and regulations made pursuant to that Act and are required to use that certificate of competency in the course of their work shall be paid a flat allowance of \$4.20 per week in respect of each certificate held.

(3) Telephone Call Out

If an employee is required to attend in a call out situation and is notified by the employee's personal telephone and that employee attends the call out, or if the employee is asked for advice in relation to the repair of the breakdown the employee shall be entitled to a telephone allowance of \$3.50 for each call out or advice given in relation to the repair of the breakdown. This allowance shall be reviewed each August and shall only be increased in line with the percentage increase in the Telecom rental charge for a single domestic telephone installation for the preceding twelve (12) months.

(4) Laundry

A flat allowance of \$6.70 per week shall be paid to employees who are responsible for laundering their own uniforms.

(5) Wet Polythene Bags

Employees required to handle wet and slippery polythene film bags containing hygroscopic material shall be paid a flat allowance of 32 cents per hour or part thereof.

(6) Acid Bricks

An employee required to perform brick work in acid furnaces, acid stills, acid towers and all other acid resisting brickwork in an acidic condition shall be paid a flat allowance of 90 cents per hour or part thereof.

(7) Explosive Powered Tools

An operator of explosive powered tools, being an employee qualified in accordance with the laws and regulations of the State of Western Australia to operate explosive powered tools who is required to use an explosive powered tool shall be paid a flat allowance of 22 cents per hour or part thereof on which the employee uses such a tool.

(8) Confined Space

An employee shall be paid a flat allowance of 42 cents per hour or part thereof when, because of the dimensions of the compartment or space in which the employee is working, the employee is required to work in a stooped or otherwise cramped position, or without proper ventilation.

(9) Boiler Work

An employee required to work in a boiler or furnace where the temperature exceeds 54 degrees Celsius shall be paid at the rate of time and one half for each hour or part thereof.

(10) Percussion Tools

An employee shall be paid a flat allowance of 22 cents per hour or part thereof when using percussion tools exceeding 7.5 kg in weight.

(11) Toxic Vapours and Materials

(a) An employee likely to be exposed to toxic vapours or materials shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.

(b) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority or in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the Union and the employer.

(c) An employee required to wear full face cartridge or cannister masks, or air swept hoods as protection from exposure when using catalyst hardeners and reactive additives, two pack catalyst systems, volatile solvents including those used for rubber working or when using chemicals for which the MSDS, the work practice and the environment of the job require such protection shall be paid a flat allowance of 42 cents per hour or part thereof provided that employees engaged on leadburning work for two (2) hours or more in any day requiring the wearing of a face sealing air supplied helmet of the "RACAL" type shall be paid a flat allowance of 22 cents per hour.

(12) Spray Application—Painter

A painter engaged in all spray applications shall be paid a flat allowance of 37 cents per hour or part thereof.

(13) Swing Scaffold

(a) Except where sub-clause (1) applies, a worker employed—

(i) on any type of swing scaffold or any scaffold suspended by rope or cable, or bosuns chair or cantilever scaffold or

(ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height 6 metres or more above the nearest horizontal plane,

shall be paid a flat allowance of \$2.53 for the first four (4) hours or part thereof and 53 cents for each hour or part thereof thereafter on any day.

(b) No apprentice with less than two (2) years' service shall use a swing scaffold or bosuns chair.

(14) Copper, Zinc, Manganese and Molybdenum

Employees carrying or emptying copper, zinc, manganese or molybdenum containers or feeding these materials into hoppers shall be paid a flat allowance of 22 cents per hour or part thereof.

(15) Sewerage Work

(a) Employees involved in the opening up of sewerage pipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a flat allowance of 22 cents per hour or part thereof.

(b) Employees involved in repair work of sewerage pipes, septic tanks or dry wells shall be paid a flat allowance of 37 cents per hour or part thereof.

(16) Hot Work

An employee shall be paid a flat allowance of 37 cents per hour or part thereof when the employee works in the shade in any place where the temperature is raised by artificial means to between 46 and 54 degrees Celsius; and for work other than boiler work, 42 cents when the temperature exceeds 54 degrees Celsius. Provided that an employee is

entitled to take reasonable rest breaks while performing hot work.

(17) Furnace Work

An employee working on the construction, alteration or repair of flues, furnaces or similar refractory work shall be paid a flat allowance of 90 cents per hour or part thereof.

(18) Plumber's Licence

An employee required to use in the course of duties a 'B' class licence or an 'A' class licence issued by the Metropolitan Water Supply Sewerage and Drainage Board shall be paid an allowance of \$11.80 or \$23.70 a week respectively.

(19) Computing Quantities

An employee, other than a leading hand, regularly required to compute or estimate quantities of materials in respect of the work performed by others (excluding stocktaking) shall be paid an allowance of 32 cents per hour or part thereof.

(20) Width of Brushes

Paint brushes shall not exceed 125mm in width and kalsomine brushes shall not exceed 175mm in width.

(21) Electric Sanding Machines

Electric sanding machines for sanding down paintwork shall not exceed 5.9 kilograms.

(22) Roof Repairs

An employee working on roof repairs shall be paid an allowance of 42 cents per hour or part thereof.

(23) Sulphur Allowance

An employee working for a minimum of two (2) hours per day on sulphur heaps as part of sulphur receipt, driving end loaders not fitted with sealed cabs, or cleaning sulphur dust from equipment used for sulphur handling immediately prior to repairs shall be paid an allowance of 22 cents per hour or part thereof.

19.—PROTECTIVE EQUIPMENT AND FIRST AID ALLOWANCE

(1) Protective Equipment and Clothing

(a) The employer shall have available a sufficient supply of protective equipment (as, for example, goggles (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, ear protectors, helmets, or other efficient substitutes therefore) for use by employees when engaged on work for which some protective equipment is necessary.

(b) An employee shall sign an acknowledgement when issued with any article of protective equipment and shall return that article to the employer when they have finished using it or on leaving employment with the employer.

(c) An article of protective equipment which has been used by an employee shall not be issued by the employer to another employee until it has been effectively sterilised but this paragraph only applies where sterilisation of the article is practicable and is reasonably necessary.

(d) Full Protective Clothing Allowance

(i) In addition to any other allowance, an allowance of 41 cents per hour shall be paid in the following situations:

- Cleaning in acidic or caustic conditions inside acid towers, tanks, vessels chambers and scrubbing systems.
- Cleaning in acidic conditions underneath filters.
- Using high pressure water guns in acidic conditions.
- Dismantling vessels and equipment containing acid.
- Initial dismantling of ammonia equipment which contains ammonia.

- Cleaning inside sumps and cleaning pipes in acidic conditions at gypsum ponds.

- Cleaning acidic deposits from fluosilicic acid plate filter on scrubbing system.

- Working with materials containing asbestos.

- Hand screening of vanadium catalyst dust.

- Cleaning down brickwork with acids or corrosive substances.

- Dry polishing tiles with a machine or cutting tiles with an electric saw.

- Working with insulwool, slag wool, silicate of cotton or other recognised insulating material of a like nature.

- Performing repair work with concrete or timber on operating water cooling towers.

(ii) To qualify for the allowance, all the following clothing must be worn—hat, gloves, goggles, chemical protective jacket, and special protective clothing, pants and boots, or appropriate respiratory equipment where necessary.

(e) Fully Enclosed Protective Equipment and Self Contained Breathing Apparatus

An employee who is required to wear fully enclosed protective equipment and self contained breathing apparatus or gas tight and air supplied protective suits (e.g. jolly green giant type), such as used in the acid towers shall in addition be paid an all purpose allowance of 92 cents per hour, in lieu of any allowance payable under paragraph 19(1)(d) of this award.

(2) First Aid and Emergency

(a) Employees who are holders of a current St. John Ambulance Association Certificate in First Aid and are appointed by the employer to act as first aid attendant on a regular basis are entitled to a flat allowance of \$6.40 per week.

(b) Employees who are holders of a current St. John Ambulance Association Certificate in First Aid and are directed to act as a first aid attendant on an irregular basis are entitled to a flat allowance of \$6.40 per week for each week they are so required to act.

(c) (i) Employees who are trained and appointed members of a fire and rescue team listed below and who attend training and emergencies are entitled to a flat allowance as follows:

Bayswater & Country Works	\$11.10 per week
Kwinana Out of Hours	\$16.90 per week
Kwinana Normal Hours	\$20.60 per week
Kwinana Off Site Group	\$25.30 per week

(ii) Death and total and permanent disablement insurance cover of the prescribed amount of \$83,000 will apply to all employees who are members of the fire and emergency team where disablement or death is a direct result of participation in or training for an emergency involving the employers plant buildings, materials or products, or an external emergency attended by the fire and emergency team at the request of the employer.

20.—GENERAL CONDITIONS

(1) Chest Medical Examinations

Annual vitalograph lung function tests will be available to all employees on a voluntary basis. Where ongoing records show a specific indication, the employee will be advised so that a Doctor can be consulted.

(2) (a) Clothing

(i) After completion of one (1) week's service and depending on duties, new employees are

issued with two (2) pairs of trousers, three (3) Yakka shirts or three (3) t-shirts or any combination of three (3) of these and a jacket or jumper. Alternatively two (2) pairs of overalls, three (3) Yakka shirts or three (3) t-shirts or any combination of three (3) of these may be issued.

- (ii) Employees working on some duties may be issued with shorts in place of long trousers. Such duties may vary at each works but exclude those in the manufacturing plants and maintenance servicing in these plants. Safety, climate and duties are to be considered in the choice of garment.
- (iii) After one (1) year's service, employees are eligible for one (1) additional "Yakka" shirt or t-shirt, one (1) pair of trousers or shorts, one (1) jumper or jacket or coat and one (1) pair of boots.
- (iv) Worn out clothing which has been issued on the above basis will be replaced on presentation. Interchange is possible for Yakka shirts to t-shirts and jackets to jumpers provided that coats will only be replaced after two years use.

(b) Overall

Lightweight overalls may be issued in lieu of standard issue to employees who are not engaged in welding or oxy flame work or electrical work.

(c) Footwear

- (i) The employer will keep a range of safety footwear available in stock. Employees are required to wear safety footwear.
- (ii) Exemptions will only be granted to employees with a medical certificate from a duly qualified medical practitioner. Only in these circumstances, will special orders for non-safety footwear be obtained.
- (iii) On commencement regular employees shall be issued with the prescribed safety footwear and the cost of this footwear shall be deducted from the employee's wages only where the employment of the employee is terminated for any reason during the first month of employment.

Employees, other than regular employees, may on commencement be issued with the prescribed safety footwear and the cost of this footwear shall be deducted from the employee's wages, and where possible from the employee's first full week's wages.

(d) Loan Issue Jumpers

Employees shall be provided with loan issue jumpers if required.

(e) Loan Issue Clothing

- (i) Loan Issue Clothing arrangements can be made where there is the possibility of employee's uniforms being exposed to toxic chemicals or extremely dirty conditions (as agreed by supervisors). Loan issue socks will be made available by the employer for extreme conditions (e.g. toxicity of materials handled) and will be laundered where practicable, otherwise they will be disposed of.
- (ii) The purpose of this paragraph is to assist in avoiding such chemicals being transmitted into the home environment.

(3) Emergency Service Leave

Employees involved in actual emergency situations with the prior or subsequent consent of the employer will be paid for time off work.

(4) Employee Purchase of Lawn and Garden Fertilisers

Up to three (3) bags per year of Cresco Garden and Cresco Lawn will be made available at wholesale prices to employees for lawn and garden care.

(5) Employee Issue of Lawn or Garden Fertiliser

On 1 October each year, each employee shall be entitled to one (1) 40 kg bag of Cresco Garden or one (1) 40 kg bag of Cresco Lawn fertiliser. The fertiliser will be available for collection by the employee from the employee's works during the month of October.

(6) Prescription Glasses

- (a) Where employer issued prescription glasses are damaged by working conditions in the industry they will be replaced.
- (b) Where an employee has corrective spectacles prescribed, frames and safety lenses will be provided by the employer. The employee will pay for the consultation. The same provision will apply to employees already required to wear spectacles. The acquisition of the prescription for corrective lenses will be at the employee's initiative with an employer nominated optometrist making up the safety spectacles.

(7) Trade Union Training Leave

The employer will grant reasonable leave for recognised trade union training. Adequate notice in writing shall be given and the employees will be released if there is no significant impact on employer operations. Wages will be paid.

Reasonable leave for an employee would be one (1) week's training in any one (1) year of service. In general, trade union training shall be reserved for employees who are shop stewards or union delegates. Where a public holiday or rostered day off falls during the duration of a course, a day off in lieu of that day will not be granted. Where an accrued day off falls during the duration of a course, a day off in lieu of that day will be granted on a day nominated by the employer.

(8) Washing Time

Employees who become excessively dirty due to the nature of the work or where clothes are wetted will be allowed time to wash and/or change.

(9) Testing of Electrical Work

The work of a maintenance trades employee with an electrical licence shall not be tested by an employee with a lower grade licence.

21.—CAR AND TRAVELLING ALLOWANCE

(1) Employees who use their own vehicle to attend call outs shall be paid the allowances prescribed in subclause (5) of this clause.

(2) The employer shall provide taxis for employees who do not have their own transport and are called out. If a taxi is not available at the completion of the work referred to in this subclause, the employer will ensure that the employee is driven home.

(3) (a) Where an employee is required and authorised by the employer to use the employee's own motor vehicle in the course of the employee's duties the employee shall be paid an allowance as provided for in subclause (5) of this clause.

(b) The provisions of paragraph (a) shall not apply where clause 22—Distant Work applies.

(4) Where an employee in the course of a journey travels through both the areas referred to in subclause (5) of this clause payment at the rates prescribed in subclause (5) of this clause shall be made at the appropriate rate applicable to each of the areas traversed.

(5) The following shall be the rates payable to employees for the use of the employee's own vehicle as provided for in this clause:

Area and Details	Engine Displacement (in Cubic Centimetres)	
	Over 2000cc	2000cc & under
Metropolitan Area	40.0	36.0
Rest of the State	42.0	38.0

(6) When an employee is required by the employer to work at a job away from the employee's accustomed workshop or depot ("the home shop") the following shall apply:

- (a) The employee shall present for work at the usual starting time at the job away unless otherwise directed by the employer.

- (b) If travelling time to the job away is greater than normal travelling time to the home shop the employer shall pay ordinary rates for the excess time.
- (c) If public transport fares to the job away are greater than public transport fare to the home shop the employer shall reimburse the employee for the difference between those fares.
- (d) If the employee is directed to use personal transport by the employer and the distance travelled to the job away is greater than the normal distance travelled to the home shop the employee shall be paid at the appropriate rate prescribed in subclause (5) of this clause for the excess distance.

(7) If employees request a transfer from the accustomed workshop or depot to another workshop or depot for training purposes the employer shall pay, in lieu of any other allowances payable under this clause, for public transport fares used to travel to the workshop or depot used for training purposes.

(8) Any reasonable expense incurred in travelling during ordinary working hours from and to the employer's places of business or from one job to another including payment of ordinary rates whilst the employee is travelling, shall be paid by the employer.

22.—DISTANT WORK

(1) Where the employer directs an employee to work at such a distance from the employee's home, that the employee cannot return each night, the employer shall provide the employee with suitable board and lodging, or shall pay the expenses reasonably incurred by the employee for board and lodging.

(2) If the employee is absent from work without reasonable cause, proof of which shall be upon the employee, the employer may deduct costs the employer incurred in providing suitable board and lodging from monies owing to the employee, including monies owing to the employee upon termination.

(3) Where an employee attends emergency work or work at installations other than that employee's normal installation, and where that attendance necessitates overnight accommodation the employee shall be paid a flat \$5.10 per night for each night they are absent from home in addition to any other allowances or benefits provided by this clause.

(4) The employer shall pay all reasonable expenses, and the employee shall be paid for up to eight (8) ordinary hours in any one day, incurred travelling pursuant to this clause; provided that an employee directed to use their own vehicle shall be reimbursed at the rates prescribed in subclause (5) of clause 21—Car and Travelling Allowance.

(5) An employee, to whom subclause (1) of this clause is applicable, shall be paid a flat allowance of \$17.50 for any weekend that the employee returns home, but only if—

- (a) the employee advises the employer of the employee's intention no later than the Tuesday preceding the weekend which the employee intends to return home;
- (b) the employee is not required to work during that weekend;
- (c) the employee returns to the job on the first working day following the weekend; and
- (d) the employer does not provide, or offer to provide, suitable transport.

(6) Where an employee, who is being supplied with board and lodging by the employer pursuant to subclause (1) of this clause is required to live more than 800 metres from the job, the employer shall provide suitable transport to and from the job or pay the employee \$8.70 per day. If travelling time to or from the job exceeds twenty (20) minutes, the excess time shall be paid at ordinary rates regardless of whether the employer is providing transport.

(7) Where employees elect to use their own conveyance in travelling as provided in subclause (1) of this clause, the amount of the airfare that would have been reasonably incurred shall be paid by the employer to the employee.

23.—LOCATION ALLOWANCE

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when

employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK
	\$
Agnew	14.50
Argyle (see subclause 12)	37.50
Balladonia	14.20
Barrow Island	24.40
Boulder	5.90
Broome	23.00
Bullfinch	6.90
Carnarvon	11.70
Cockatoo Island	25.30
Coolgardie	5.90
Cue	14.70
Dampier	19.90
Denham	11.70
Derby	24.00
Esperance	4.50
Eucla	16.10
Exmouth	20.60
Fitzroy Crossing	28.90
Goldsworthy	13.30
Halls Creek	32.80
Kalbarri	4.90
Kalgoorlie	5.90
Kambalda	5.90
Karratha	23.60
Koolan Island	25.30
Kooyanobbing	6.90
Kununurra	37.50
Laverton	14.60
Learmonth	20.60
Leinster	14.50
Leonora	14.60
Madura	15.20
Marble Bar	35.70
Meekatharra	12.70
Mt Magnet	15.70
Mundrabilla	15.70
Newman	13.90
Norseman	12.20
Nullagine	35.60
Onslow	24.40
Pannawonica	18.70
Paraburdoo	18.50
Port Hedland	19.80
Ravensthorpe	7.70
Roebourne	27.10
Sandstone	14.50
Shark Bay	11.70
Shay Gap	13.30
Southern Cross	6.90
Telfer	33.20
Teutonic Bore	14.50
Tom Price	18.50
Whim Creek	23.40
Wickham	22.80
Wiluna	14.80
Wittenoom	31.60
Wyndham	35.50

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid 66 2/3% of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by 33 1/3%; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause:

- (a) "Dependant" shall mean—
- (i) a spouse or defacto spouse; or
 - (ii) a child where there is no spouse or defacto spouse;
- who does not receive a district or location allowance.

- (b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

24.—INTRODUCTION OF CHANGE

(1) In this clause "major change" means a significant change in production, programming, organisation structure or technology by the employer.

(2) Where the employer has made a definite decision to make major changes within the employer's organisation the employer

must notify affected employees and the appropriate Respondent Union/s.

The employer shall—

- (a) Provide in writing to employees and respondent unions all relevant information about such changes.
- (b) Discuss with the employees and respondent unions the changes, including measures to avoid or minimise the adverse effects on the employee.
- (c) Where changes will result in employees being made redundant the employer will discuss with employees and respondent unions the composition of any list of redundant employees prior to retrenchments taking place.

25.—REDUNDANCY

(1) DEFINITIONS: In this clause

- (a) "Redundancy"
- (i) is a situation where there are more employees available than are needed to undertake the amount of work that needs to be done;
 - (ii) may be caused by (but not limited to) the following situations:
 - (aa) technological change eliminating the need for some jobs to be done by anyone;
 - (bb) changes in market demands creating a condition where less employees are required.
- (b) "Retrenchment" is the action taken to reduce the number of employees to the level required by the employer.

(2) AIM

The Company's aim is to assist employees who are retrenched to make the transition to other employment and to provide assistance to secure their short-term financial situation.

(3) PRACTICE

(a) Eligibility

The employer will make every endeavour to ensure that retrenchments occur either voluntarily or by natural attrition; provided that :

- (i) the employer will:
 - (aa) establish its employee requirements having regard to legal and occupational health and safety considerations; and
 - (bb) determine which employees are to be retrenched.

(ii) Having made the determination referred to in (i) (bb) the employer will then discuss the position of all redundant employees with the employees concerned and the Respondent Union/s, and if agreement is reached, employees selected for retrenchment by the employer may be substituted for by other employees.

(iii) Voluntary retrenchment does not mean that all employees who wish to be retrenched will be offered retrenchment by the employer.

(iv) Only redundant employees are eligible to receive the benefits prescribed by this clause.

(v) This clause does not apply to employees whose employment is terminated for conduct that justifies instant dismissal.

(vi) This clause only applies to regular employees pursuant to clause 7, subclause (8)(a)(i).

(b) Notice

(i) Employees who are to be retrenched will be advised in writing and provided with information concerning their entitlements.

(ii) Employees who are to be retrenched will be given twelve weeks pay in lieu of notice, except where the employee is aged forty five years or more in which case the employee will receive four additional weeks pay in lieu of notice.

(c) Work During Notice

Where an employee is engaged in a particular project/task payment in lieu of notice will be made on satisfactory completion of that project/task.

(d) Assistance During Notice Period

When, after receiving preliminary advice of retrenchment, an employee is completing a project/task, the employer will allow reasonable time off work to attend interviews for alternative employment.

(e) Out Placement

Upon a request made within one month of advice of retrenchment to an employee the Employer will—

- (i) make available the services of its Employee Relations Department to assist employees to prepare applications for other employment;
- (ii) make enquiries of other employers as to the availability of employment;
- (iii) arrange and meet the cost of financial planning and retirement counselling, provided that that cost must be authorised by the employer prior to its being incurred.

(4) PAYMENTS

Subject to sub-clause (5) retrenched employees will receive the following payments:

- (i) Annual Leave—accrued and pro-rata Award entitlements with leave loading to be paid on those entitlements.
- (ii) Long Service Leave—pro-rata Award entitlement subject to a minimum of seven years' service.
- (iii) Superannuation—The employer will expedite payment of entitlements under the terms of the relevant Trust Deed and according to employee instructions.
- (iv) Severance Payment—Retrenched employees will receive the following severance payments:

(a) All retrenched employees:

less than one year's service	6 weeks
1 year but less than 2 years' service	8 weeks
2 years but less than 3 years' service	10 weeks
3 years but less than 4 years' service	12 weeks
4 years but less than 5 years' service	14 weeks
5 years but less than 6 years' service	16 weeks
6 years but less than 7 years' service	18 weeks
7 years but less than 8 years' service	20 weeks
8 years but less than 9 years' service	22 weeks
9 years but less than 10 years' service	24 weeks
10 years but less than 11 years' service	26 weeks
11 years but less than 12 years' service	28 weeks
12 or more years service	30 weeks

(b) Retrenched employees over 45 years

Employees who are aged 45 years or more will receive one additional weeks payment for each year, or part of a year, of service after their 45th birthday.

(c) Retrenched employees with 25 years service

Employees who have more than 25 years service will receive one additional weeks payment for each year, or part of a year, of service in excess of 25 years service.

(5) MAXIMUM PAYMENT

- (a) No employee will be entitled to a payment greater than the employee would have received had the employee continued to work until attaining the age of 65 years.
- (b) No employee will receive a payment (excluding Award entitlements to annual and long service leave) which is greater than 78 weeks pay.

26.—PAYMENT OF WAGES

(1) Subject to other provisions of this award which permit the employer to deduct monies from an employee's wages, including monies due on termination, each employee shall be paid the appropriate rate prescribed in clause 9—Wages of this award. Subject to subclause (2) of this clause payment shall be pro rata where less than the full week is worked.

(2) Unless otherwise provided for in this award, and subject to the provisions of clause 7—Contract of Employment and subclauses (3) and (4) of this clause, wages shall be paid as follows:

(a) Actual 38 ordinary hours:

In the case of an employee whose ordinary hours of work are arranged so that the employee works 38 ordinary hours each week, wages shall be paid weekly according to the actual ordinary hours worked each week.

(b) Average of 38 ordinary hours:

In the case of an employee whose ordinary hours of work are arranged so that the employee works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

(c) Shiftworkers and watchpersons shall be paid according to the shift worked.

(3) Absences from Duty

(a) (i) An employee who is paid wages in accordance with paragraph (b) of subclause (2) of this clause and is absent from duty (other than on annual leave, long service leave, public holidays, sick leave, jury service, or bereavement leave, prescribed under this award) shall, for each day the employee is so absent, lose average pay for that day calculated by dividing the employee's average weekly wage rate by five (5).

(ii) An employee who is so absent from duty for part of a day shall lose average pay for each hour the employee is absent by dividing the employee's average daily rate by eight (8).

(b) Provided when such an employee is so absent from duty for a whole day the employee will not accrue a "credit" because he would not have worked ordinary hours that day in excess of seven (7) hours thirty six (36) minutes for which the employee would otherwise have been paid. Consequently, during the week of the work cycle the employee is to work less than thirty eight (38) ordinary hours the employee will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the "credit" the employee does not accrue for each whole day during the work cycle the employee is absent.

(4) Alternative Method of Payment

An alternative method of paying wages to that prescribed by subclauses (2) and (3) of this clause may be agreed between the employer and the majority of the employees concerned.

(5) Payment by Electronic Fund Transfer

Subject to sub-clause (12):

(a) Wages shall be paid by Electronic Fund Transfer into the employee's financial institution account on Thursday. The pay week shall run from Wednesday to Tuesday.

(b) Employees in service with the employer prior to November 3, 1987 shall have eight (8) hours pay deducted from their pay when their employment with the employer is terminated.

(6) Termination of Employment

(a) Subject to other provisions of this award which permit the employer to deduct monies from an employee's wages, including monies due on termination, an employee who lawfully leaves employment, or is dismissed, shall be paid all monies due to the employee by Electronic Fund Transfer directly into the employee's financial institution account on the next banking day following the termination. Provided that when termination occurs on a Tuesday prior to 4.00 p.m., entitlements shall be paid into the employee's financial institution account by the following Thursday.

- (b) An employee who is paid average pay and who has not taken the day off due to the employee during the work cycle in which the employee's employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle.
- (c) Where an employee has taken a day/s off during the work cycle in which the employee's employment is terminated or any earlier work cycle, the wages due to that employee shall be reduced by the total amount of credits which have not accrued during the work cycles.

(7) When an employee commences employment with the employer, their first pay shall be calculated according to the time they have worked in the relevant pay period.

(8) Calculation of Hourly Rate

Except as provided in subclause (3) of this clause ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by thirty eight (38).

(9) Subject to other provisions of this award which permit the employer to deduct monies from an employee's wages, including monies due on termination, no deduction shall be made from an employee's wages unless the employee has authorised such deduction in writing.

(10) The employer will deduct union contributions from wages when an employee so requests.

(11) Wage advice details shall be distributed to employees during working hours.

(12) If any mistake is made in the calculation or payment of wages resulting in the employee being underpaid, the employer shall, when it becomes aware of the underpayment, at the employee's election pay the employee the amount of the underpayment in cash by the next normal working day or include the amount of the underpayment in the next payment of wages.

27.—TIME AND WAGES RECORD

(1) The employer shall maintain records which show—

- (a) the name of each employee;
- (b) the occupation of each employee;
- (c) the ordinary working hours worked each week by the employee;
- (d) overtime worked each week by each employee;
- (e) any leave of any sort taken by each employee;
- (f) the wages and allowances paid to each employee each week.
- (g) age with respect to junior employees.

(2) The time and wages record shall be open for inspection to a duly accredited representative of a respondent union during the usual office hours at the employer's office or other convenient place.

(3) The representative making such inspection shall be entitled to take a copy of relevant entries in a time and wages record.

28.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

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

For the purpose of this clause:

- (a) An employee shall include a part-time employee but shall not include an employee engaged upon seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

- (a) Subject to sub-clause (3) and (6) of this clause, the period of maternity leave shall be for an unbroken period of up to fifty two (52) weeks.
- (b) An employer by not less than fourteen (14) days notice in writing to the employee may require the

employee to commence leave at any time within the six (6) weeks immediately prior to the employee's presumed date of confinement.

- (c) A period of six (6) weeks leave shall be taken immediately after confinement provided that an employee may return to work less than six (6) weeks after confinement if a duly qualified medical practitioner certifies that the employee is fit to resume work.
- (d) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, give notice in writing to the employer stating the presumed date of confinement.
- (e) An employee shall give not less than four (4) weeks' notice in writing to the employer of the date upon which the employee proposes to commence maternity leave, stating the period of leave to be taken.
- (f) 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 (d) of this sub-clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) 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 the employee's 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 sub-clauses (7), (8), (9) and (10) of this clause.

(4) Variation of Period of Maternity Leave

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

(5) Cancellation of Maternity Leave

- (a) 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.
- (b) 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 four (4) weeks from the date of notice in writing by the employee to the employer that the employee desires to resume work.

(6) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of an employee not then on maternity leave terminates after twenty eight (28) weeks other than by the birth of a living child then—
 - (i) the employee 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 the employee's return to work; or
 - (ii) for illness other than the normal consequences of confinement the employee shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which the employee is then entitled and which a duly qualified medical practitioner certifies as necessary before the employee's return to work.

- (b) Where an employee not then on maternity leave suffers illness related to the pregnancy, the employee may take such paid sick leave as to which the employee 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 the employee's return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed fifty two (52) weeks.
- (c) For the purposes of sub-clause (7), (8) and (9) of this clause, maternity leave shall include special maternity leave.
- (d) An employee returning to work after the completion of a period of leave taken pursuant to this sub-clause shall be entitled to the position which the employee held immediately before proceeding on such leave or, in the case of an employee who transferred to a safe job pursuant to sub-clause (3) of this clause, to the position the employee 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 the employee is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to sub-clauses (3) and (6) of this clause does not exceed fifty two (52) weeks:

- (a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which the employee is then entitled.
- (b) Paid sick leave and other paid authorised award absences (excluding annual leave and long service leave), shall not be available to an employee during the employee's absence on maternity leave.

(8) 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 the award.

(9) Termination of Employment

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

(10) Return to Work After Maternity Leave

- (a) An employee shall confirm their intention of returning to work by notice in writing to the employer given not less than four (4) weeks prior to the expiration of the employee's period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) of this sub-clause, shall be entitled to the position which the employee held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to sub-clause (3), to the position which the employee 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 the employee is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

(11) Replacement Employees

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

29.—BEREAVEMENT LEAVE

(1) An employee, shall, on the death within Australia of a wife, husband, defacto wife, defacto husband, father, father-in-law, mother, mother-in-law, brother, sister, child or stepchild, be entitled, on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two (2) ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

(2) Where the criteria in sub-clause (1) hereof apply, employees at country works who attend a funeral in the Perth metropolitan area shall be entitled to additional leave of one (1) working day. Proof of attendance at such funeral shall be furnished by the employee to the satisfaction of the employer.

(3) Payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with any shift roster, or on long service leave, annual leave, sick leave, workers' compensation leave, leave without pay, public holiday or on an accrued day off.

(4) For the purposes of this clause the pay of any employee employed on shift work shall be deemed to include any usual shift allowance.

30.—LONG SERVICE LEAVE

(1) Right to Leave

An employee shall be entitled to leave with pay in respect of long service as provided in this clause.

(2) Long Service

- (a) The long service which shall entitle an employee to such leave shall be continuous service with the employer in accordance with the definition of long service provided in paragraph 2 of the Long Service Leave Provisions published in Volume 68 of the Western Australian Industrial Gazette.
- (b) Employees, who have been absent from their employment without reasonable excuse when they should otherwise have been at work will have their anniversary date for long service leave extended by the period of unauthorised absence.

(3) Period of Leave

- (a) The leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this subclause.
- (b) Subject to the provisions of paragraphs (e) and (f) of this subclause, where an employee has completed at least ten (10) years' service the amount of leave shall be:
 - (i) In respect of 10 years' service so completed—13 weeks leave.

- (ii) In respect of each 10 years' service completed after such 10 years—13 weeks leave.
- (iii) On the termination of the employee's employment—
- (A) by death; or
- (B) in any circumstances,
- otherwise than by the employer for serious misconduct, in respect of the number of years' service with the employer completed since the employee last became entitled to an amount of long service leave, a proportionate amount on the basis of 13 weeks for 10 years' service.
- (c) Subject to the provision of paragraph (f) of this subclause, where an employee has completed at least seven (7) years service but less than ten (10) years service since its commencement and the employee's employment is terminated—
- (i) by death; or
- (ii) in any circumstances,
- otherwise than by the employer for serious misconduct, the amount of leave shall be such proportion of thirteen (13) weeks leave as the number of completed years of such service bears to ten (10) years.
- (d) In the cases to which the provisions of sub-paragraph (b)(iii) and paragraph (c) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.
- (e) An employee whose service with the employer commenced before 1 January 1981 and whose service should entitle the employee to long service leave under this clause shall be entitled to leave calculated on the following basis:
- (i) For each completed year of service commencing before 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and
- (ii) For each completed year of service in the period commencing on or after 1 October 1964 and concluding 31 December 1980, an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service; and
- (iii) For each completed year of service commencing on or after 1 January 1981 an amount of leave calculated on the basis of 13 weeks' leave for 10 years' service.
- Provided that such employee shall not be entitled to long service leave until the employee's completed years of service entitle the employee the amount of long service leave prescribed in either of sub-paragraphs (b)(i) or (ii) of this subclause as the case may be.
- (f) An employee to whom the provisions of sub-paragraph (b)(iii) and paragraph (c) of this subclause apply whose service with the employer commenced before 1 January 1981 shall be entitled to an amount of long service leave calculated on the following basis:
- (i) For each completed year of service commencing before 1 October 1964 an amount of leave calculated on the basis of 13 weeks leave for 20 years service; and
- (ii) For each completed year of service in the period commencing on or after 1 October 1964 and concluding 31 December 1980 an amount of leave calculated on the basis of 13 weeks leave for 15 years service; and
- (iii) For each completed year of service commencing on or after 1 January 1981 an amount of leave calculated on the basis of 13 weeks leave for 10 years service.
- (4) Payment of Period of Leave
- (a) An employee shall be entitled to be paid for each week of leave to which the employee becomes entitled, or is deemed to have become entitled, at the rate applicable to the employee for the standard weekly hours which are prescribed by this award, but in the case of part-time employees shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard.
- (b) The rate of pay—
- (i) shall include any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;
- (ii) shall include Service Pay as provided in clause 11, First Aid and Emergency Allowance as provided in clause 19(2)(a), Watertube Boiler, Firetube Boiler and Turbine Drivers Certificate Allowance as provided in clause 18(2) and Leading Hand Allowance provided in clause 9(3);
- (iii) shall not include shift premiums, overtime, penalty rates, special rates and allowances, fares and travelling allowances or the like.
- (5) Taking Leave
- (a) In a case to which the provisions of sub-paragraphs (b)(i) and (ii) of subclause (3) apply:
- (i) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the employee or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the seasonal nature of the industry and the needs of the employer's establishment and the employee circumstances.
- (ii) Except where the time for taking leave is agreed to by the employer and the employee or determined by the Special Board of Reference the employer shall give to an employee at least one month's notice of the date from which the employee's leave is to be taken.
- (iii) Leave may be granted and taken in one continuous period or if the employer and the employee so agree in not more than three (3) separate periods in respect of the first thirteen (13) weeks' entitlement and in not more than two (2) separate periods in respect of any subsequent period of entitlement.
- (iv) Any leave shall be inclusive of any public holidays specified in this award occurring during the period when the leave is taken but shall not be inclusive of any annual leave.
- (v) Payment shall be made in one of the following ways—
- (A) in full before the employee goes on leave; or
- (B) in any other way agreed between the employer and the employee.
- (vi) No employee shall, during any period when the employee is on leave, engage in any employment for hire or reward in substitution for the employment from which the employee is on leave, and if an employee breaches this provision the employee shall thereupon forfeit the employee's right to leave under this clause in respect of the unexpired period of leave upon which the employee has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.
- (vii) Where any periods of annual leave, long service leave or deferred accrued days off are taken together, the deferred accrued days off shall be deemed to have been taken first followed by the annual leave.
- (b) In the case to which the provisions of sub-paragraphs (b)(iii) or (c) of subclause (3) apply and in any case in which the employment of the employee who has

become entitled to leave under this clause is terminated before such leave is taken or fully taken the employer shall, upon termination of the employee's employment otherwise than by death pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which the employee was entitled or deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave under this clause.

(6) Granting Leave in Advance and Benefits to be Brought into Account

- (a) Subject to paragraph (c) of this subclause, the employer may by agreement with an employee allow leave to such an employee before the right thereto has accrued due, but where leave is taken in such case the employee shall not become entitled to any further leave pursuant to this clause in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.
- (b) Where leave has been granted to an employee pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the employee has been granted long service leave to which the employee was not at the date of termination of the employee's employment or prior thereto entitled.
- (c) Proportionate leave may be granted to an employee after ten (10) years service and every five (5) years thereafter.

(7) Adjustment for Leave

In the event that an employee's service is, subject to paragraph (d) of subclause (2) of this clause, not continuous in that the employee has had absences from employment which do not count as service and the employee has previously made arrangements for utilizing the employee's long service leave, long service leave may be granted at the employee's unadjusted anniversary date (which in most instances will be the anniversary of the employee's commencement date with the employer) provided that the payment for long service leave is reduced proportionately to reflect the difference in service between the employee's unadjusted anniversary date and what would have been the employee's entitlement date for the purposes of this clause.

Notwithstanding paragraph (b) of subclause (3) of this clause the adjustment for the purposes of this paragraph shall be calculated on a daily basis. [For example, if the leave entitlement is 13 weeks for 10 years service, the adjustment would be made on the basis of deducting 11.4 minutes for each day of absence which does not break continuity of service, but does not count as service. The unpaid portion of the long service leave shall not break continuity of service but shall not count as service.]

31.—SUPERANNUATION

(1) Employees are eligible to join the CSBP Employees Superannuation Fund according to the requirements of the Trust Deed for that fund.

(2) Information concerning the fund is available from the employer.

(3) The employer makes contributions to the fund on behalf of members, and members have the ability to voluntarily contribute.

(4) The employer's contributions to the fund include a contribution in full recognition of the Superannuation Principle of the State Wage Case Decision 1987 reported in Volume 67 Western Australian Industrial Gazette 435.

32.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate than the employee's ordinary classification, shall be paid the higher

rate for the time the employee is so engaged provided that where an employee is so engaged for two (2) hours or more of one day or shift the employee shall be paid at the higher rate for the whole day or shift.

33.—ELDERLY EMPLOYEES

- (1) (a) Employees who are sixty (60) years of age and over and have ten (10) years continuous service or more with the employer, shall be paid at the ordinary rate of pay for the classification in which they were employed for the majority of time in the last ten (10) years of service with the employer.
- (b) An employee shall be paid the ordinary rate of pay for the classification in which they have been employed for the majority of time in the last ten (10) years service with the employer provided that—
- the employee is unable to perform their normal job due to sickness or injury, and
 - the sickness and/or injury is not as a result of the employee's own misconduct, and
 - a medical certificate must be provided as evidence of the sickness and/or injury. The employer has the right to require an employee to undergo an examination with the medical practitioner of the employer's choice, and
 - the employee is 55 years of age or over.
- (2) The rates payable as a result of this clause shall be paid to the employee till their employment is terminated or the employee retires at or before 65 years of age as provided in the Letter of Engagement.

34.—JUNIOR EMPLOYEES AND STUDENTS

(1) Junior Employees

- (a) Junior employees shall not be employed in any occupation to which apprentices may be taken pursuant to the provisions of the Industrial Training Act, 1975.
- (b) Upon being engaged junior employees shall establish their full name and date of birth by the production of a record of the junior employee's registration of birth or by such other means which are satisfactory to the employer.
- (c) No employee shall have any claim on the employer for additional wages, if the employee has provided their incorrect age.
- (d) Junior employees shall receive the following proportion of the rate for a Production and Maintenance worker Group 1:

	%
Under 16 years of age	50
16 to 17 years of age	60
17 to 18 years of age	70
Over 18 years of age	100

(2) Students

Notwithstanding the provisions of this clause and the provisions of clause 35—Apprentices, persons who are undertaking a recognised course of formal education qualifications in engineering or science may, under supervision of a qualified tradesperson, be given training and practical work experience on tools and equipment relevant to their field of learning.

35.—APPRENTICES

(1) Apprentices shall be paid the following percentage of the Maintenance Trades Groups 1 or 2 rate prescribed by clause 9(2):

FOUR YEAR TERM—

First year	42
Second year	55
Third year	75
Fourth year	88

THREE AND A HALF YEAR TERM—

First six months	42
Next year	55
Next year	75
Final year	88

THREE YEAR TERM—

First year	55
Second year	75
Third year	88

(2) Apprentices may be taken on at a ratio of one apprentice for every two (2) or fraction of two (2) (the fraction being not less than one (1)) tradespersons and shall not be taken on in excess of that ratio unless—

- (a) the respondent union/s concerned so agree; or
- (b) the Commission so determines.

(3) Apprentices may be taken in the following trades:

- (a) Electrical fitting;
- (b) Instrument fitting;
- (c) Boilermaking and first class welding;
- (d) Fitting and turning, machining;
- (e) Leadburning; and
- (f) Painting and decorating, carpentry and joinery, and plumbing.

(4) Time which an apprentice is required to attend Technical College and would otherwise have been spent in normal attendance at work shall be deemed normal working time and the employee shall be paid as such. This shall only apply up to the rostered ordinary hours which normally would have been worked on that/those day/s.

(5) Lost Time

- (a) Where an apprentice, in any year of apprenticeship, has actually given service or attended a prescribed course of instruction on less than the number of the apprentice's ordinary working days occurring during that year without the employer's consent the employer may require that such apprentice serve an additional day for each day not so served within that year, and in such case the year of service in question shall not be deemed to have been completed until such extra days have been served.
- (b) In calculating the extra time to be served the apprentice shall be credited with the time the apprentice has worked in excess of ordinary hours during the relevant year of service.

(6) If an apprentice whose normal place of work is outside the metropolitan area is required to attend training courses within the metropolitan area the employer shall provide accommodation during the course of such training.

(7) Apprentices shall purchase a kit of tools within six (6) months of engagement of the standard and otherwise in accordance with Clause 36.

36.—TOOL KITS—MINIMUM STANDARDS

(1) Tradespersons and apprentices shall maintain their tool kits at the agreed standard as reached as part of second tier agreement made in accordance with the State Wage Decision 1987 (at 67 Western Australian Industrial Gazette 435).

(2) Tradespersons' and apprentices' tools may be purchased through employer stores.

(3) Tradespersons and apprentices can obtain a list of the required tools pertaining to their works from their supervisor.

(4) The tool lists may be amended from time to time to meet the needs of a particular works. Changes to the list(s) shall be agreed upon between the employer and the unions concerned.

(5) Where an employee's tools are damaged beyond normal wear and tear or lost or stolen while in use for the employer's operation provided that care has been taken to minimise damage or loss the employer shall replace the worn-out or lost tool with a new tool of equivalent quality.

37.—REPRESENTATIVE INTERVIEWING
EMPLOYEES

(1) On notifying the employer the secretary or any authorised officer of the union shall have the right to visit and inspect any work covered by this award at any time when work is being carried on whether during or outside the ordinary working hours and to interview the employee covered by this award provided that the representative does not unduly interfere with the work in progress.

(2) The Union may by prior arrangement with the employer hold meetings with the employees to discuss or communicate matters relating to the operation of the plant or the employer. Provided that the duration of the meeting is reasonable employees may attend such meetings during ordinary rostered hours without loss of pay.

38.—POSTING OF AWARD AND UNION NOTICES

(1) The employer shall make readily available copies of this award which employees may gain access to.

(2) The employer shall provide lockable notice board space for the posting of union notices. A key for the notice boards shall be issued to the accredited union representative.

(3) All notices must be seen by the Section Supervisor prior to being posted.

(4) Notices may only be removed on the authority of the works manager or the accredited union representative.

39.—EMPLOYEE RELATIONS PROCEDURE

(1) The parties to this award are committed to promoting good industrial relations based on goodwill consultation and discussion. To this end all personnel involved shall use their best endeavours to resolve problems promptly whilst work continues normally in accordance with the following arrangements and the employer's counselling and disciplinary procedures.

(2) In order to allow for the peaceful resolution of outstanding matters every effort will be made to avoid stoppages of work, lockouts or any other bans or limitations on the performance of work while procedures of negotiation and conciliation are being followed.

(3) Domestic or individual problems shall be raised initially with the employee's immediate supervisor. If the matter cannot be mutually resolved then the employee may request further discussion with the supervisor and the Union representative or, if necessary, with more senior management and Union representatives. If the matter still remains unresolved, then it should be referred to the appropriate full-time Official of the Union and Company representative.

(4) Resolution of problems which directly concern the content of the award or other agreements entered into by the parties, should involve an appropriate full-time Union Official and Company representatives.

(5) The employer will ensure that all practices applied during the course of these procedures are in accordance with safe working practices and consistent with established custom and practice at the workplace.

(6) In the event of work stoppage, such employees as are necessary shall, where appropriate, complete production in process in order to ensure an orderly close down to avoid damage to process plants or the environment, to avoid creating hazardous conditions for employees or others and to prevent loss of materials before ceasing work. Provided that where cessation of work will lead to any of the aforementioned conditions arising in a continuously operated process then the parties agree that the plant may be operated by employer staff.

40.—UTILISATION OF CONTRACTORS

- (1) (a) Due to training and experience employees of the employer acquire an intimate knowledge of the employer's equipment, plant, processes and procedures. As a result operating and maintenance work on the site can usually be performed most efficiently by those employees.
- (b) In some situations including increased work demands and/or the need for different skills or equipment the use of contractors is the best means of achieving the essential efficiency and productivity in the performance of work.
- (c) No employee of the employer will suffer any detrimental effect in respect of normal earnings, job security or available reasonable hours of work (including overtime) due to the use of contractors.
- (2) (a) The circumstances in which the employer may need to have contractors perform work on-site will relate to—
 - (i) work which is not customarily done by employees of the employer and is normally or

- generally done by contractors to the employer;
or
- (ii) project or expansion or capital or other works which are beyond the normal labour resources for which the employer has geared its production, processing and maintenance operations; or
 - (iii) major campaign maintenance shutdown work or work related to substantial failure of plant or equipment or process which is beyond the normal labour resources of the employer and which requires additional labour resources for a temporary period.
- (3) (a) Before the employer acts to let to contract work of a kind other than that described in paragraph (a)(i) of subclause (2) of this clause, and that work is customarily performed by employees of the employer, the employer shall notify the appropriate employees and shop steward in the section/s where the contract works are to be carried out. As part of that advice information relevant to—
- (i) a broad outline of the work to be done;
 - (ii) the principal contractor/s involved; and
 - (iii) the estimated time duration of the work;
- will be provided.
- (b) The employer will regularly consult with employees on the use of contractors.
- (4) (a) Employees of contractors who are utilised onsite and within the employer's operations will be required to undertake a safety induction programme to a standard relevant to the particular work and circumstances in which that work is then to be done.
- (b) The employer will require that the contractor shall ensure, as a condition of the contract, that employees of a contractor who are utilised on-site and within the employer's operations comply with awards binding the contractor and comply with the employer's safety regulations and with all reasonable directions by the supervisor.

41.—JURY SERVICE

(1) An employee required to attend for jury service during ordinary working hours shall be re-imbursed by the employer an amount equal to the difference between the amount paid in respect of the attendance for such jury service and the amount the employee would have earned in respect of the employee's rostered ordinary working hours had the employee been at work.

(2) The employee shall provide the employer with proof of attendance on jury service, the duration of such attendance and the amount received in respect of such attendance.

42.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained elsewhere in this award an employee may be employed to work ordinary working hours each week which are less than those prescribed in clause 12—Day Worker Hours and clause 13—Shift Work Hours of this award, and for less than the length of day, afternoon or night shift prescribed in clause 6—Definitions of this award.

(2) When an employee is employed under the provisions of this clause the employee shall be paid at a rate and shall be entitled to all other benefits and conditions prescribed elsewhere in the award in the proportion to which the employee's rostered ordinary working hours bear to the hours of a full-time employee working rostered ordinary working hours under clause 12—Day Worker Hours or clause 13—Shift Work Hours as appropriate. Provided that an employee employed on a part-time basis pursuant to this clause shall be paid overtime for time worked in excess of the employee's rostered ordinary working hours in accordance with clause 14—Overtime of this award.

(3) The employer shall notify the relevant union of the engagement of part-time employees.

43.—SECOND TIER AGREEMENT

The provisions of the Commission's Order No. 693 of 1987 concerning Enterprise Based Restructuring and Efficiency Agreement except where inconsistent with this award shall be

deemed to be part of this award and shall continue to have effect on and from the date of operation of this award.

44.—WORKERS' COMPENSATION

(1) An employee who, by temporary incapacity from employment under this award, and who is entitled to weekly workers' compensation benefit for that incapacity, shall be paid the rate of pay for thirty eight (38) hours prescribed by clause 9—wages and the rate of pay shall also include:

- (i) any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;
- (ii) Service Pay as provided in clause 11, First Aid and Emergency Allowance as provided in clause 19(2)(a), Watertube Boiler, Firetube Boiler and Turbine Drivers Certificate Allowance as provided in clause 18(2) and Leading Hand Allowance provided in clause 9(3);

but shall not include shift premiums, overtime, penalty rates, special rates and allowances, fares and travelling allowances or the like.

45.—LIBERTY TO APPLY

The Operative Painters' and Decorators' Union of Australia, West Australian Branch, Union of Workers is given liberty to apply during the term of this Award for the inclusion of a further duty description in clause 10—Classifications.

SCHEDULE A—PARTIES TO THE AWARD

The following organisations are party to this award:

Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch)

Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch—The

Federated Miscellaneous Workers' Union of Australia, W.A. Branch—The

Metals and Engineering Workers' Union—Western Australian Branch

SCHEDULE B—IMPLEMENTATION AGREEMENT

(1) Participation of Employees and their Unions

- (a) All shop stewards or elected union delegates will participate in all re-structuring discussions and negotiations without loss of pay.
- (b) In recognition of the significant changes being contemplated by the employer and the employees, seminars shall be organised for all employees. All seminars shall be in paid time and involve union officials, if so requested.

(2) Security of Employment

- (a) Employees will not be made redundant because of changes made to introduce award re-structuring.
- (b) Wherever possible the employer shall utilise the existing workforce to cover total workforce requirements in both production and maintenance areas.

(3) Training of Employees

- (a) The employer will re-train the existing workforce as changes occur.
- (b) Employees will not be forced to re-train and no employee will suffer loss or reduction of wages or conditions of employment because of the re-structuring process.
- (c) Technical and Further Education Colleges will be used wherever possible to assist in the skills assessment, administration and accreditation of the skills training programme.

(4) Local Consultative Committee

- (a) The Local Consultative Committee shall comprise an equal number of elected union delegates and employer's representatives. Union delegates shall have a reasonable amount of paid time allocated to them to research or prepare for such committee meetings.
- (b) The Local Consultative Committee shall:
 - (i) Assess training programmes at the enterprise within the terms of the new Award and make

recommendations to the employer. The assessment shall be in relation to both on-the-job training and external training.

- (ii) Review qualifications of employees as determined by assessment criteria and make recommendations to the employer to help to ensure that the job classification to which employees have been appointed is appropriate to their qualification.
 - (iii) Monitor summaries of attendance at training programmes with due regard to a set of negotiated criteria (including seniority, affirmative action, etc.) so that any tendency to provide preferential treatment or to express favouritism is minimised.
 - (iv) Assist in the identification of development changes in factors and duties relevant to job classifications and make recommendations to the employer for referral to the Job Evaluation Group for their consideration and re-evaluation as appropriate.
 - (v) Review assessments from the Job Evaluation Group and make recommendations to the employer.
- (c) The unions and the employer shall establish procedural and administrative arrangements to be applied by the Local Consultative Committee.
- (5) Job Evaluation Group
- (a) At least half the members of the Job Evaluation Group shall be employee members.
 - (b) Additional or changed duties which arise from time to time as a result of changed work requirements or technology, shall be referred to the Job Evaluation Group for reassessment in accordance with the established factors and procedures.
- (6) Further Changes

Any further changes to work design, work organisation, classifications, training or conditions of employment, and variations to the award including wages and allowances, shall follow established procedures with the Local Consultative Committee.

SCHEDULE C—RESPONDENT UNIONS

- (1) Amalgamated Metal Workers and Shipwrights Union of W.A.
- (2) Construction, Mining and Energy Workers Union of Australia, W.A. Branch.
- (3) Federated Miscellaneous Workers Union of Australia, W.A. Branch.
- (4) The Operative Painters' and Decorators' Union of Australia, West Australian Branch, Union of Workers.
- (5) The Plumbers and Gas Fitters Employee's Union of Australia, Western Australia Branch, Industrial Union of Workers.
- (6) The Australian Electrical, Electronics, Foundry & Engineering Union (Western Australian Branch).

DRY CLEANING AND LAUNDRY AWARD 1979.

No. R35 of 1978

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 10th day of January, 1996

J. CARRIGG,
Registrar.

Dry Cleaning and Laundry Award 1979.

No. R35 of 1978

1.—TITLE

This award shall be known as the Dry Cleaning and Laundry Award 1979 and replaces Award No. 13 of 1941 as amended.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. Scope
4. Area
5. Term
6. Definitions
7. Contract of Service
8. Deleted
9. Hours of Work
10. Meal Intervals and Rest Periods
11. Meal Money
12. Overtime
13. Holidays
14. Annual Leave
15. Absence Through Sickness
16. Bereavement Leave
17. Long Service Leave
18. Special Rates
19. Mixed Functions
20. Travelling Time
21. Casual Worker/Permanent Part-Time Worker
22. Location Allowances
23. Time and Wages Record
24. Right of Entry
25. General Conditions
26. Protective Equipment
27. Notice Boards
28. Board of Reference
29. Liberty to Apply
30. Wages
31. Payment of Wages
32. Maternity Leave
33. Shift Work
34. Superannuation
35. Award Modernisation and Enterprise Consultation
Schedule A—Respondents
Schedule B—Parties to Award

3.—SCOPE

This award shall apply to all workers employed in the classifications referred to in Clause 30.—Wages in the industry of dry cleaning, dyeing and/or repairing and/or invisible mending of garments or articles in dry cleaning establishments and their auxiliary receiving depots and in the industry of laundering and to all employers employing those workers, but shall not apply to any worker or employer bound by an award of the Australian Conciliation and Arbitration Commission.

4.—AREA

This award shall apply throughout the State of Western Australia for Dry Cleaning and Linen Repairers and outside the South West Land Division for Laundry workers.

5.—TERM

Except where otherwise specified in clause 30.—Wages this award shall operate from the date hereof and shall remain in force for a period of six months.

6.—DEFINITIONS

(1) “Dry Cleaning” for the purpose of this Award shall cover the cleaning, spotting and finishing of garments and materials and the maintenance of plant and equipment (except steam air forming and the receiving sorting and dispatching of garments and materials).

(2) “Cleaning” for the purposes of the definition of dry cleaning in this Clause ‘cleaning’ shall mean all operations in relation to dry cleaning which shall include the classification of garments, the application of distillation, filtration, tumbling and pre-spotting techniques and the after treatment of garments and materials.

(3) “Spotting” for the purposes of the definition of dry cleaning in this clause ‘spotting’ shall mean the application of the techniques of pre-spotting, stain removal by chemical application, wet cleaning, steam gun operation, the drying of garments and materials, the classification of garments and fibre identification.

(4) “Finishing” for the purpose of the definition of dry cleaning in this Clause ‘finishing’ means the application of all types of machine and hand pressing techniques.

(5) “Late Shopping Night” for the purposes of this Award shall mean the evening of the day on which ordinary hours of work of a general retail shop may be worked between 7.00am and 9.00pm.

(6) “Union” for the purposes of this Award shall mean the Federated Miscellaneous Workers Union of Australia, Western Australian Branch.

(7) “Casual Worker” for the purposes of this Award shall mean a worker engaged and employed as such.

(8) “Permanent Part Time Worker” for the purposes of this Award is as defined in subclause (2) of Clause 21. -Casual Worker/Part Time Worker.

(9) “Laundry Employee—Grade 1” for the purposes of this award shall mean:

- An employee in the first six months (991 hours inclusive of public holidays and annual leave) of employment with no previous experience in the industry.
- Works under routine supervision either individually or in a team environment.
- Responsible for own work subject to detailed instructions.
- Carries out duties in a safe, responsible and efficient manner.

Indicative of tasks which an employee at this level may perform are the following:

1. Be able to identify and classify items of linen/garments and associated simple tasks.
2. Be able to load and unload drying machines.
3. Be capable of simple keyboard operations.
4. Maintain simple production records.
5. Clean machines.

Furthermore, an employee at this level will be trained in at least one of the following work brackets:

Bracket 1

1. Perform all manual or machine folding/hanging operations on linen/garments.
2. Perform all ironing machine functions either manually or with the aid of semi-automatic or automatic feeding, folding and preparing equipment.
3. To operate a tunnel finisher.
4. To use a heat seal or heat marketing machine or to mark linen with any other type of machine manually.
5. Packing of garments/linen for customer supply.

Bracket 2

1. Operate any washing, drying and extracting equipment.

2. Operate towel unwinding equipment.

Bracket 3

1. Operate any textile pressing machine.

Bracket 4

1. Manual or machine repairer of garments or linen.

(10) “Laundry Employee—Grade 2” for the purposes of this award shall mean:

An employee with at least six months employment in the industry who can competently perform the tasks required of them in the appropriate bracket, as well as meeting the general requirements of a Grade 1, even though they may not have completed training in all the tasks in their Bracket. Notwithstanding, in such case, the employee will be required to qualify in the tasks missed while in Grade 1.

Furthermore an employee at this level will be trained in at least one additional bracket.

An employee at this level must also be able to:

- Operate with a minimum of supervision.
- Recognise and report obvious faults in the equipment they use.
- Be responsible for the maintenance of the quality and quantity of their own output.

(11) “Laundry Employee—Grade 3” means:

An employee who meets the requirements of a Grade 2 Laundry Employee, and in addition:

1. Has the skills to efficiently carry out two Brackets and is required to utilise these skills;

OR

2. Operates washing and ancillary equipment and is reasonable for work flow and control of all washing supplies for such equipment and can carry out these tasks with minimal supervision;

OR

3. A repairer who is competent to perform all facets of repair functions and is required to utilise these skills. Tasks performed by a repairer at this level would include but not be limited to the following:

- zip replacement
- pocket replacement
- alterations
- making of monograms

(12) “Laundry Employee—Grade 4” for the purposes of this award shall mean:

- Meets the requirements of a Grade 3 Employee.
- Appointed to supervise a production section of the operation.
- Responsible for the work flow and quality standards.
- Responsible for the implementation of on-the-job training.

Indicative of the tasks which an employee at this level may perform include the following:

- induction of new employees;
- co-ordinates employees and work on a daily basis;
- exercises intermediate keyboard skills.

7.—CONTRACT OF SERVICE

(1) Except as otherwise provided in terms of the award, all workers shall be subject to a working week’s notice in the termination of an engagement. Such notice may be given at any time within working hours for the purpose of this clause; notice given within a period not later than 10.00 a.m. on any day shall be regarded as a full day’s notice, otherwise a further day’s notice is required. One week’s wages shall be paid by the employer or one week’s wages shall be forfeited by the worker (whether weekly or piece-worker) which may be deducted from any moneys due to the worker in the event of the employer or worker failing to give the required notice. When employment is terminated by an employer, the employer shall, upon the date of such termination, pay to the worker (weekly or piece-worker) all moneys due to him or her, and when employment is terminated by a worker in accordance

with the terms of this award the employer shall upon the date of termination pay the worker (weekly or piece-worker) all moneys due to him or her.

Provided that a worker shall not be given notice or dismissed, except for misconduct, whilst legitimately absent from duty on accrued sick leave or on annual leave and the days on which a worker is absent from duty on account of such sick leave or annual leave shall not be counted as within a working week's notice for the purpose of this award unless, in the case of sick leave, a worker had been given notice prior to the employer being informed that paid sick leave was to be taken. Alternatively, a worker shall not be entitled to give an employer notice while absent on account of paid sick leave and paid annual leave.

The provisions of this clause shall not affect the right of an employer to dismiss any worker without notice for malingering, inefficiency, neglect of duty or misconduct. Where a worker is so dismissed, payment shall be made for time actually worked to the time of dismissal.

(2) Where a worker has given or been given notice as aforesaid such worker shall continue in employment until the expiration of such notice. Any worker who has given or has been given notice as aforesaid without reasonable cause (proof of which shall be upon the worker) is absent from work during such period shall be deemed to have abandoned the engagement and shall not be entitled to payment for work done within that period.

(3) A casual worker is one engaged and paid as such, and whose services may be terminated on either side by an hour's notice.

(4) In the event of the work of the factory or section of the factory or workshop being stopped by a breakdown of machinery, or for any cause for which the employer cannot reasonably be held responsible, all weekly hands who present themselves for work shall be found work for that day or paid one day's wages in lieu thereof, but the employer may, when such causes occur, give notice to a worker that his or her services will not be required on the following day or days, and the worker shall not be entitled to any further payment in respect of any further days that he or she is out of employment by reason of such causes.

Provided that for any day upon which a worker cannot be usefully employed because of any strike or lockout by any persons whatsoever, or any failure, or lack of power arising away from the premises of the employer, or, any restriction, lack or shortage of power for which an employer cannot justly be held responsible all weekly workers who are required to attend for work and do so attend on that day shall be paid a minimum of two hours' pay at ordinary rates, if required to perform work or remain at work for longer than two hours, payment shall be made at ordinary rates for all time standing by and time worked.

(5) Notwithstanding anything contained in subclause (1) hereof during the first week of an employment the services of a worker may be terminated by the giving of one hour's notice on either side, or by the payment or forfeiture of one hour's pay in lieu of notice as the case may be. Provided that, after the first day and during the balance of the first week of an employment, where on any day the employer terminates the services of a worker, other than for malingering, neglect of duty or misconduct, he shall be required to pay the worker not less than a day's pay for that day.

(6) No worker shall, without just cause, be absent from his or her employment during the prescribed hours whilst there is work ready to be done by such employee and must be available, ready and willing on the days and during the hours fixed by this award.

(7) A worker not attending for duty shall, except as provided in clause 15.—Absence through Sickness of this award, lose his pay for the actual time of such non-attendance.

(8) (a) Where an employer terminates the employment of a worker within fourteen days of the day on which a holiday occurs and such worker is re-engaged within a period of one month after such holiday or holidays, the worker shall be paid for such holiday or holidays prescribed by this award, provided that such worker has been employed by the employer for a

period of at least one week prior to the termination of employment.

(b) Notwithstanding anything hereinbefore contained, should the employment of a worker be terminated by the employer (through no fault of the worker) on or after the last working day of the last pay period in November each year, or within fourteen working days prior to Good Friday such worker shall be paid for the public holidays occurring during the Christmas-New Year period and at Easter time in the same manner as he or she would have been entitled to payment had a termination of employment not occurred. To qualify for this provision a worker must have been employed by the employer for a period of at least three months prior to the termination of employment.

(9) Workers shall be paid all wages due to them in full during the ordinary working hours not later than two working days following the termination of the working week.

(10) Subject to the provisions of this Clause, for permanent part time workers as defined in Clause 21.—Casual Worker/Part Time Worker, the payment of monies or deduction of monies in lieu of notice shall be calculated on a proportionate basis on the average weekly number of ordinary hours worked by the employee during the 12 months preceding the termination of employment or, if the period of employment is less than 12 months, on the average weekly number of ordinary hours worked during the actual period of employment.

(11) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

8.—DELETED

9.- HOURS OF WORK

(1) The ordinary working week shall be no greater than 38 hours worked in accordance with subclause (2) of this clause.

(2) (a) Ordinary hours of work shall be worked between 7.00am and 7.00pm Monday to Friday, 7.00am and 9.00pm on a "prescribed late night shopping night/s" in an area or locality covered by this award, and 7.00am and 5.00pm on Saturdays.

(b) No employee shall work more than nine hours without payment of overtime in non-package plants and ten hours without payment of overtime in package plants.

(c) Starting and finishing times of each employee shall be fixed by the employer and shall not be altered by the employer, except in a case of emergency, unless a week's notice of such change has been given to the employee.

(d) Where any ordinary hours of work are performed by a weekly employee after 7.00pm and before 9.00pm on a "prescribed late night shopping night/s" in an area or locality covered by this award and between 7.00am and 12.00pm on a Saturday, an employer shall pay a penalty of 25 percent above the wage rate prescribed in Clause 30.—Wages of this award.

(e) Where ordinary hours of work are performed by a weekly employee between 12.00pm and 5.00pm on a Saturday, an employer shall pay to an employee a penalty of 50 per cent above the wage rate prescribed in Clause 30.—Wages of this award.

(f) Any other starting or finishing times may be agreed upon by the employer and employee concerned and assented to by the union in writing or as approved by the Board of Reference.

(g) The usual working hours shall be prominently displayed in each work room or factory depot.

(h) An employer who requires employees in package plants to work the 38 ordinary hours in one week within four days Monday to Friday inclusive shall inform the employee at least seven days prior to commencement of that working week of the days upon which they are rostered to work and the days on which they are rostered off.

(i) Provided that where the regular late night shopping night/s is a public holiday/s and another night/s is

nominated, the prescribed late night shopping hours shall apply.

- (3) (a) Subject to the daily limitations prescribed in (a) and (b) of this subclause, and agreement between an employer and a majority of the workers the hours of work on an establishment may be by any one of the following methods—
- (i) By working shorter hours on one or more days of each week; or
 - (ii) By fixing a day on which all workers will be off during a particular work cycle; or
 - (iii) By rostering workers off on various days of the week during a particular work cycle.
- (b) Where workers are entitled to a rostered day or days off in accordance with paragraph (ii) or (iii) of (d) of this subclause, the employer shall notify such workers not less than four weeks in advance of the week-day he or she is to take off. Where a worker has not accumulated a day's entitlement when a rostered day off occurs, such worker for that day, shall receive payment for the actual time already accrued.
- (c) Where the employer and workers agree rostered days off may accumulate to a maximum of four days which shall be taken in one continuous period within one month of such accrual.
- (d) Where an arrangement is made in accordance with this clause, starting and finishing times and the daily and weekly hours so determined shall constitute the ordinary working hours and work performed outside or in excess of such times and hours will constitute overtime for the purposes of this Award.
- (e) (i) An employer, with the agreement of the majority of workers concerned, may substitute the day a worker is to take off in accordance with any arrangement pursuant to (a) of this subclause, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.
- (ii) An employer with the agreement of the employee concerned, may substitute the day that employee is to take off for another day.
- (4) In the event of a dispute over the implementation of the 38 hour week, the following procedures shall be followed—
- (a) Consultation shall take place within the particular establishment concerned.
 - (b) If the dispute is not resolved at establishment level, it shall be the subject of discussions between the Union and the employer concerned.
 - (c) In the event of a dispute over the implementation of the 38 hour week the matter may be referred to the Western Australian Industrial Relations Commission.

10.—MEAL INTERVALS AND REST PERIODS

(1) Meal Breaks.

Each employee shall be granted a meal interval of not less than thirty minutes to be commenced not later than five hours of commencing duty.

Provided that where it is not possible to grant the meal interval on any day, the said meal interval shall be treated as time worked and paid at the rate for the day plus a loading of fifty per cent upon the ordinary weekly rate, until released for a meal.

(2) Rest Period

- (a) Save as provided in (b) of this subclause, a rest period of ten (10) minutes shall be allowed by an employer to all employees each day between the time of commencing work and the usual meal interval. A further rest period of ten (10) minutes shall be allowed between the usual meal interval and the usual time of ceasing work.
- (b) In the case of casual workers and permanent part-time workers commencing work or ceasing work at other than the usual time of commencement or of cessation of work, the rest periods prescribed in (a)

hereof shall not be taken within two hours of the usual meal interval as prescribed in (1) of this subclause.

11.—MEAL MONEY

(1) A worker required to work overtime for more than one hour after the usual ceasing time or beyond 6.30pm (whichever is the later) on any day, Monday to Friday inclusive, shall either be supplied with an adequate recognised evening meal by the employer from an established canteen on the premises or paid \$3.25 in lieu thereof.

(2) If the notice is given and overtime is not worked, the meal money prescribed herein shall not be required to be paid.

(3) Any dispute under this clause as to the suitability of a canteen meal supplied may be referred to a Board of Reference.

12.—OVERTIME

(1) All time worked by a weekly worker in excess of 38 hours in a week or in excess of his or her normal number of daily hours or outside the daily limits prescribed in Clause 9.—Hours of Work of this Award shall be paid for at the rate of time and a half for the first two hours and double time thereafter. Each day shall stand alone for the purpose of calculating overtime and any overtime worked on any day of the week shall be paid for on a daily basis.

- (2) (a) An employer may require any worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirements.
- (b) The organisation party to this Award shall not in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(3) Notwithstanding subclause (2) of this Clause, workers required to work for longer than one and a half hours after the usual ceasing time shall be allowed not less than 30 minutes meal break provided that this provision shall not apply to workers on any day where there is an early ceasing time, unless a total of five and a half hours or more inclusive of overtime is to be worked following the midday meal break.

(4) A worker other than a worker subject to subclause (4) of this Clause who is required to work overtime for more than one hour beyond the ordinary ceasing time on any day, other than on a working day of less than eight hours, shall be entitled to a rest period of ten minutes paid for at the appropriate rate.

- (5) (a) Where an employer and employee so agree, time off in lieu of payment for any or all overtime worked may be granted proportionate to the payment to which the employee is entitled in accordance with subclause (1) of this clause.
- (b) Time off in lieu of payment for overtime shall be taken within a period of 2 months of the date on which the overtime is worked.

13.—HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject as hereinafter provided, be allowed as holidays without deduction of pay, namely, New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

- (b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) On any public holiday not prescribed as a holiday under this award the employer's establishment or place of business may be closed, in which case a worker need not present himself for duty and payment may be deducted, but if work is done ordinary rates of pay shall apply.

(3) Work done on any day prescribed as a holiday in subclause (1) of this clause shall be paid for at the rate of double time and one half.

(4) The provisions of this clause shall not apply to casual workers.

14.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by the employer after a period of twelve months' continuous service with such employer.

(b) The annual leave shall be given and taken in one or two continuous periods. Provided that, if the employer and employee so agree, then the annual leave entitlement may be given and taken in a maximum of four separate periods.

(2) (a) During a period of annual leave a worker shall be paid a loading of 17½ per cent calculated on his ordinary wage as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any prescribed holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(4) (a) If after one month's continuous service in any qualifying 12 monthly period a worker leaves his or her employment lawfully or his or her employment is terminated by the employer through no fault of the worker, the worker shall be paid at the rate of 2.923 hours payment calculated by reference to the rate of wage prescribed in Clause 30.—Wages of this Award, divided by 38, for each completed week of service.

(b) In addition to any payment to which he may be entitled under paragraph (a) of this subclause, a worker whose employment terminates after he has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which subclause (7) or (11) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

(i) he has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(5) Any time in respect of which a worker is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his right to annual leave.

(6) In the event of a worker being employed by an employer for portion only of a year, he shall only be entitled, subject to subclause (4) of this clause to such leave on full pay as is proportionate to his length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers he shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(7) When a worker is entitled to annual leave under this clause, he shall receive at least two week's notice from his employer of the date when it will be convenient to the employer that such worker shall take his leave.

(8) Every worker shall be given and shall take annual leave within six months after the date the leave falls due.

(9) The provisions of this clause shall not apply to casual workers.

(10) Notwithstanding anything else herein contained an employer may observe a Christmas close down for the purpose of granting annual leave and may require an employee to take annual leave at that time.

(11) (a) At the request of an employee, and with the consent of the employer, annual leave prescribed by this clause may be taken before the completion of 12 months' continuous service as prescribed by subclause (1) of this clause.

(b) If the service of an employee terminates and the employee has taken a period of leave in accordance with this subclause and if the period of leave so taken exceeds that which would become due pursuant to subclause (4) of this clause the employee shall be liable to pay the amount representing the difference between the amount received by him/her for the period of leave taken in accordance with this subclause and the amount would have accrued in accordance with subclause (4) of this clause. The employer may deduct this amount from monies due to the employee by reason of the other provisions of this award at the time of termination.

(c) The annual leave loading provided by subclause (2) of this clause, shall not be payable when annual leave is taken in advance pursuant to the provisions of this subclause. The loading not paid, for the period of leave taken in advance, shall be payable to the employee at the end of the first pay period following the employee completing the qualifying period of continuous service provided in subclause (1) of this clause.

15.—ABSENCE THROUGH SICKNESS

(1) (a) A worker who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the worker's services terminate, if before the end of that year of service, to the extent that the worker has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the worker if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that a worker shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the worker shall as soon as is reasonably practicable advise the employer of her inability to attend for work, the nature of her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence, and where possible, in the case of shift workers, prior to the usual commencing time on the first day of such absence through illness.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate. Provided that where a female worker is regularly absent because of menstrual disorder it shall be sufficient for the employer to require the production of a medical certificate with respect to such absence no more than once in any twelve months.

- (5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.
- (b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined.
- (c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.
- (d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of clause 14.—Annual Leave.
- (e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 14.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.
- (6) Where a business has been transmitted from one employer to another and the worker's service has been deemed continuous in accordance with subclause (3) of clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmitter shall stand to the credit of the worker at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.
- (7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.
- (8) The provisions of this clause do not apply to casual workers.
- (9) A worker employed under any system of payment by results and entitled to sick leave under the provisions of this clause shall be paid at the time-work rate applicable to the classification in which he is employed.

16.—BEREAVEMENT LEAVE

(1) A worker shall on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the worker in two ordinary days' work. Proof of such death shall be furnished by the worker to the satisfaction of the employer if he so requires.

(2) Provided that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of leave.

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

17.—LONG SERVICE LEAVE

The long service leave provisions in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award.

18.—SPECIAL RATES

Where a worker is required to sort foul linen an extra allowance of 22 cents per hour shall be paid whilst the worker is so employed on that type of work.

19.—MIXED FUNCTIONS

(1) A worker engaged on time work for more than half of one day on duties carrying a higher rate than his or her ordinary classification shall be paid the higher rate for such day. If for less than half of one day he or she shall be paid the higher rate for the time so worked. Provided that where a worker is engaged for more than half of a week on higher grade work, the worker shall be paid for the full week at the higher rate of pay.

(2) Where a worker engaged on time work is engaged on higher tasks than he or she is normally employed upon the employer shall keep an accurate record of the time worked by such worker on each class of work. In the absence of an accurate record the worker shall be entitled to the higher rate of pay for the whole of the week.

20.—TRAVELLING TIME

In the event of an employer requiring a worker to travel to any place other than the usual place of employment the worker shall be paid any excess travelling expenses incurred and be paid at ordinary time rates for any excess travelling time involved.

21.—CASUAL WORKER/PERMANENT PART-TIME WORKER

(1) Casual Worker

(a) A casual worker for the purpose of this Award shall mean a worker who is engaged in relieving work or work of a casual nature and who is engaged and paid by the hour and, subject to (d) and (e) of this subclause, (but does not include a worker who could properly be classified) as a full-time or part-time worker.

(i) Provided that from the 31st May 1989 to the 31st May 1990 inclusive the divisor shall be 1/40th of the ordinary rate prescribed in the Award for the class of work performed.

(b) a casual worker shall be paid per hour at the rate of 1/38th of the ordinary rate for the class of work performed for each hour worked plus 20 per cent.

(i) A penalty of 20 per cent of the hourly rate shall be paid to the worker for each hour worked.

(c) A casual worker shall not be entitled to annual leave, sick leave or public holidays.

(d) A casual worker shall not be engaged for periods totalling in excess of eight (8) weeks in any 12 month period without the approval of the Union.

(e) The provisions of (d) of subclause (1) hereof shall not apply to workers engaged for a specific period of time to replace a designated person where the period of that replacement work does not exceed 13 weeks. The period of time for which the replacement worker is engaged together with any other special conditions of employment shall be confirmed in writing at the time of appointment.

(2) Permanent Part-Time Worker

Persons may be employed on a part-time basis subject to the following terms and conditions:

(a) A part-time worker for the purpose of this Award shall mean an employee who is employed on a permanent basis but, owing to the requirements of the job on which such person is employed, the hours of duty are less than 38 hours per week or such worker chooses to accept work for less than 38 hours per week for reasons personal to that worker.

(b) (i) Subject to (ii) and (iii) hereof such permanent part-time worker shall be paid per hour 1/38th of the ordinary weekly rate prescribed in Clause 30.—Wages for the class of work performed for each hour worked and shall be entitled to sick pay, annual leave, long service leave and payment for public holidays

calculated on a pro rata basis in accordance with the hours worked in the performance of such duties relative to 38 hours per week.

- (ii) In lieu of (i) hereof and subject to agreement between the worker and the employer such worker may receive 20% of the ordinary rate in lieu of all entitlements to pro rata annual leave, sick leave and public holidays.
- (iii) Where, for a period not exceeding two months, a permanent part-time worker works an irregular number of hours each week, the employer may pay such worker 20% extra in lieu of any entitlement to pro rata annual leave, sick leave and public holidays.
- (c) Permanent part-time workers shall be employed within the ordinary spread of hours which would be applicable to full-time workers employed in the same classifications provided that where such part-time worker is employed outside the aforesaid ordinary hours, the hourly rate (exclusive of the aforesaid 20% loading, if paid) shall be increased by the appropriate overtime penalty as per the provisions of Clause 12.—Overtime of this Award.
- (d) A permanent part-time worker shall not be employed both on payment by results basis and on payment by time worked in any week basis.
- (e) If employed on a payment for time worked basis, such worker shall be paid for each hour worked at the rate of no less than 1/38th of the minimum weekly wage prescribed by this Award for the class of work performed by them. If employed on the basis of payment by results, such workers shall be paid at the appropriate payment by results rate payable under this Award, but in no case shall any of such workers be paid less than that amount of the prescribed weekly wage in the Award as is proportionate to the time worked by them.
- (f) Public Holidays
A part-time worker shall only be entitled to payment for a public holiday for the number of hours he or she would have otherwise been rostered to work had the day been an ordinary working day for that worker.
- (g) Sick Leave
The total provisions of this Award as regards sick leave shall apply to part-time workers but they shall be paid only on a proportionate basis in accordance with the provisions of Clause 15.—Absence Through Sickness.
- (h) A part-time worker shall not be required to attend for duty more than once on any one day.
- (i) Subject to the provisions of subclause (2) of this Clause, all the provisions of this Award shall apply to permanent part-time workers.

(3) It is a term of this Award that the application of Clause 21.—Casual Worker/Permanent Part-Time Worker during the winter season of 1989 shall be open to review no earlier than November 1989.

22.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.50
Argyle (see subclause 12)	37.50
Balladonia	14.20
Barrow Island	24.40
Boulder	5.90
Broome	23.00
Bullfinch	6.90
Carnarvon	11.70
Cockatoo Island	25.30
Coolgardie	5.90

TOWN	PER WEEK \$
Cue	14.70
Dampier	19.90
Denham	11.70
Derby	24.00
Esperance	4.50
Eucla	16.10
Exmouth	20.60
Fitzroy Crossing	28.90
Goldsworthy	13.30
Halls Creek	32.80
Kalbarri	4.90
Kalgoorlie	5.90
Kambalda	5.90
Karratha	23.60
Koolan Island	25.30
Koolyanobbing	6.90
Kununurra	37.50
Laverton	14.60
Learmonth	20.60
Leinster	14.50
Leonora	14.60
Madura	15.20
Marble Bar	35.70
Meekatharra	12.70
Mt Magnet	15.70
Mundrabilla	15.70
Newman	13.90
Norseman	12.20
Nullagine	35.60
Onslow	24.40
Pannawonica	18.70
Paraburdoo	18.50
Port Hedland	19.80
Ravensthorpe	7.70
Roebourne	27.10
Sandstone	14.50
Shark Bay	11.70
Shay Gap	13.30
Southern Cross	6.90
Telfer	33.20
Teutonic Bore	14.50
Tom Price	18.50
Whim Creek	23.40
Wickham	22.80
Wiluna	14.80
Wittenoom	31.60
Wyndham	35.50

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid 66 ²/₃% of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by 33 ¹/₃%; the difference remaining on 1 January 1989 shall

be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause:

(a) "Dependant" shall mean—

- (i) a spouse or defacto spouse; or
- (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance.

(b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

23.—TIME AND WAGES RECORD

(1) The employer shall provide in each factory, workshop or place where work is being done for him a time and wages book or sheet or records, which shall have correctly recorded in ink or by other means except pencil and in the English language the following particulars:

- (a) The initial and surname and classification or classifications (when engaged on mixed functions) of each worker.
- (b) The date of birth and experience and time work rate of pay of improvers in respect of new workers at the date of engagement.
- (c) The number of hours of ordinary time worked by each worker each day and each week.
- (d) The number of hours of overtime worked by each worker each day and each week.
- (e) The total amount of wages paid to each worker each week.

(f) The actual name of the day and the date of each day of each week and also the name of the day and the date on which each week ends.

(g) All holiday, annual leave, long service leave and sick leave payments.

(2) An authorised person or persons making an inspection shall be entitled to take a copy of entries in a time and wages book or records relating to any suspected breach of this award.

(3) Notwithstanding the foregoing provisions an employer with more than one place of business (whether factory or depot premises) will satisfy the requirements of this clause if the relevant records are kept at the head office only. In such circumstances however, a true copy of the ordinary daily hours of work shall be posted at each other such place of business.

24.—RIGHT OF ENTRY

(1) Any person or persons not to exceed two duly authorised by the Industrial Registrar or Assistant Industrial Registrar in writing (such authorisation shall be terminable at the will of the Industrial Registrar or Assistant Industrial Registrar) shall be allowed to enter the factory, workshop or receiving depot during working hours.

The employer shall in person, or by representatives on his behalf, be entitled to accompany the authorised person or persons during an inspection. Access shall be granted to the wages book or time sheets or records covering all workers, including outdoor workers, in the employ of that employer. The employer shall be advised on all occasions when entry is sought.

Wages books or time sheets, or a true copy thereof, must be kept on the premises at which employees are working and be made available for inspection on demand. Any failure on the part of an employer in this respect shall constitute a breach of the award.

Authorised officials shall not be denied entry to an establishment on the ground that the employer or a nominated representative is not available to grant access at the time entry is sought.

The work and duties of all workers in the establishment and the business of the employer shall be interfered with as little as possible by the authorised person or persons.

(2) An employer shall permit any person authorised by the Registrar or Assistant Registrar in writing to enter from time to time the one or several factories, workshops or receiving depots of that employer during the midday meal to conduct legitimate union business; and once during each month at a time most convenient to an employer during working hours, for the purpose of collecting members' contributions.

Such authorised person shall inform the person-in-charge (a person shall be in charge) of his arrival before entering the factory, workshop or receiving depot. Such official shall have reasonable ingress into the factory, workshop or receiving depot and access to the workers.

25.—GENERAL CONDITIONS

(1) Uniforms:

Where an employer requires a worker to wear a uniform he shall pay for its provision and cleaning.

(2) Tools of Trade:

The employer shall provide all necessary tools for workers in each workshop or factory.

Any tools lost due to neglect on the part of the worker shall be replaced by or paid for by the worker concerned.

26.—PROTECTIVE EQUIPMENT

(1) Where any person is required to work under wet or dirty conditions, suitable protective clothing including footwear, shall be supplied free of charge by the employer to the worker concerned.

(2) Any dispute as to the necessity or suitability of such clothing shall be determined by the Board of Reference constituted under this award.

27.—NOTICE BOARDS

The employer shall make facilities available in a prominent position in his workshop or factory, upon which representatives of the union shall be allowed to post union notices. Any notices so posted shall be countersigned by the representative of the

union and in the absence of a countersignature, may be removed by the union representative or the employer.

28.—BOARD OF REFERENCE

(1) The Commission hereby appoints for the purposes of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to section 48 of the Industrial Arbitration Act, 1979.

(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter which under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

29.—LIBERTY TO APPLY

Liberty is reserved to the union to apply with respect to Accident Pay in the circumstances outlined in the judgment accompanying this award.

30.—WAGES

(1) The minimum weekly rate of wage payable to an adult employee covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder:

	Base Rate	Supplementary Payment	1st & 2nd Safety Net Adjustments	Minimum Rate
	\$	\$	\$	\$
(a) Group Classification				
A Tradesperson Dry Cleaner in charge of machinery maintenance and/or boiler	365.05	52.15	16.00	433.20
B "Invisible" Mender	337.30	48.20	16.00	401.50
B Tailor or Tailoress	337.30	48.20	16.00	401.50
C Presser	306.60	43.80	16.00	366.40
C Receiver and Despatcher in Charge (namely a person in charge of a depot and responsible for the keeping of records and responsible for cash)	306.60	43.80	16.00	366.40
C Cleaner (Operating Dry Cleaning Machine)	306.60	43.80	16.00	366.40
D Repairer (other than Tailor or Tailoress)	306.60	43.80	16.00	366.40
D Spotter	306.60	43.80	16.00	366.40
D Presser (Off-set Press)	306.60	43.80	16.00	366.40
D Hand Ironer	306.60	43.80	16.00	366.40
D Receiver and/or Despatcher	306.60	43.80	16.00	366.40
E Wet Cleaner	299.30	42.80	16.00	358.10
E Steam Air Finisher	299.30	42.80	16.00	358.10
E Examiner of Garments	299.30	42.80	16.00	358.10
E Assembler of Garments	299.30	42.80	16.00	358.10
E Sorter of Garments	299.30	42.80	16.00	358.10
F All other Adult Employees	299.30	42.80	16.00	341.40

Provided that a person employed in any area of operation of this award who is required to be solely accountable for all aspects of a self-contained dry cleaning establishment including the receiving of garments and articles, the cleaning, spotting, pressing, packaging and despatch of garments and articles, the handling of moneys, the keeping of records and the maintenance of the establishment shall be paid at a rate of not less than the rate prescribed in this table for the Tradesperson Dry Cleaner. Provided that in such a case all receivers and despatchers in that establishment shall be paid in accordance with the rates prescribed for Group D of such table.

(b) Laundering Industry:

Classification	Base Rate	Relativity to Tradesperson	1st & 2nd Safety Net Adjustments	Minimum Rate per week
	\$	\$	\$	\$
Laundry Employee—Grade 1	333.75	80%	16.00	\$349.75
Laundry Employee—Grade 2	340.45	85%	16.00	\$356.45
Laundry Employee—Grade 3	367.00	91%	16.00	\$383.00
Laundry Employee—Grade 4	375.30	95%	16.00	\$391.30

Provided that an employee at Grade 1 or Grade 2 who was paid \$354.30 per week as a washing machine operator prior to the introduction of this wages structure shall continue to have their wage maintained at the weekly rate of \$354.30.

(c) (i) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset

to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(ii) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) Junior Employees:

(a) Dry Cleaning and Dyeing Industry

(i) Wages: The minimum rates of wages to be paid to junior employees shall be as follows:

	Percentage of Minimum Rate for Classification E—Sorter of Garments
	%
Under 16 years of age	50
16 years and under 17 years	55
17 years and under 18 years	65
18 years and under 19 years	75
19 years and under 20 years	85
20 years and under 21 years	93

(ii) Proportion of Juniors:

(aa) Juniors may be employed in the following proportion of not more than two for every employee receiving the adult rate.

(bb) Calculation of Proportion: In the calculation of the proportion of the number of employees receiving the adult rate for the purposes of this clause, working proprietors shall be included, but each working proprietor shall be counted only once.

(iii) No person under 18 years shall be employed on a manually operated steam press (other than an off-set silk press) or a manually operated dry cleaning machine.

(iv) Junior employed in a Receiving Depot: Notwithstanding anything hereinbefore contained, any junior working alone and responsible for cash transactions and/or in charge of depot shall be paid not less than the rate prescribed for a junior "19 years and under 20 years" plus an amount of \$4.40 per week.

(b) Laundering Industry:

(i) Wages: The minimum rates of wages to be paid to junior employees shall be as follows:

	Percentage of Minimum Rate for the Classification in which they are Employed
	%
Under 16 years of age	55
16 to 17 years of age	65
17 to 18 years of age	75
18 to 19 years of age	85
19 to 20 years of age	90
20 to 21 years of age	95

(3) Structural Efficiency:

- (a) Arising out of the decision of the 1989 State Wage Case Decision (69 WAIG 2913) and in consideration of the wage increases resulting from the first structural efficiency adjustment payable from the first pay week commencing on or after 29 March 1990, employees are to perform a wider range of duties including work which is incidental to or peripheral to their main tasks or functions.
 - (b) Any changes to the classification system in the award will be based on the results of federal skill audit and trialing. The Union is prepared for the purposes of the second phase and in good faith, to duly consider any specific concerns identified by respondents to the Award and any proposals for trialing specific arrangements aimed at achieving greater flexibility for WA employers.
 - (c) In accordance with the Structural Efficiency Principle the parties are prepared to commit themselves to the:
 - (i) acceptance of classification change and new job specifications;
 - (ii) acceptance in principle that with due consultation between the relevant parties there will be no barriers to opportunity for advancement of employees within the award structure or through access to training;
 - (iii) co-operation in the transition from the old structure to the new structure in an orderly manner.
 - (d) In addition the Union gives the following commitments:
 - (i) preparedness of employees to undertake training associated with wider range of duties;
 - (ii) acceptance by the Union of the broad award framework and relationships established.
- (4) (a) The structural efficiency increases specified below shall be added to existing actual rate of pay/base rates of pay for time employees/payment by results employees respectively and shall not be absorbed into any over award bonus payment.

GROUP	STRUCTURAL EFFICIENCY ADJUSTMENT
	\$
F (all others)	10.00
E (rest of Group E)	12.50
D	12.50
C	12.50
B	15.00
A	15.00

31.—PAYMENT OF WAGES

Each worker shall be paid all wages due during the worker's ordinary working hours and not later than two working days following the termination of the usual working week. Provided, however, that where at least 50 per cent of the employees in a factory, workshop or section thereof agree and with the consent in writing of the Secretary of the Union, payment of all wages due may be made in the form a cash transfer to the employee's nominated account. Such transfer shall occur not later than during the forenoon of the second working day following the termination of the working week.

32.—MATERNITY LEAVE

(1) For the purposes of this Clause:

- (a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.
 - (b) Maternity leave shall mean unpaid maternity leave.
- (2) Eligibility for Maternity Leave

A worker 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.

(3) Period of Leave and Commencement of Leave

- (a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) A worker shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (c) A worker shall give not less than four 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.
- (d) A worker shall not be in breach of this award as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(4) 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 worker make it inadvisable for the worker to continue at her present work, the worker 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 worker may, or the employer may require the worker 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 (7), (8), (9) and (10) hereof.

(5) Variation of Period of Maternity Leave

- (a) 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 worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(6) Cancellation of Maternity Leave

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.
- (b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be the right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(7) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
 - (i) 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
 - (ii) 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.
- (b) Where a worker 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.

- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.
- (d) A worker 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 a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker 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.

(8) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks:

- (a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(9) 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 a worker but shall not be taken into account in calculating the period of service for any purpose of the award.

(10) Termination of Employment

- (a) A worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (b) An employer shall not terminate the employment of a worker 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.

(11) Return to Work After Maternity Leave

- (a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), 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 worker 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 wages to that of her former position.

(12) Replacement employees

- (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.
- (b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.
- (c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker 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 worker who is being replaced.

- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.
- (e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

33.—SHIFT WORK

(1) Shifts may be worked by adult workers at such hours as may be agreed upon by the employer and the employees and assented to by the Union in writing.

(2) A worker employed on shift work other than day shift shall be paid 15 per cent more than the prescribed rate of pay for the classification.

34.—SUPERANNUATION

(1) Definitions:

- (a) "Approved Superannuation Fund" shall mean any superannuation fund which complies with the Australian Government's Operational Standards for Occupational Superannuation.
- (b) "Ordinary time earnings" shall mean the salary, wage or other remuneration regularly received by the employee in respect of the time worked in ordinary hours and shall include shift work penalties, payments which are made for the purpose of district or location allowances or any other rate paid for all purposes of the award to which the employee is entitled for ordinary hours of work. Provided that "ordinary time earnings" shall not include any payment which is for vehicle allowances, fares or travelling time allowances (including payments made for travelling related to distant work), commission or payment by way of bonuses which do not form part of the regular wage.
- (c) "Preferred Fund" for the purposes of this clause shall mean Westscheme.

(2) Employer Contributions:

- (a) Subject to this clause, an employer shall contribute 3% of ordinary time earnings per eligible employee into Westscheme or an exempted fund as allowed by subclause (5) of this clause.
- (b) Subject to the rules of an approved superannuation fund, employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer.
- (c) (i) No contributions shall be made for periods of unpaid leave, or unauthorised absences in excess of 38 ordinary hours or for periods of workers' compensation in excess of 52 weeks.
- (ii) No contributions shall be made in respect of annual leave paid out on termination of any other payments on terminations.
- (d) Employers shall be required to make contributions on behalf of every employee whose employment is regulated by this Award after the employee has completed eight weeks' continuous service, provided that such contributions shall then be calculated from date of engagement of the employee by the employer.

(3) Fund Membership:

Contributions in accordance with subclause (2)—Employer Contributions of this clause shall be calculated by the employer on behalf of each employee from the date the employee commences employment, unless the employee fails to return a completed application to join the fund and the employer has complied with the following:

- (a) the employer shall provide the employee with an application to join the fund and documentation explaining the fund within one week of employment commencing.
- (b) from two weeks following the employer's advice pursuant to paragraph (a) of this subclause should the employee not have returned the completed form

to the employer, the employer, subject to (c) hereof, shall be under no obligation to make superannuation payments of that employee.

- (c) provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form the employer shall make contributions on behalf of that employee from the date of return of the signed application form.

(4) Part-time employees shall not be entitled to receive the employer contribution mentioned in subclause (2)—Employer Contributions of this clause unless they receive on average a minimum of \$100.00 per week within any calendar month before taxation and other deduction.

(5) Exemptions:

Exemptions from the requirement of this clause shall apply to an employer who at the date of operation of this clause:

- (a) was contributing to an approved fund, in accordance with an Order of an industrial tribunal; or
- (b) was contributing to an approved fund in accordance with an Order or Award of an industrial tribunal, for a majority of employees and makes payment for employees covered by this award in accordance with that Order or Award; or
- (c) was not contributing to an approved superannuation fund for employees covered by this award; and
- (i) written notice of the proposed alternative approved superannuation fund is given to the Union; and
- (ii) contributions and benefits of the alternative approved superannuation fund are no less than those provided by this clause and the preferred fund; and
- (iii) within one month of the notice prescribed in paragraph (a) being given, the Union has not challenged the suitability of the alternative approved fund by notifying the Western Australian Industrial Relations Commission of a dispute.

35.—AWARD MODERNISATION AND ENTERPRISE CONSULTATION

(1) The parties to this award are committed to co-operating positively to increase the efficiency and productivity of the industry to enhance the career opportunities and job security of employees in the industry.

(2) At each plant or enterprise a consultative mechanism may be established by the employer or shall be established upon request by the employees or their Union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of that plant or enterprise.

(3) Where a consultative committee is established, it will be free to address any matter which is consistent with the objectives of subclause (1) of this clause.

(4) Discussions that take place will have regard to the following requirements:

- (a) the changes sought shall not affect provisions reflecting State standards;
- (b) the majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;
- (c) any agreement shall not, in the context of a total package, provide for a set of conditions of a lesser standard than that provided by the award and no employee shall have a lesser income as a result of the conditions provided for in such agreement;
- (d) the Union must be a party to any agreement which affects the wages and/or conditions of employment of employees;
- (e) the Union shall not unreasonably oppose any agreement;
- (f) any agreement relating to award matters shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency;

- (g) if agreement cannot be reached on a particular issue, then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

SCHEDULE A—RESPONDENTS

Eric Dry Cleaners
Burt Street
Boulder

Valiant Dry Cleaners
Frederick Street
Albany

North Star Steam Laundry
and Dry Cleaners
Edgar Street
Port Hedland

Busselton Dry Cleaners
43 Nuove Street
Busselton

Four Seasons Dry Cleaners
Katanning

Eimes Dry Cleaners and Laundry
Norseman Road
Esperance

Alsco Linen Service Pty Ltd
33-37 Canvale Road
Canningvale
[As at 3 March 1993—not operating in Dry Cleaning Industry]

SCHEDULE B—PARTIES TO AWARD

Eric Dry Cleaners
Burt Street
Boulder WA 6432

Valiant Dry Cleaners
Frederick Street
Albany WA 6330

North Star Steam Laundry
and Dry Cleaners
Edgar Street
Port Hedland WA 6721

Busselton Dry Cleaners
43 Nuove Street
Busselton WA 6280

Four Seasons Dry Cleaners
Katanning WA 6317

Eimes Dry Cleaners and Laundry
Norseman Road
Esperance WA 6450

Alsco Linen Service Pty Ltd
33-37 Canvale Road
Canningvale WA 6155

Federated Miscellaneous Workers' Union of Australia,
WA Branch
61 Thomas Street
Subiaco WA 6008

Dated at Perth this 24th day of July, 1979.

ELECTRICAL, ENGINEERING AND BUILDING TRADES (WEST AUSTRALIAN NEWSPAPERS LIMITED) AWARD, 1988.
Award No. A17 of 1985.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 15th day of January, 1996

J. CARRIGG,
Registrar.

Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988

1.—TITLE

This Award shall be known as the Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award, 1988.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
 - 1A. Statement of Principles December 1994
 2. Arrangement
 - 2A. State Wage Principles—June 1991
 3. Area and Scope
 4. Term
 5. Definitions
 6. Contract of Service
 7. Apprentices
 8. Hours of Duty
 9. Shift Work Penalties
 10. Overtime
 11. Higher Duties
 12. Annual Leave
 13. Holidays
 14. Sick Leave
 15. Make Up Pay on Workers Compensation
 16. Bereavement Leave
 17. Jury Service
 18. Payment of Wages
 19. Fares and Travelling
 20. Distant Work
 21. Special Rates and Provisions
 22. Representatives Interviewing Employees
 23. Shop Stewards
 24. Trade Union Training
 25. Maternity Leave
 26. Long Service Leave
 27. Liberty to Apply
 28. Training
 29. Part-Time Work
 30. Time and Wages Record
 31. Redundancy
- Appendix 1—Classification Structure and Definitions
First Schedule—Wages
Second Schedule—Parties to Order

2A.—STATE WAGE PRINCIPLES—JUNE 1991

It is a term of this award, arising from the decision of the Western Australian Industrial Relations Commission in the State Wage Case on 17 June 1991, that the unions will not pursue, prior to 14 November 1991, any extra claims, award or over-award, except where consistent with the Principles determined by the decision.

3.—AREA AND SCOPE

This Award shall apply to employees of West Australian Newspapers Limited engaged in engineering or electrical

maintenance, installation or construction work, or building maintenance and construction work in the State of Western Australia.

4.—TERM

This Award shall be for a term of three years as from the beginning of the first pay period commencing on or after the 15th day of July, 1985 except where otherwise provided in this Award.

5.—DEFINITIONS

In this Award unless the contrary intention appears—

- (1) "Commission" shall mean the Western Australian Industrial Relations Commission.
- (2) "Leading Hand" shall mean an employee who is placed in charge of no less than three other employees.
- (3) "Electrical Fitter" means an employee engaged in making, repairing, altering, assembling, testing, winding, or wiring electrical machines, instruments, meters, or other apparatus, other than wires leading thereto, but an employee shall not be deemed to be an electrical fitter—
 - (a) solely by reason of the fact that this work consists of placing electrodes in "Neon" tubes sealed by him;
 - or
 - (b) if he is employed as a meter tester.
- (4) "Electrical Installer" means an employee engaged in the installation of electric lighting, electric meters, bells, telephones or motors and apparatus used in connection therewith and includes a worker engaged in running, repairing or testing of conductors used for lighting, heating or power purposes but does not include an employee who is a linesman or a meter fixer.
- (5) "Trades Assistant" shall mean an employee, other than a tradesman or apprentice, who assists a tradesman in the carrying out of his/her duties.
- (6) "Electrician (Special Class)" shall mean, subject to paragraph (c) of this subclause an electrical fitter or electrical installer who—
 - (a) (i) has satisfactorily completed a prescribed post trade course in industrial electronics; or
 - (ii) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under subparagraph (i) of this paragraph;
 - (b) (i) is engaged on work on or in connection with complicated intricate circuitry, which work requires for its performance the standard of knowledge referred to in paragraph (a) of this subclause; and
 - (ii) is able, where necessary and practicable, to perform such work without supervision and to examine, diagnose and modify systems comprising interconnected circuits,

but does not include such an employee unless the work on which he/she is engaged requires for its performance knowledge in excess of that gained by the satisfactory completion of the appropriate Technical College Trade Course.
- (c) For the purpose of this award an employee shall be deemed to be an Electrician (Special Class) only for the time during which he/she meets the foregoing conditions, unless—
 - (i) that time exceeds sixteen hours per week; or
 - (ii) in the opinion of the employer or, in the event of disagreement, in the opinion of the Board of Reference that time

- is likely during the course of his employment to exceed sixteen hours per week on average,
- in which case he/she shall be classified as Electrician (Special Class) for as long as his/her employment continues on either of those bases.
- (d) In the event of disagreement about the implementation of this Electrician (Special Class) provision, a Board of Reference shall determine the matter.
- (e) For the purpose of this definition the following courses are deemed to be prescribed post trade courses in industrial electronics—
- (i) Post Trade Industrial Electronics Course of the N.S.W. Department of Technical Education.
 - (ii) The Industrial Electronics Course (Grades 1 and 2) as approved by the Education Department of Victoria.
 - (iii) The Industrial Electronics Course of the South Australian School of Electrical Technology.
 - (iv) Industrial Electronics (Course "C") of Department of Education, Queensland.
 - (v) The Industrial Electronics of the Technical Education Department of Tasmania.
 - (vi) The Certificate in Industrial Electronics of the Technical Education Division of the Education Department of Western Australia.
- (7) "Industrial Electronic Tradesman" shall mean an adult employee working at a level beyond that of electrician special class and who is mainly engaged in applying his knowledge and skills to the tasks of installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and diagnosing of various forms of machinery and equipment which are electronically controlled by complex digital circuitry. The application of this skill and principles of the systems and equipment on which the tradesman is required to carry out his tasks. To be classified as an industrial electronic tradesman, a tradesman must be capable of—
- (a) Maintaining and repairing multi-function printed circuitry using circuit diagrams and test equipment.
 - (b) Working under minimum supervision and technical guidance.
 - (c) Providing technical guidance within the scope of the work described in the definition.
 - (d) Preparing reports of a technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.
- (8) Building Tradesperson means an employee substantially engaged as a carpenter and joiner tradesperson, or painter tradesperson and who is required to carry out work in connection with building maintenance and construction within the employer's premises.
- (9) "Engineering Tradesperson—Special Class" means, subject to paragraph (c) of this subclause, an engineering tradesperson who—
- (a)
 - (i) is engaged in work on, or in connection with, fluid power circuitry, which work requires for its performance in the standard of knowledge and skills referred to in sub-paragraphs (iii) and (iv) of this paragraph; and
 - (ii) is able, where necessary and practicable, to perform such work without supervision and to examine, diagnose and modify systems comprising interconnected fluid power circuits; and
 - (iii) has satisfactorily completed the following TAFE units—

Course	Syllabus No.
Industrial Hydraulics 1	85007
and	
Industrial Pneumatics 1	85009
and either—	
Industrial Hydraulics 2	85008
and	
Hydraulic Component Repair	85012
or	
Pneumatic System Maintenance (Industrial)	85010
and	
Pneumatic System Control (Industrial)	85014;
or	
 - (iv) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under sub-paragraph (iii) of this paragraph or, in the case of a dispute, has been satisfactorily assessed and/or examined pursuant to the Fluid Power Exemptions Course detailed in paragraph (d) of this subclause;

but does not include such an employee unless the work on which the employee is engaged requires for its performance knowledge in excess of that gained by the satisfactory completion of the appropriate Technical College Trade Course.
- (b) For the purpose of this award an employee shall be deemed to be an Engineering Tradesperson—Special Class only for the time during which the employee meets the foregoing conditions, unless—
- (i) that time exceeds 16 hours per week; or
 - (ii) in the opinion of his/her employer, or in the event of disagreement in the opinion of the Board of Reference, that time is likely, during the course of employment, to exceed 16 hours per week on average,

in which case the employee shall be classified as Engineering Tradesperson—Special Class for as long as the employment continues on either of those bases.
- (c) For the purpose of this definition, employees who have completed courses in any other state shall, in the event of a dispute, submit their credentials for assessment by TAFE or be assessed in accordance with subparagraph (iv) of paragraph (a) of this subclause.
- (d) Fluid Power Exemptions Course:
- Course exemptions for Fluid Power Certificate Units can only be granted on completion of the TAFE divisional exam. However, class attendance exemptions may be granted for the following reasons—
- (i) Attending Short Vocational course (30 hours). This will exempt the student from the practical component of the course. However, the theory component can be completed by a 24-hour

correspondence course with TAFE External Studies.

- (ii) Students claiming exemption from the practical course requirements, due to their industrial skills, could obtain an exemption through a documented case presented by their employer. Full course accreditation can then be obtained by completing the 24-hour correspondence course with TAFE External Studies.
 - (iii) Students without documented evidence may obtain a practical exemption through five hours of skill testing. These students, if successful, may then enter the correspondence mode to obtain full unit accreditation.
 - (iv) Students who have claimed subject exemptions in the certificate of workshop technology can only gain an automatic exemption from the introductory units on full completion of the certificate.
- (e) For the purposes of this definition, 'fluid power circuitry' involves Industrial Hydraulics and/or Industrial Pneumatics.
- (10) "Building Tradesperson—Multi-skilled Carpenter" means an employee who has been employed by the Company as a carpenter for a period of more than two years and is able to perform the following duties in addition to the normal trades skills of a carpenter as recognised by the 'Australian Standard Classification of Occupations Dictionary'.

Duties

- Affixing of Roof Sheeting
 - Marking Out
 - Manufacture and Erection of Signs
 - Bricklaying
 - Concrete Work
 - Fixing of Ceramic Tiles
 - Basic Plumbing
 - Installation and Maintenance of Reticulation
 - Driving of Vehicles as required necessitating the holding of 'B' class licence
 - External Cleaning of Building
 - Installation of Christmas Decorations
 - Installation of Insulation
 - Plastic and Perspex Cutting and Polishing
 - Laying of Carpet and Vinyl Tiles
 - Mounting of all forms of Art Work
- (11) "Building Tradesperson—Carpenter Special Class" means an employee who has satisfactorily completed or has gained through practical on the job experience, as accredited by TAFE, the Advanced Certificate in Furniture Studies.
- (12) Building Tradesperson—Multi-skilled Painter means an employee who has been employed by the company as a painter for a period of more than two years and is able to perform the following duties in addition to the normal trades skills of a painter as recognized by the 'Australian Standard Classification of Occupations Dictionary'.

Duties

- Industrial Spraypainting
 - Signwriting
 - Painting of Motor Vessels
 - Application of floor coatings (including two-pack preparations)
- (13) Building Tradesperson—Painter Special Class means an employee who has satisfactorily completed or has gained through on the job experience, as accredited by TAFE, the Painters Registration Certificate or

other relevant post trade course as agreed between the OPDU and W.A. Newspapers.

Duties

- Glazing
 - Plastering
 - Bricklaying
 - Brickpaving
 - Concreting
 - Grouting
 - Tile laying—ceramic and vinyl
 - Erection and Removal of Partitions
 - Removal of office furniture
 - Driving of forklifts and trucks requiring the driver to possess a 'B' class license.
- (14) "The employer" shall mean West Australian Newspapers Limited.
- (15) "Monday to Friday" shall mean 12 midnight Sunday to 12 midnight Friday of the same week.
- (16) "Saturday" shall mean 12 midnight Friday to 12 midnight Saturday (the following day).
- (17) "Sunday" shall mean 12 midnight Saturday to 12 midnight Sunday (the following day).
- (18) "Union" shall mean the Electrical Trades Union of Workers (Western Australian Branch), Perth, the Amalgamated Metal Workers; and Shipwrights' Union of Western Australia and the Australasian Society of Engineers, Moulders and Foundry Workers' Industrial Union of Workers, Western Australian Branch, and The Construction, Mining and Energy Workers' Union of Australia, Western Australian Branch and the Operative Painters' and Decorators' Union of Australia, Western Australian Branch, Union of Workers.

6.—CONTRACT OF SERVICE

(1) A contract of service to which this award applies may be terminated in accordance with the provisions of this clause and not otherwise but does not operate so as to prevent any party to a contract from giving a greater period of notice than is hereinafter prescribed nor to affect the employer's right to dismiss an employee without notice for misconduct and an employee so dismissed shall be paid wages for the time worked up to the time of dismissal only.

(2) Subject to the provisions of this clause, a party to a contract of service may, on any day give to the other party the appropriate period of notice of termination of the contract prescribed in subclause (5) of this clause and the contract terminates when that period expires.

(3) In lieu of giving the notice referred to in subclause (2) of this clause an employer may pay the employee concerned his ordinary wages for the period of notice to which he would otherwise be entitled.

(4) (a) Where an employee leaves his employment—

(i) without giving the notice referred to in subclause (2) of this clause; or

(ii) having given such notice, before the notice expires, he forfeits his entitlement to any moneys owing to him under this award except to the extent that those moneys exceed his ordinary wages for the period of notice which should have been given.

(b) In a case to which paragraph (a) of this subclause applies—

(i) the contract of service shall, for the purposes of this award, be deemed to have terminated at the time of which the employee was last ready, willing and available for work during ordinary working hours under the contract; and

(ii) the provisions of subclause (2) of this clause shall be deemed to have been complied with if the employee pays to the employer, whether by forfeiture or otherwise, an amount equivalent to the employee's ordinary wages for the period of notice which should have been given.

(5) The period of notice referred to in subclause (2) of this clause is—

(a) in the case of a casual employee, one hour;

(b) in any other case—

- (i) during the first month of employment under the contract, one day; and
- (ii) after the first month of such employment, one week.

(6) (a) On the first day of engagement an employee shall be notified by the employer or by the employer's representative whether the duration of his employment is expected to exceed one month and, if he is hired as a casual employee, he shall be advised accordingly.

(b) An employee shall, for the purposes of this award, be deemed to be a casual employee—

- (i) if the expected duration of the employment is less than one month; or
- (ii) if the notification referred to in paragraph (a) of this subclause is not given and the employee is dismissed though no fault of his own within one month of commencing employment.

(7) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself for duty, except when such absence from duty is due to illness and comes within the provisions of Clause 14.—Sick Leave of this Award, or such absence is on account of holidays to which the employee is entitled under the provisions of this Award.

(8) (a) The employer is entitled to deduct payment for any day upon which an employee (including an apprentice) cannot be usefully employed because of a strike by any of the unions party to this Award, or by any other association or union.

(b) The provisions of paragraph (a) of this subclause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union or unions concerned so agree or, in the event of disagreement, the Board of Reference so determines.

(c) Where the stoppage of work has resulted from a breakdown of the employer's machinery the Board of Reference, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and endeavours made by the employer to repair the breakdown.

7.—APPRENTICES

(1) Apprentices may be taken in the ratio of one apprentice to every two tradespersons or part thereof, and shall not be taken in excess of that ratio unless—

- (a) the respective union party to this Award agrees, or—
- (b) the Commission so determines.

(2) The following applies to adult apprentices—

- (a) An adult apprentice means a person of 21 years of age or over at the time of entering into an indenture into one of the trades as mentioned in this Award.
- (b) Where a person was employed by the employer immediately prior to becoming an adult apprentice with the employer, such a person shall not suffer a reduction in their actual rate of pay by virtue of becoming indentured.

8.—HOURS OF DUTY

(1) The ordinary hours of work in any week shall consist of 38 to be worked in not more than five shifts of not more than 10 hours' duration, unless otherwise agreed by the parties.

(2) (a) Day shifts shall be worked between 6.00 a.m. and 6.00 p.m.

(b) Night shifts shall be worked between 6.00 p.m. and 6.00 a.m.

(c) Intermediate shifts are those which include hours of both day and night shift.

(d) The ordinary hours in any shift shall be consecutive except for a half hour unpaid meal break on day shift. A half hour paid meal break shall be provided within the hours worked on the afternoon and night shifts, and all shifts on a Saturday and Sunday.

(e) In the work room of each section the roster of daily hours for that section shall be prominently displayed and subject to paragraph (f) of this subclause shall only be altered—

- (i) by agreement between the employer and the union; or
- (ii) by the employer after one week's notice of the intended alteration.

(3) (a) Notwithstanding the provisions of subclauses (1) and (2) above, shifts may be arranged of up to 12 hours per shift. The working of such shifts shall be subject to agreement between the employer and the majority of employees in the section or sections concerned.

(b) In the event that it is agreed that ordinary hours will be 12 on any day, such hours shall be worked subject to the following—

- (i) the employer and employees concerned be guided by the Occupational Health and Safety provisions of the ACTU Code of Conduct on 12 hour shifts (as exhibited in the Western Australian Industrial Relations Commission on 11 April 1990 in Matters No. 478, 479 and 483 of 1990);
- (ii) proper health monitoring procedures being introduced;
- (iii) suitable roster arrangements being made; and
- (iv) proper supervision being provided.

(c) Subject to the provisions of paragraphs (a) and (b) hereof, 12 hour shifts may be worked provided that the employer has given the relevant union or unions concerned notice in writing that such shifts are to be worked.

(d) Where, due to holidays, sickness or the occurrence of special circumstances which could not reasonably have been foreseen, it is, in the opinion of the employer, necessary to alter any roster, that roster may be varied by notifying the employees concerned not later than the day on which that alteration is to take effect.

9.—SHIFT WORK PENALTIES

(1) An employee working an intermediate or night shift shall receive a loading of 15% of the total rate of pay for that employee for each shift worked as provided in subclause (1) of First Schedule—Wages, of the Award.

(2) For all rostered work performed between midnight Friday and midnight Sunday a penalty of 25% of the all purpose rate for the classification shall be paid. The penalty payment shall be calculated separately and will not apply to the calculation of overtime.

(3) Where an employee is rostered to work an intermediate or night shift on both a Saturday and Sunday in any weekend he/she shall be paid the full night shift loading for the week.

(4) For the purposes of this subclause only, a "calendar" week is defined as being Sunday through to Saturday inclusive.

Where an employee works both the Saturday and Sunday in a calendar week, and one of those shifts is an intermediate or night shift, the employee shall receive the full night shift loading for that week.

10.—OVERTIME

(1) Subject to the provisions of this clause, the aggregate of time worked by an employee before and after his rostered shift shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(2) Double time shall be paid—

- (a) for time worked by an employee on a Saturday or Sunday on which he is not rostered for work; and
- (b) for the time worked by an employee on a Sunday before or after a shift for which he is rostered.

but the provisions of this subclause do not apply—

- (c) to overtime which, except for meal breaks, is continuous with a rostered Saturday shift; or
- (d) to time worked on a rostered day off, Monday to Friday when payment shall be time and one half for the first two hours and double time thereafter.

(3) Overtime shall be computed to the nearest fifteen minutes. If, in any period of fifteen minutes, eight minutes or more

are worked the employee shall be deemed to have worked for the whole of that fifteen minute period.

(4) Day, night and intermediate shift employees shall be paid at day, night and intermediate overtime rates respectively.

(5) An employee who is called in to work overtime on a day on which he is rostered for work shall, in addition to payment for the time worked, be paid two hours pay at ordinary rates, but the provisions of this subclause do not apply—

- (a) if the employee has been notified, before leaving work on his previous shift that he will be required for such overtime; or
- (b) if such overtime commences within one hour of his rostered starting time on that day.

(6) Where an employee is entitled to a meal break pursuant to subclause (13) of this clause; and

- (a) He/she has worked two hours or more of overtime immediately before any intermediate or night shift or immediately after a day shift, such employee will receive at least a 30 minute unpaid meal break and be paid meal money of \$6.10.
- (b) where an employee works overtime that is continuous with his normal rostered shift and he works two hours or more overtime without a meal break, he will receive a 30 minute meal break which will be paid for at the appropriate overtime rate.

(7) Where, as a result of working overtime, an employee finishes work at a time when his usual means of conveyance home is not available, he shall be conveyed home without delay in a suitable manner and at his employer's expense, but this subclause does not apply to an employee who is employed regularly on night or intermediate shift producing a daily or weekly newspaper.

(8) (a) The employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(b) No union or association party to this Award, or employee or employees covered by this Award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.

(9) (a) An employee who is required to work overtime on a day on which he is not rostered for work shall be paid a minimum of four hours pay at the prescribed overtime rate.

(b) An employee called back to duty with or without prior notice outside the hours of the rostered shift shall be paid—

- (i) a minimum of three hours at the appropriate overtime rate Monday to Friday;
- (ii) a minimum of four hours at the appropriate overtime rate on a Saturday or Sunday;

irrespective of the time actually worked.

(10) When an employee is required to work overtime on a day which he is not rostered for work, an employee shall not be required to work for more than five hours without a meal break. Such meal break shall be not less than thirty minutes and shall be paid for at overtime rates.

(11) Subject to the provisions of subclause (12) of this clause the time to be allowed for meal breaks shall be mutually arranged between the employer and the union or in default of agreement determined by the Commission.

(12) Not less than thirty minutes and not more than one hour shall be allowed for a meal break.

(13) An employee shall not be required to work for more than five hours without a meal break.

(14) Meal breaks shall be arranged by the person in charge of the section at a time which will, in his opinion, best suit the exigencies of the work.

(15) Notwithstanding the provisions of subclause (3) hereof, where an edition is obviously running late, and where employees employed in accordance with this Award will be required to continue working, to complete the print run of that edition, employees shall be paid one (1) hour at overtime rates where eight (8) minutes or more of overtime is worked in each hour of overtime. This provision only applies to the guaranteed completion of press run.

(16) An employee who has worked overtime shall be informed by the employer that he/she is entitled to and shall be granted a break of at least eight (8) hours between the time of finishing work and the time when he/she next commences work, and no deductions shall be made from the employee's pay because of any time lost by reason of such break. Where the employee is required by the employer to work before he/she has completed the break of eight (8) hours the employee shall be paid double time for all time worked by the employee until the employee has had a break of at least eight (8) hours.

11.—HIGHER DUTIES

Except where such higher duties are performed as part of the employee's training, an employee who, during any shift is engaged in duties carrying a higher rate than the employee's usual classification shall be paid at the higher rate—

- (1) for the full shift if employed on such duties for more than two hours in any shift; or
- (2) for the hours actually worked if employed on such duties for less than two hours in any shift.

12.—ANNUAL LEAVE

(1) Subject to the provisions of this clause each employee shall be allowed six weeks and two days leave on full pay each year in respect of each twelve months of continuous service.

(2) Annual leave rights accrue on the 31st December of each year and in the case of any employee who joins the employer's service during the year annual leave shall be adjusted to that date.

(3) An employee whose employment ends after three months service but before he has completed twelve months service is entitled to pro rata annual leave based on completed weeks of service.

(4) One day shall be added to an employee's annual leave for any holiday referred to in Clause 13.—Holidays of this award which occurs during his leave.

(5) By agreement between an employee and the employer annual leave may be taken in two periods neither of which shall be less than one week.

(6) Existing practices concerning the rotation and taking of annual leave shall continue. Any dispute concerning the operation of this subclause may be referred to the Commission.

(7) For the purposes of this clause, "full pay", with respect to any employee, means—

- (a) the rate prescribed in this order for his regular classification;
- (b) any personal margin ordinarily paid to him;
- (c) where, during the period in which his annual leave is accrued, he has been employed for more than twenty shifts on a higher classification—an additional amount proportionate to the number of such shifts;
- (d) where, during the period in which his annual leave accrued, he was employed on night or intermediate shifts—night or intermediate work loading proportionate to the number of such shifts; and
- (e) where, during the period in which his annual leave accrued he was entitled to weekend penalties an additional amount proportionate to such penalties;
- (f) a loading of twenty per cent of the amount arrived at by the application of the preceding paragraphs of this subclause.

(8) The provisions of this clause do not apply—

- (a) to casual employees; or
- (b) to any employee who is dismissed for serious or wilful misconduct.

13.—HOLIDAYS

(1) Subject to the provisions of this clause the following days shall be observed as holidays, without loss of pay, namely—

- (a) one day at Christmas and one day at Easter; and
- (b) any special day gazetted or proclaimed as a special holiday.

For the purpose of this subclause "one day" shall mean the rostered shift of the employee on that day or one fifth of the weekly hours as prescribed in Clause 8.—Hours of Duty of this award.

(2) Where an employee is required to work on any of the days referred to in subclause (1) of this clause he shall, in addition to any payment to which he is entitled by virtue of that subclause, be paid—

- (a) double time for all time worked on any day referred to in paragraph (a) of that subclause; and
- (b) ordinary time for all time worked on any day referred to in paragraph (b) of that subclause.

(3) Where an employee's rostered shift off falls on a day observed as a holiday pursuant to subclause (1) of this clause, he shall—

- (a) be granted the corresponding shift off on the day before or the day after the holiday; or
- (b) be granted the corresponding shift off on some other day agreed between him and the employer; or
- (c) have a day added to his annual leave, but the provisions of paragraphs (b) and (c) of this subclause only apply where compliance with paragraph (a) of this subclause would not enable the employer to maintain a working balance of staff.

14.—SICK LEAVE

(1) Subject to the provisions of this clause, an employee who is absent from duty due to personal sickness is entitled to be paid sick leave as hereinafter prescribed.

(2) Without limiting the operation of subclause (1) of this clause, an employee shall be deemed to be absent from duty due to personal sickness when he leaves work during a rostered shift for examination or treatment by a medical practitioner, physiotherapist, dentist or chiropractor but if and only if—

- (a) his absence for that purpose is approved by the employer; and
- (b) he satisfies the employer that such examination or treatment—
 - (i) is necessary for the cure or relief of personal sickness; and
 - (ii) is not available to him during his own time; or
 - (iii) is so urgently necessary as to justify his absence from work.

(3) In each calendar year an employee with not less than six months continuous service is entitled to paid sick leave on the following basis—

- (a) full pay for the first twenty working days;
- (b) half pay for the second twenty working days;
- (c) quarter pay for the third twenty working days;

(4) (a) Where, in any year an employee is allowed, as sick leave on full pay, less than the period prescribed in paragraph (a) of subclause (3) of this clause, one-half of the unused portion of such sick leave shall be carried forward as accumulated sick leave (full pay) and shall be available to the employee for a period of five years from the end of the year in which it accrued.

(b) Accumulated sick leave (full pay) shall rank immediately after the entitlement prescribed in paragraph (a) of subclause (3) of this clause.

(c) The number of days accumulated sick leave (full pay) available to the employee at any time shall be calculated to the nearest whole number.

(5) An employee with more than three but less than six months continuous service is entitled to paid sick leave on the following basis—

- (a) full pay for the first ten working days;
- (b) half pay for the second ten working days;
- (c) quarter pay for the third ten working days.

(6) An employee with less than three months continuous service is entitled to paid sick leave on the basis of one day's pay for each completed month of service.

(7) Any two or more periods of absence through sickness in each calendar year of employment shall be aggregated for the computation of sick pay.

(8) An employee who, through sickness or injury, is unable to attend for duty shall notify the employer accordingly—

- (a) not later than two hours before the starting time of his rostered shift if he is on night shift; and
- (b) not later than the starting time of his rostered shift if he is on day or intermediate shift,

and if, without reasonable cause he fails so to do he forfeits his entitlement to paid sick leave.

(9) An employee who, after two consecutive days absence, is unable to return to work, shall notify the employer of the probable duration of his absence and if, without reasonable cause, he fails so to do he forfeits his entitlement to paid sick leave.

(10) An employee shall produce a medical certificate:

- (a) If he is absent for more than two consecutive days; or
- (b) for any absence occurring after he has in any calendar year been absent on paid sick leave for more than four days not covered by a medical certificate;

if without reasonable cause he fails so to do within twenty-four hours of resuming work, that period of sick leave shall be without pay.

(11) The employer may, at his own expense, send a doctor to examine an employee to whom subclause (9) of this clause applies and if the employee refuses to be examined by that doctor and refuses to name his attending doctor he shall not be entitled to the benefits of this clause.

(12) An employee is not entitled to the benefits of this clause in respect of any absence which is occasioned by his engaging in secondary employment or dangerous hobbies or pastimes.

(13) An employee is not entitled to the benefits of this clause in respect of any absence through sickness occasioned by his engaging in sporting activities unless he produces a doctor's certificate to the effect that the sickness was the result of an injury occurring immediately prior to the absence.

(14) An employee who has a statutory or common law right to claim damages or compensation (other than Workers' Compensation) in respect of any absence through sickness is not entitled to the benefits of this clause.

(15) The provisions of this clause do not apply—

- (a) to casual employees; or
- (b) in respect of any absence on Workers' Compensation.

15.—MAKE UP PAY ON WORKERS COMPENSATION

When an employee is incapacitated through an accident arising out of or in the course of his employment, such time (covered by a medical certificate) as he is absent from duty as a result of the injury shall be paid for up to a maximum period of twenty-six weeks at the rate being received by the employee at the time, less the sum received under the compulsory insurance provided for under the existing Workers' Compensation and Assistance Act, provided that the employer's liability under this clause ceases when no payments are being made under such compulsory insurance. After the expiration of twenty-six weeks an employee, if still incapacitated, shall receive only the sum provided for under the existing Workers' Compensation and Assistance Act.

16.—BEREAVEMENT LEAVE

(1) Upon production of satisfactory evidence of the death of an employee's husband, wife, father, mother, brother, sister, or child, mother-in-law, father-in-law, an employee shall be entitled to—

- (a) Two days leave without loss of pay whenever the death occurs in Australia.
- (b) Two days leave without loss of pay whenever the death occurs outside of Australia and the worker travels offshore.
- (c) One days leave without loss of pay whenever the death occurs outside of Australia and the employee does not travel as in paragraph (b) of this subclause.

- (d) For the purposes of this clause the words husband and wife shall include defacto husband or wife and the words father and mother shall include foster father or mother and step father or mother.

(2) In cases of the death of a mother-in-law or father-in-law, the entitlement of bereavement leave shall be a maximum of one day only.

17.—JURY SERVICE

(1) An employee required to attend for jury service during his ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his attendance for such jury service and the amount of wage he would have received in respect of the ordinary time he would have worked had he not been on jury service.

(2) The employee shall notify his employer as soon as possible of the date on which he is required to attend for jury service. Further the employer shall provide the employer with proof of his attendance, the duration of such attendance and the amount received in respect of such jury service.

18.—PAYMENT OF WAGES

(1) Wages shall be paid weekly in cash unless the employee and employer agree to an alternative arrangement.

(2) Each employee shall be provided weekly with a detailed breakdown of wages paid and deductions made.

(3) No deduction shall be made from an employee's wages without the written authority of the employee.

19.—FARES AND TRAVELLING

Where an employee is required to work away from their shop, the following provisions shall apply—

- (1) The employee shall be paid fares of \$9.20 per day.
- (2) Where the employer requests the employee to use his/her own vehicle to transfer from one site to another and the employee agrees, an amount of 43 cents per kilometre shall be paid.

20.—DISTANT WORK

(1) Where an employee is sent by the employer or is engaged or selected or advised by the employer to proceed to a job whereby the employee cannot return to his/her home each night, the employer shall pay the expenses reasonably incurred by the employee for board and lodging or shall provide suitable board and lodgings.

(2) Where an employee is required to use his/her own vehicle for distant work the employer shall insure that employee's vehicle for the duration of the journey and pay him/her 48 cents per kilometre.

(3) Time occupied in travelling up to a maximum of 8 hours per day shall be paid at ordinary rates.

21.—SPECIAL RATES AND PROVISIONS

(1) An employee shall be paid an allowance of \$2.40 per shift, or \$1.40 per half shift, when engaged on work of an unusually dirty nature where clothes are unduly damaged by the nature of the work done or when, because of the dimensions of the compartment or space in which he/she is working, he/she is required to work in a stooped or otherwise cramped position, or without proper ventilation.

(2) (a) The employer shall have available a sufficient supply of protective equipment (as, for example, goggles (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gumboots, ear protectors, helmets, or other efficient substitutes thereof) for use by his employees when engaged on work for which some protective equipment is reasonably necessary.

(b) An employee shall sign an acknowledgement when he receives any articles of protective equipment and shall return that article to the employer when he is finished using it or on leaving his employment.

(c) An employee to whom an article of protective equipment has been issued shall not lend that article to another employee and if he does both he and that other employee shall be deemed guilty of wilful misconduct.

(d) An article of protective equipment which has been used by an employee shall not be issued by the employer to another

employee until it has been effectively sterilised but this paragraph only applies where sterilisation of the article is practicable and is reasonably necessary.

(e) Adequate safety gear (including insulating gloves, mats and/or shields where necessary) shall be provided by the employer for employees required to work on live electrical equipment.

22.—REPRESENTATIVES INTERVIEWING EMPLOYEES

(1) On notifying the employer or his representative an accredited representative of a Union shall be permitted to interview an employee during the recognised meal hour on the business premises of the employer at the place at which the meal is taken but this permission shall not be exercised without the consent of the employer more than once in any one week.

(2) In the case of a disagreement existing or anticipated concerning any of the provisions of this award, an accredited representative of a Union, on notifying the employer or his representative, shall be permitted to enter the business premises of the employer to view the work the subject of any such disagreement but shall not interfere in any way with the carrying out of such work.

23.—SHOP STEWARDS

(1) The employer shall recognise shop stewards and deputy shop stewards appointed in accordance with the rules of the Unions party to this award.

(2) The Union concerned shall notify the employer in writing of such appointments under subclause (1) of this clause.

(3) A shop steward or deputy shop steward shall be allowed the necessary time during working hours, without loss of pay, to interview employer representatives on matters affecting employees whom he or she represents.

(4) The employer shall provide a notice board for the posting of Union notices.

(5) The employer shall supply up-dated copies of this award to the shop stewards and deputy shop stewards and shall keep a copy of the agreement in a convenient place for perusal by employees covered by this Award.

24.—TRADE UNION TRAINING

(1) Ten days leave with pay per calendar year shall be allowed to an employee nominated by a union to attend courses provided by the Trade Union Training Centre or for other trade union training courses approved by the union and mutually agreed with the employer.

(2) Where the release of more than one employee is required attendance shall not exceed an aggregate of ten days per calendar year.

(3) The leave will be paid at the day work rate.

(4) The employer shall not unreasonably withhold the release of the employee to attend a trade union course approved by a union.

25.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An employee who becomes pregnant shall upon production to the 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 twelve months' continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(2) For the purpose of this clause—

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

(b) Maternity leave shall mean unpaid maternity leave.

(3) Period of Leave and Commencement of Leave

(a) Subject to subclauses (4) and (7) of this clause, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken

immediately before the presumed date of confinement and a period of six weeks' to be taken immediately following confinement.

- (b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to the employer stating the presumed date of confinement.
- (c) An employee shall give not less than four weeks' notice in writing to the employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
- (d) 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 (c) of this subclause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(4) 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 (8), (9), (10) and (11) of this clause.

(5) Variation of Period of Maternity Leave

- (a) 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.
- (b) 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.

(6) Cancellation of Maternity Leave

- (a) 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.
- (b) 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 four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(7) Special Maternity Leave and Sick Leave

- (a) 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—
 - (i) 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
 - (ii) 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.
- (b) 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.

- (c) For the purposes of subclauses (8), (9) and (10) of this clause, maternity leave shall include special maternity leave.
- (d) An employee returning to work after the completion of a period of leave taken pursuant to this clause 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 (4) of this clause, to the position 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.

(8) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (4) and (7) of this clause does not exceed 52 weeks.

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

(9) Effect of Maternity Leave on Employment

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

(10) Termination of Employment

- (a) 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.
- (b) 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 the employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Maternity Leave

- (a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (4) of this clause, 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.

(12) Replacement Employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) Before the 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.
- (c) 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.

- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) 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.

26.—LONG SERVICE LEAVE

The Long Service Leave provisions set out in Volume 65 of the Western Australian Industrial Gazette pages 1—4 both inclusive are incorporated in and form part of this award.

27.—LIBERTY TO APPLY

Leave is reserved without prejudice to any party to apply to the Western Australian Industrial Relations Commission to vary this Award in the following matters—

- (1) To review the rate applicable to the classification of 'Electrician Special Class' as defined in this Award.
- (2) To apply for disability allowances for building maintenance employees should the need arise.

28.—TRAINING

(1) The parties to this Award recognise that in order to increase the efficiency, productivity and competitiveness of West Australian Newspapers Limited, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to—

- (a) developing a more highly skilled and flexible workforce;
- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
- (c) removing barriers to the utilisation of skills acquired.

(2) Following proper consultation in accordance with subclause (6) in First Schedule—Wages, the employer shall develop a training programme consistent with—

- (a) the current and future skill needs of the enterprise;
- (b) the size, structure and nature of the operations of the enterprise;
- (c) the need to develop vocational skills relevant to the enterprise and the metal and engineering industry through courses conducted by accredited educational institutions and providers.

(3) Consultation referred to in subclause (2) hereof shall include, for example—

- (a) formulation of a training programme and availability of training courses and career opportunities to employees;
- (b) dissemination of information on the training programme and availability of training courses and career opportunities to employees;
- (c) the recommending of individual employees for training and reclassification;
- (d) monitoring and advising management and employees regarding the ongoing effectiveness of the training.

(4) (a) Where, as a result of consultation in accordance with subclause (6) of First Schedule—Wages, of this Award, and/or with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to subclause (2) hereof should be undertaken by an employee, that training may be undertaken either on or off the job and if the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

(b) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall be on an annual

basis, subject to the presentation of reports of satisfactory progress.

(c) Travel costs incurred by an employee undertaking training in accordance with this clause, which exceed those normally incurred in travelling to and from work, shall be reimbursed by the employer.

(5) Subclauses (2), (3) and (4) hereof shall operate as interim provisions and shall be reviewed after nine months' operation. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in subclause (1) hereof. In this connection, the unions reserve the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking training to meet the needs of an individual enterprise and the metal and engineering industry.

29.—PART-TIME WORK

(1) A part-time employee shall be paid an hourly rate for all work performed as based on the following—

- (a) The hourly rate shall be calculated by dividing the weekly rate for the appropriate classification prescribed in First Schedule—Wages, of this Award, by the number of hours prescribed for the work as provided in Clause 8.—Hours of Duty, of this Award.
- (b) For the purposes of this subclause, the hourly rate of pay for the classification of work performed shall include shift loadings in the case of intermediate or night shift as prescribed in Clause 9.—Shift Work Penalties, of this Award.

(2) (a) Part-time employees shall be entitled to the provisions of Clause 12.—Annual Leave, Clause 14.—Sick Leave and Clause 16.—Bereavement Leave, of this Award.

(b) Payment for leave as prescribed by subclause (2)(a) of this clause shall be directly proportional to the relationship the number of hours worked per week bears to the hours prescribed for the shift worked as provided in Clause 8.—Hours of Duty, of this Award.

(3) The engagement of part-time employees shall be subject to consultation through the consultative committee as prescribed in subclause (6) of First Schedule—Wages, of this Award, prior to any part-time employee being so engaged.

30.—TIME AND WAGES RECORDS

(1) The employer shall maintain a record from which the following information shall be clearly shown—

- (a) The name of each employee.
- (b) The classification of each employee.
- (c) The ordinary working hours worked each pay period by the employee.
- (d) Overtime worked each pay period by each employee.
- (e) Any leave of any sort taken by each employee.
- (f) The wages and allowances paid to each employee each pay period.
- (g) Any deduction, including tax, taken from each employee's wage each pay period.

(2) Such record may be inspected upon receipt of 24 hours' notice at any time during ordinary business hours, for inspection during ordinary business hours by the Secretary of the Union or their representative or by any person so authorised by the Western Australian Industrial Relations Commission.

(3) Each employee shall be supplied with a pay slip each pay period showing the employee's gross wages and overtime, all authorised deductions and the net amount due each pay period.

31.—REDUNDANCY

(1) Discussions Before Termination

- (a) Where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.

- (b) The discussion shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse effect of any terminations on the employees concerned.
- (c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out.

(2) Redundancy Payments

- (a) For those employees deemed redundant, the following redundancy payments shall apply—
 - 4 weeks' pay per year of service for each completed year of the first 10 years of service.
 - 3 weeks' pay per year of service for each completed year of service thereafter.
- (b) Where an employee has completed six months or more in any year, he/she shall be credited with a full year's service.
- (c) In the application of the redundancy payment to those employees, the "week's pay" referred to above shall be the prescribed award rate for the classification of the employee, plus night/intermediate shift loadings where such shifts are regularly worked and personal margins, but shall exclude any weekend penalties or loadings.

For the purposes of this subclause, the shift loading shall be calculated in the proportion that the number of shifts actually worked in the preceding 12 months bear to 52 weeks.

(3) An employee shall not be entitled under this Award to a payment greater than the employee would have received in wage payments had the employee remained in employment with the Company until the employee's 65th birthday.

(4) The Company shall inform the union(s) of impending redundancies as early as practicable, the number of employees to be made redundant, the intended date of termination and the circumstances relating to the decision.

(5) The Company shall invite applications from employees who are willing to volunteer for redundancy.

(6) Applications will be addressed to the Industrial Relations Officer who shall receive all applications in confidence.

(7) (a) A list of employees volunteering for redundancy will be compiled in order of seniority subject to paragraph (b) of this subclause. Application for voluntary severance will be accepted on the basis of one from the top of the list and one from the bottom of the list so compiled until the required number is met.

(b) The procedure set out in paragraph (a) above may be varied by consultation between the union(s) and employer where to follow that procedure would materially affect the continued viability of the enterprise.

(8) In the event of a shortfall in securing the desired number of employees to leave the Company through the procedure set out in subclause (7) hereof, the Company shall consult with the Union Secretary on the appropriate factors to be considered in ensuring the number is met by negotiation.

(9) Employees will be advised by written advice of the termination of their services.

(10) Employees will terminate one week after receiving notice as prescribed in subclause (9) hereof.

APPENDIX 1

CLASSIFICATION STRUCTURE AND DEFINITIONS

(1) The following classifications and definitions shall supersede Clause 5.—Definitions and subclause (1) First Schedule—Wages, of this Award. It is agreed by the parties to this

Award that the following classifications specify skill and training standards and broad areas of work. The definitions recognise national qualifications outlined by the Australian Council of Tertiary Awards and the standards set down by the National Metals and Engineering Skills Training Board on behalf of the National Training Board and recognised and accredited in Western Australia by the appropriate State Training Authority (i.e. SESDA, ITAC and TAFE).

(2) Classifications are based on the progressive acquisition of modules of skill and/or training and form the career path which determines the pay rate structure. Through the NMESTB (or SESDA when operative) and the training providers, appropriate credits or exemptions will be given for training already completed, or experience and skills already obtained.

(3) The structure recognises that credit for skill and formal training is transferable from one classification to the next. Reclassification on the basis of skills obtained through means other than training accredited by the National Training Board (or SESDA when operative) will be subject to the testing and competency standards set down by the NMESTB and recognised in Western Australia by the appropriate State Training Authority and shall be in accordance with the training clause contained in this Award.

(4) Transition/Implementation Period and Arrangements—

(a) Duration

It is agreed between the parties that a transition/implementation period shall operate from the first pay period to commence on or after 21 September 1990 until the first pay period beginning on or after 21 March 1991.

(b) Objective

The objective of this transition/ implementation period is—

- (i) To enable all parties to the Award to familiarise themselves with the new wage classification and definition structure.
- (ii) For each establishment to apply (subject to the transitional arrangements below) the new wage, classification and definition structure set out in this Appendix in place of existing arrangements as defined in Clause 5.—Definitions and First Schedule—Wages, classification and wage groups, of this Award.

(c) Transitional Arrangements

In order to assist an orderly transition, the following arrangements shall apply—

- (i) From the first pay period commencing on or after 21 September 1990 an employee's new wage group shall be determined in accordance with First Schedule—Wages, of this Award.
- (ii) Transfer to the new classification structure and definitions shall be subject to the availability of the Implementation Manual. In the interim the existing definitions in Clause 5.—Definitions, of this Award, will apply.
- (iii) The parties at each plant or enterprise shall undertake appropriate consultation in accordance with subclause (6) in First Schedule—Wages, of this Award.
- (iv) Upon transition to the new classification structure, subject to subparagraph (iii) hereof, employees will perform work in accordance with the new classification and definitions set out in this Appendix in lieu of definitions currently set out in Clause 5.—Definitions, of this Award.
- (v) Wage increases arising from broadbanding and adjustment of minimum rates are subject to absorption into existing overaward payments.

(d) Reclassification will be according to the following principles—

- (i) Employees will transfer to the new classification structure without loss of pay in accordance with a schedule agreed between the parties which will "line-up" the old classifications with the new levels.

- (ii) Reclassification to any higher level shall be contingent upon such additional work being available and required to be performed by the employer.
- (iii) In the event that there is a claim for reclassification by an existing employee to a higher level under the new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any ground the following principles apply—
- (aa) The parties agree that the existing award disputes avoidance procedure shall be followed.
- (bb) Agreed competency standards shall be established by the parties in conjunction with TAFE (and SESDA when operative) for all levels in the new classification structure before any claims for reclassification are processed and shall be incorporated in the Implementation Manual as they become available.
- (cc) The Implementation Manual shall lay down procedures for testing the validity of an employee's claim for reclassification. These procedures shall be undertaken by an independent third party recognised by SESDA (when established) and/or the National Training Board, e.g. TAFE.

(e) Review

- (i) Prior to the expiration of the six month period, the parties will consult and make any changes to the classification structure as they may be advised.
- (ii) At the expiration of the six month period, the employer will be required to have completed the transitional phase.
- (iii) The parties are committed to modernising the terms of the Award and to addressing the issues associated with training with a view to finalising these matters by 1 April 1991 and 1 July 1991 respectively.

Wage Group	Classification Title	Minimum Training Requirement
C 5	Advanced Tradesperson—Level II	Advanced Certificate or Formal Equivalent
C 6	Advanced Tradesperson—Level I	1st Year of Advanced Certificate
C 7	Tradesperson Special Class—Level II	Post Trade Certificate or Formal Equivalent
C 8	Tradesperson Special Class—Level I	Completion of 66% of qualification for C 7
C 9	Tradesperson—Level II	Completion of 33% of qualification for C 7
C 10	Tradesperson—Level I	Trade Certificate or Production/Engineering
C 11	Production Employee—Level IV	Production/Engineering Certificate II
C 12	Production Employee—Level III	Production/Engineering Certificate I
C 13	Engineering Production Employee—Level II	In-house Training

Wage Group C 13

Engineering/Production Employee—Level II
(Relativity to C 10—82%)

An Engineering/Production Employee—Level II who has completed up to three months' structured training so as to enable the employee to perform work within the scope of this level.

At this level an employee performs work above and beyond the skills of an employee at C 14 and to the level of their training—

- (1) Works under direct supervision, either individually or in a team environment.

- (2) Understands and undertakes basic quality control/assurance procedures including the ability to recognise basic quality deviations and faults.
- (3) Understands and utilises basic statistical process control procedures.

Indicative of the tasks which an employee at this level may perform are the following—

Repetitive work on automatic, semi-automatic or single purpose machines or equipment.

Assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment.

Basic soldering or butt and spot welding skills or cutting scrap with oxy-acetylene blow pipe.

Uses selected hand tools.

Cleans boilers.

Maintains simple records.

Uses hand trolleys and pallet trucks.

Assists in the provision of on-the-job training in conjunction with tradesperson and supervisor/trainers.

Wage Group C 12

Production Employee—Level III
(Relativity—87.4%)

A Production Employee—Level III has completed a Production/Engineering Certificate I or equivalent training to enable the employee to perform work within the scope of this level.

At this level an employee performs work to the level of their training—

- (1) Is responsible for the quality of their own work, subject to routine supervision.
- (2) Works under routine supervision, either individually or in a team environment.
- (3) Exercises discretion within their level of skills and training.

Indicative of the tasks which an employee at this level may perform are the following—

Operates flexibly between assembly stations.

Operates machinery and equipment which requires exercising skills and knowledge beyond that of an employee at Level C 13.

Non-trade engineering skills.

Basic tracing and sketching skills.

Receiving, despatching, distributing, sorting, checking, packing (other than repetitive packing in a standard container or containers in which such goods are ordinarily sold), documenting and recording of goods, materials and components.

Basic inventory control in the context of a production process.

Basic keyboard skills.

Advanced soldering techniques.

Boilers attendant

Operation of mobile equipment including forklifts, hand trolleys, pallet trucks, overhead cranes and winch operation.

Ability to measure accurately.

Assists one to more tradespersons.

Welding.

Assists in the provision of on-the-job training in conjunction with tradespersons and supervisor/trainers.

Wage Group C 11

Production Employee—Level II
(Relativity—92.4%)

A Production Employee—Level II who has completed a Production/Engineering Certificate II or equivalent training so as to enable the employee to perform work within the scope of this level.

At this level an employee performs work above and beyond the skills of an employee at C 12 and to the level of training—

- (1) Works from complex instructions and procedures.
- (2) Assists in the provision of on-the-job training to a limited degree.
- (3) Co-ordinates work in a team environment or works individually under general supervision.
- (4) Is responsible for assuring the quality of their own work.

Indicative of the tasks which an employee at this level may perform are the following—

Use of precision measuring instruments.

Machine setting, loading and operation.

Rigging (certificated).

Inventory and store control, including—

Licensed operation of all appropriate materials handling equipment;

Use of tools and equipment within the scope of (basic non-trades) maintenance;

Computer operation at a level higher than that of an employee at C 12 level.

Intermediate keyboard skills.

Basic engineering and fault-finding skills.

Basic quality checks on the work of others.

Is licensed and certified for forklift, engine driving and crane driving operations to a level higher than C 12.

Has a knowledge of the employer's operations as it relates to production processes.

Lubricates production machinery equipment.

Assists in the provision of on-the-job training in conjunction with tradespersons and supervisor/trainers.

Wage Group C 10

Tradesperson—Level I
(Relativity 100%)

A Tradesperson—Level I holds a Trade Certificate or a Tradesperson's Rights Certificate as an—

Engineering Tradesperson—Level I; or

Electrical Tradesperson—Level I; or

Building Tradesperson—Level I;

and is able to exercise the skills and knowledge of that trade.

A Tradesperson—Level I works above and beyond an employee at C 11 and to the level of their training—

- (1) Understands and applies quality control techniques.
- (2) Exercises good interpersonal and communication skills.
- (3) Exercises keyboard skills at a level higher than C 11.
- (4) Exercises discretion within the scope of this grade.
- (5) Performs work under limited supervision, either individually or in a team environment.
- (6) Operates all lifting equipment incidental to their work.
- (7) Performs non-trade tasks incidental to their work.
- (8) Performs work which, while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.
- (9) Is able to inspect products and/or materials for conformity with established operational standards.

Wage Group C 9

Tradesperson—Level II
(Relativity to C 10—105%)

An Tradesperson—Level II is an—

Engineering Tradesperson—Level II; or

Electrical Tradesperson—Level II; or

Building Tradesperson—Level II;

who has completed one of the following training requirements—

33% of the modules towards an appropriate Post Trade Certificate; or

x percentage of modules towards an Advanced Certificate; or

y percentage of modules towards an Associate Diploma, as prescribed in the Implementation Manual.

A Tradesperson—Level II works above and beyond a Tradesperson at C 10 and to the level of their training—

(1) Exercises the skills attained through satisfactory completion of the training prescribed for this classification, subject to the standards prescribed by the Implementation Manual.

(2) Exercises discretion within the scope of this grade.

(3) Works under general supervision, either individually or in a team environment.

(4) Understands and implements quality control techniques.

(5) Provides trade guidance and assistance as part of a work team.

(6) Exercises trade skills relevant to specific requirements of the enterprise at a level higher than Engineering Tradesperson—Level I.

Tasks which an employee at this level may perform are subject to the employee having the appropriate Trade and Post Trade Training to enable the particular tasks to be performed.

Wage Group C 8

Tradesperson Special Class—Level I
(Relativity to C10-110%)

A Tradesperson Special Class—Level I means an—

Engineering Tradesperson Special Class—Level I; or

Electrical Tradesperson Special Class—Level I; or

Building Tradesperson—Carpenter Special Class

who has completed the following training requirements—

66% of the modules towards an appropriate Post Trade Certificate; or

x percentage of modules towards an Advanced Certificate; or

y percentage of modules towards an Associate Diploma, as prescribed in the Implementation Manual.

A Tradesperson Special Class—Level I works above and beyond a Tradesperson at C 9 and to the level of their training—

(1) Exercises the skills attained through satisfactory completion of the training for this classification, subject to the standards prescribed by the Implementation Manual.

(2) Provides trade guidance and assistance as part of a work team.

(3) Assists in the provision of training in conjunction with supervisors and trainers.

(4) Understands and implements quality control techniques.

(5) Works under limited supervision, either individually or in a team environment.

The following tasks are indicative of what an employee at this level may perform, subject to the employee having the appropriate Trade and Post Trade Training to enable the particular tasks to be performed—

Exercises high precision trade skills using various materials and/or specialised techniques.

Performs operations on a CAD/CAM (Computer Aided Drafting/Computing Aided Manufacturing) terminal in the performance of routine modifications to NC/CNC (Numerical Control/Computer Numeric Control) programme.

Installs, repairs, maintains, tests, modifies, commissions and/or fault-finds complex machinery and equipment which utilises hydraulic and/or pneumatic principles and, in the course of such work reads and understands

hydraulic and pneumatic circuitry which controls fluid power systems.

Works on complex or intricate circuitry which involves examining, diagnosing and modifying systems comprising interconnected circuits.

Wage Group C 7

Tradesperson Special Class—Level II
(Relativity to C 10—115%)

A Tradesperson Special Class—Level II means an—
Engineering Tradesperson Special Class—Level II; or
Electrical Tradesperson Special Class—Level II

who has completed one of the following training requirements—

an appropriate Post Trade Certificate; or
x percentage of modules towards an Advanced Certificate; or

y percentage of modules towards an Associate Diploma, as prescribed in the Implementation Manual.

A Tradesperson Special Class—Level II works above and beyond a Tradesperson at C 8 and to the level of their training—

- (1) Exercises the skills attained through satisfactory completion of the training for this classification, subject to the standards prescribed by the Implementation Manual.
- (2) Is able to provide trade guidance and assistance as part of a work team.
- (3) Provides training in conjunction with supervisors and trainers.
- (4) Understands and implements quality control techniques.
- (5) Works under limited supervision, either individually or in a team environment.

The following tasks are indicative of what an employee at this level may perform, subject to the employee having the appropriate Trade and Post Trade Training to enable the particular tasks to be performed—

Works on machines or equipment which utilise complex mechanical, hydraulic and/or pneumatic circuitry and controls, or a combination thereof.

Works on machinery or equipment which utilises complex electrical/electronic circuitry and controls.

Works on instruments which make up a complex control system which utilises some combination of electrical, electronic, mechanical or fluid power principles.

Applies advanced computer numerical control techniques in machining or cutting or welding or fabrication.

Exercises intermediate CAD/CAM skills in the performance of routine modifications to programmes.

Works on complex or intricate interconnected electrical circuits at a level above C 8.

Works on complex radio/communication equipment.

NB: The Post Trade Certificate referred to in this definition is not directly comparable with existing post-trade qualifications and the possession of such qualifications does not itself justify classification of a tradesperson to this level.

Wage Group C 6

Advanced Tradesperson—Level I
(Relativity to C 10—125%)

An Advanced Tradesperson—Level I means an—
Advanced Engineering Tradesperson—Level I; or
Advanced Electrical/Electronics Tradesperson—Level I

who has completed—

x percentage of modules towards an Advanced Certificate; or

y percentage of modules towards an Associate Diploma; or

equivalent accredited training,

as prescribed in the Implementation Manual.

An Advanced Tradesperson—Level I works above and beyond a Tradesperson at C 7 and to the level of their training—

- (1) Undertakes quality control and work organisation at a level higher than C 7.
- (2) Provides trade guidance and assistance as part of a work team.
- (3) Assists in the training of employees in conjunction with supervisors/trainers.
- (4) Performs maintenance planning and predictive maintenance work other than in technical fields.
- (5) Works under limited supervision, either individually or in a team environment.
- (6) Prepares reports of a technical nature on specific tasks or assignments as prescribed.
- (7) Exercises broad discretion within the scope of this level.

The following are indicative of tasks which an employee at this level may perform, subject to the employee having the appropriate Trade and Post Trade Training to enable the particular tasks to be performed—

Works on combinations of machines or equipment which utilises complex electronic, mechanical and fluid power principles.

Works on instruments which make up a complex control system which utilises some combination of electrical, electronic, mechanical or fluid power principles and electronic circuitry containing complex analogue and/or digital control systems utilising integrated circuitry.

Application of computer integrated manufacturing techniques involving a higher level of computer operating and programming skills than for Level C 7.

Works on various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control systems using integrated circuitry.

Wage Group C 5

Advanced Tradesperson—Level II
(Relativity to C 10—130%)

An Advanced Tradesperson—Level II means an—
Advanced Engineering Tradesperson—Level II; or

Advanced Electrical/Electronics Tradesperson—Level II

who has completed—

an Advanced Certificate; or

y percentage of modules towards an Associate Diploma; or

equivalent accredited training,

as prescribed in the Implementation Manual.

An Advanced Tradesperson—Level II works above and beyond a Tradesperson at C 6 and to the level of their training—

- (1) Provides technical guidance or advice within the scope of this level.
- (2) Prepares reports of a technical nature on specific tasks or assignments as directed, or within the scope of discretion at this level.
- (3) Has an overall knowledge and understanding of the operating principle of the systems and equipment on which the Tradesperson is required to carry out his/her task.
- (4) Assists in the provision of on-the-job training in conjunction with supervisors and trainers.

The following are indicative of the tasks an employee at this level may perform, subject to the employee having the appropriate Trade and Post Trade Training to enable the particular tasks to be performed—

Through a systems approach is able to exercise high level diagnostic skills on complex forms of machinery, equipment and instruments which utilise some combination of electrical, electronic, mechanical or fluid power principles.

Sets up, commissions, maintains and operates sophisticated maintenance, production and test equipment

and/or systems involving the application of computer operating skills at a higher level than C 6.

Works on various forms of machinery and equipment electronically controlled by complex digital and/or analogue control systems using integrated circuitry.

Works on complex electronics or instruments or communications equipment or control systems which utilise electronic principles and electronic circuitry containing complex analogue and/or digital control systems using integrated circuitry.

FIRST SCHEDULE—WAGES

(1)		Base	Supp.	Add.	Total
CLASSIFICATION		Rate	Payment	Payment	
		\$	\$	\$	\$
C 6	(a) Industrial Electronic Tradesperson (with 2 or more years' experience)	456.50	65.00	48.60	570.10
C 6	(b) Industrial Electronic Tradesperson (with less than 2 years' experience)	456.50	65.00	30.30	551.80
C 8	(c) Electrical, Engineering and Building Tradesperson—Carpenter—Tradesperson Special Class	401.70	57.20	81.60	540.50
C 10	(d) Electrical, Engineering and Building Tradesperson—Multi Skilled Carpenter (more than 2 years' experience with the employer)	365.20	52.00	99.10	516.30
C 10	(e) Electrical, Engineering and Building Tradesperson (with less than 2 years' continuous experience with the employer)	365.20	52.00	82.60	499.80
C 12	(f) Tool Storeperson	319.20	45.40	40.30	404.90
C 12/13	(g) Trades Assistant	306.80	42.60	55.50	404.90

(2) The weekly rate of wage for an apprentice shall be the following percentages of the tradesman's rate of wage as prescribed in paragraphs (a) and (c) of subclause (1) of this schedule. An apprentice, upon completing his indentures, shall be required to work two years before qualifying for the experience tradesman's rate as prescribed in paragraphs (b) and (d) of subclause (1) of this schedule.

(a) Wage per week expressed as a percentage of the "Tradesman's rate"—

Five Year Term	%
First Year	40
Second Year	48
Third Year	55
Fourth Year	75
Fifth Year	88
Four Year Term	
First Year	42
Second Year	55
Third Year	75
Fourth Year	88
Three and a Half Year Term	
First Six Months	42
Next Year	55
Next Year	75
Final Year	88
Three Year Term	
First Year	55
Second Year	75
Third Year	88

(3) Responsibility Payment

An Engineering or Electrical Tradesperson, Special Class Electrician or Electronic Tradesperson or Building Tradesperson required to work when supervisory staff are not on duty shall receive the additional flat payment per shift—

- (a) Saturday — \$ 5.95
- (b) Sunday — \$11.60

(4) In addition to the appropriate total wage prescribed in this schedule, a leading hand in charge of not less than three or more other employees shall be paid \$34.65 per week.

(5) An Industrial Electronics Tradesperson, an Electrician—Special Class, an Electrical fitter and/or Armature Winder or an Electrical installer who holds, and in the course of this employment may be required to use, a current "A" Grade or "B" Grade licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of \$13.20 per week.

(6) Structural Efficiency

(a) Arising out of the decision of the State Wage Case on 8 September 1989 and in consideration of the wage increases resulting from the first structural efficiency adjustment in Application No. 1731 of 1989, employees are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

(b) The parties to the Award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of West Australian Newspapers Limited and to enhance the career opportunities and job security of employees in the metal and engineering industry as a whole.

(c) At each plant or enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or their relevant union or unions. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of paragraph (b) hereof shall be processed through that consultative mechanism and procedures.

(d) Measures raised for consideration consistent with paragraph (c) hereof shall be related to implementation of the new classification structure, the facilitative provisions contained in this Award and, subject to Clause 28.—Training, of this Award, matters concerning training and, subject to paragraph (e) hereof, any other measures consistent with the objectives of paragraph (b) of this subclause.

(e) Without limiting the rights of either an employer or a union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission and by agreement of the parties involved shall be subject to the following requirements—

- (i) The changes sought shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission.
- (ii) The majority of employees affected by the change at the plant or enterprise must genuinely agree to the change.
- (iii) No employee shall lose income as a result of the change.
- (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.
- (vi) Any Agreement shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this Award and take precedence over any provision of this Award to the extent of any inconsistency.

- (f) Any disputes arising in relation to the implementation of paragraphs (c) and (d) hereof shall be subject to the dispute settling procedures.
- (7) Award Modernisation
- (a) In accordance with paragraph (e) of subclause (6) hereof, the parties are committed to modernising the terms of the Award.
- (b) The parties will discuss all matters raised which may lead to increased flexibility and the removal of obsolete conditions to better reflect the realities of modern industry practices and assist in the restructuring process. Any such discussion with the Unions shall be on the premise that—
- (i) The majority of employees at the enterprise must genuinely agree.
 - (ii) No employee will lose income as a result of the change.
 - (iii) The Unions must be party to the agreement, particularly where enterprise level discussions relate to matters requiring variations to the Award.
 - (iv) Agreements will be ratified by the Commission.
- (c) Should an agreement be reached pursuant to paragraph (b) hereof, and that agreement requires an award variation, the parties shall support such Award variation.
- (d) There shall be no limitations on any award matter being raised for discussion.
- (e) The parties agree that working parties will continue to meet with the aim of modernising the Award.

SECOND SCHEDULE—PARTIES

- (1) West Australian Newspapers Limited
125 St. George's Terrace
PERTH WA 6000
- (2) The Amalgamated Metal Workers and Shipwrights Union of Workers of Western Australia
82 Beaufort Street
PERTH WA 6000
- (3) The Electrical Trades Union of Workers of Australia (Western Australian Branch)
82 Beaufort Street
PERTH WA 6000
- (4) The Australasian Society of Engineers, Moulders and Foundry Workers, Industrial Union of Workers (W.A. Branch)
318 Lord Street
EAST PERTH WA 6000
- (5) The Construction, Mining and Energy Workers' Union of Australia, Western Australian Branch
102 Beaufort Street
PERTH WA 6000
- (6) The Operative Painters' and Decorators' Union of Australia, West Australian Branch, Union of Workers
31-33 Moore Street
EAST PERTH WA 6004

DATED at Perth this 17th day of January, 1986.

ELECTRONIC SERVICING EMPLOYEES (BUILDING MANAGEMENT AUTHORITY) AWARD 1984.

AWARD No. A 40 of 1982.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 23rd day of January, 1996.

J. CARRIGG,
Registrar.

Electronic Servicing Employees (Building Management Authority) Award 1984.

1.—TITLE

This Award shall be known as the Electronic Servicing Employees (Building Management Authority) Award 1984.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. Area and Scope
4. Term
5. Definitions
6. Contract of Service
7. Under-Rate Employees
8. No New Designation
9. No Reduction
10. Hours of Duty
11. Overtime
12. Payment of Wages
13. Special Rates and Provisions
14. Car Allowance
15. Fares and Travelling Allowances
16. Distant Work—Construction
17. District Allowances
18. Holidays
19. Annual Leave
20. Sick Leave
21. Long Service Leave
22. Shop Stewards
23. Notice Boards
24. Right of Entry
25. Liberty to Apply
26. Maternity Leave
27. Paid Leave for English Language Training
28. Leave to Attend Union Business
- First Schedule—Wages
- Second Schedule—38 Hour Week
- Third Schedule—Named Parties to the Award

3.—AREA AND SCOPE

(1) This award relates to all electronic servicing work as defined in Clause 5.—Definitions and performed by employees engaged in the industry of the Building Management Authority, subject to the provisions of subclause (2).

(2) This award only applies to employees engaged on electronic servicing installation or maintenance work for which an electrical worker's licence other than a "restricted" licence is not required pursuant to the Electricity Act 1945 and the regulations made thereunder.

4.—TERM

This award shall operate for one year from the date hereof.

5.—DEFINITIONS

(1) Electronic Technician Level 1 shall mean an adult employee with the appropriate trade qualifications to carry out electronic servicing work or who at the date of introduction of

this award was already working within the BMA Welshpool Electronics Workshop on the basis that an accepted suitable alternative qualification had been obtained. Provided that this classification shall only apply to a technician who is—

- (a) awaiting assessment for a higher grading; or
- (b) limited by the scope and type of his/her duties to such a degree that normal assessment cannot occur; or
- (c) seen after assessment as not achieving an above minimum level of basic satisfactory performance.

(2) Electronic Technician Level 2 shall mean an adult employee who has progressed beyond that of Grade 1 and who has basic electronic servicing qualifications and experience necessary to service electronic equipment. Provided that a technician may be approved to proceed to Level 3 by the Chief Electrical Engineer upon recommendation of the Manager over the workshop if he/she demonstrates that he/she has kept abreast of technological changes and exhibits the following attributes—

- (a) has sound technical and practical abilities, has attended Technical College courses or through his/her own initiative has kept pace with technological changes and can demonstrate these skills as required;
- (b) is able to communicate effectively and, if requested, to assist with training, evaluation of equipment and to submit written reports;
- (c) shows initiative, assumes responsibility and is dependable and co-operative; and
- (d) is able to work with minimal supervision.

(3) Electronic Technician Level 3 shall mean an adult employee who has the essential qualifications and established abilities of a Level 2 technician but who in addition has substantially developed expertise in a specialised area and the ranges of equipment therein or who has met other sets of criteria approved by the employer provided that a technician so classified who demonstrates to the satisfaction of the Chief Electrical Engineer that he/she has developed expertise that places him or her to the forefront in a recognised specialised area shall be eligible to progress to Senior Technician level.

(4) Electronic Technician Level 4 shall mean an electronic technician who is identifiably in the forefront technically within a recognised specialised area.

(5) Electronic Technician Level 5 shall mean a person who is required to have sound practical skills in analogue as well as digital computer systems and has studied the equivalent of:

Data Processing:	IA and IB
Digital Techniques:	I and II
Micro Processing:	I and II
Programming 1 Basic:	I and II

and be capable of servicing advanced personalised computers and peripherals.

(6) Electronic Servicing Work shall mean, for the purpose of this award only, installing, maintaining, repairing, modifying, diagnosing and testing the electronic components and circuits of the following devices, equipment and systems:

- Video cassette recorders
- Audio cassette recorders
- Radios
- "Reel to Reel" tape recorders
- Public address systems
- Loud hailers
- Record players
- Dictation machines
- Metal detectors
- Meters and signal generators
- Television cameras
- Colour television sets
- Black and white television sets
- Two-way radios
- Movie projectors
- Slide projectors
- Mini computers and associated equipment

- Security systems
- Controllers

and any similar devices, equipment and systems.

(7) Construction Work means electronic servicing work as defined in subclause (5) of this Clause, which is performed on site or in connection with—

- (a) the construction of a large industrial undertaking or any large civil engineering project;
- (b) the construction or erection of any multi-storey building; and
- (c) the construction, erection or alteration of any other building, structure or civil engineering project which the employer and the union or unions concerned agree or, in the event of disagreement, which the Board of Reference declares to be construction work for the purpose of this award.

(8) Electronic Servicing Work as defined in subclause (5) of this Clause shall be performed either in the workshop or in the field by any technician, as directed.

(9) Any dispute arising as a result of assessment shall be referred to a Board of Reference.

(10) All technicians shall have the right to have their classification reviewed on application to the Chief Engineer.

6.—CONTRACT OF SERVICE

(1) The contract of service shall be by the week and shall be terminable by one week's notice on either side or by the payment or forfeiture, as the case may be, of a week's wage in lieu of such notice.

(2) The employer shall be under no obligation to pay for any day not worked on which the employee is required to present himself for duty, except where such absence from work is due to illness and comes within the provisions of Clause 20—Sick Leave or such absence is on account of holidays to which the employee is entitled under the provisions of this award.

(3) This clause does not affect an employer's right to dismiss an employee for misconduct and an employee so dismissed shall be paid wages up to the time of dismissal only.

(4) An employer is entitled to deduct payment for any day or portion of a day on which an employee cannot be usefully employed because of a strike by any of the unions party to this award or by any other union or association or through the breakdown of the employer's machinery or through any stoppage of work by any cause which the employer cannot reasonably prevent.

7.—UNDER RATE EMPLOYEES

(1) Any employee who by reason of old age or infirmity is unable to earn the wage for his classification may be paid such lesser wage as may from time to time be agreed upon in writing between the union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to the Board of Reference for determination.

(3) After application has been made to the Board, and pending the Board's decision the employee shall be entitled to work for and be employed at the proposed lesser rate.

8.—NO NEW DESIGNATION

No new designation shall be introduced during the currency of this award so as to reduce the status of any employee covered thereby.

9.—NO REDUCTION

This award shall not in itself operate to reduce the wages of any employee who is at present receiving above the minimum rate prescribed for his class of work.

10.—HOURS OF DUTY

(1) (a) Subject to the provisions of this subclause, the week's work shall consist of thirty eight hours and shall be worked in eight hours per day, Monday to Friday inclusive, between 7.00 a.m. and 5.30 p.m.

(b) Starting or finishing times outside the limits prescribed in paragraph (a) of this subclause may, in any particular case, be fixed by agreement between the employer and the union or unions concerned.

(c) The ordinary working hours shall be consecutive except for a meal interval which shall not exceed one hour.

(d) (i) Subject to the provisions of this paragraph, a rest period of seven minutes from the time of ceasing to the time of resumption of work shall be allowed each morning.

(ii) The rest period shall be counted as time off duty without deduction of pay and shall be arranged at a time and in a manner to suit the convenience of the employer.

(iii) Refreshments may be taken by employees during the rest period but the period of seven minutes shall not be exceeded under any circumstances.

(iv) An employer who satisfies the Commission that any employee has breached any condition expressed or implied in this paragraph may be exempted from liability to allow the rest period.

(v) There shall be no afternoon rest period.

(2) Ordinary hours shall be worked within a twenty day cycle of eight hours of each of the first nineteen days in each cycle with 0.4 of one hour of each such day worked accruing as an entitlement to take the twentieth day in each cycle as a paid day off as though worked.

11.—OVERTIME

(1) (a) Except as hereinafter provided, all time worked in excess of or outside of the usual working hours on any day shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(b) Where work is done on Saturdays, the employee shall be paid at the rate of time and a half for the first two hours and double time thereafter, but if work is performed on a Sunday, or after 12 noon on a Saturday the worker shall be paid double time for all time so worked.

(c) When an employee is required for duty during his usual meal time, he shall be paid at overtime rates until he gets his meal.

(d) In computing overtime each day shall stand alone but when an employee works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of this subclause.

(e) Where, to meet the needs of the Department, the employee is required to work on his rostered day off, no overtime will be paid and that employee will be re-rostered for another day off duty within ten (10) work days. A re-rostered day will be the first or last working day of the week unless another day is agreed between the Department and the employee. However, if an employee is called out on the rostered day off for less than a day then he will be paid in accordance with the award.

(f) Overtime provisions will not apply until after eight hours have been worked on each day.

(2) (a) (i) When overtime work is necessary it shall, wherever reasonably practicable be so arranged that employees have at least ten consecutive hours off duty between the work on successive days.

(ii) An employee (other than a casual employee) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least ten consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) If, on the instructions of his employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, he shall be paid at double time rates until he is released from duty for such period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iv) Where an employee (other than a casual employee) is called in to work on a Sunday or holiday preceding an ordinary working day, he shall, wherever reasonably practicable, be given ten consecutive hours off duty before his usual starting time on the next day. If this is not practicable then the provisions of subparagraphs (ii) and (iii) of this paragraph

shall apply mutatis mutandis. Provided that overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this paragraph, when the actual time worked is less than three hours on such recalls or on each of such recalls.

(b) When an employee is recalled to work after leaving the job—

(i) he shall be paid for at least three hours at overtime rates;

(ii) time reasonably spent in getting to and from work shall be counted as time worked.

(c) An employee shall not be compelled to work more than five hours without a break for a meal.

(d) Subject to the provisions of paragraph (e) of this subclause, an employee required to work overtime for more than one hour shall be supplied with a meal by the employer or be paid \$5.00 a meal, and if, owing to the amount of overtime worked, a second or subsequent meal is required he shall be supplied with each such meal by the employer or be paid \$3.40 for each meal so required.

(e) The provisions of paragraph (d) of this subclause do not apply—

(i) in respect of any period of overtime for which the employee has been notified on the previous day or earlier that he will be required; or

(ii) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which he can reasonably go home.

(f) If an employee to whom subparagraph (i) of paragraph (e) of this subclause applies has, as a consequence of the notification referred to in that subclause, provided himself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he shall be paid, for each meal provided and not required, the appropriate amount prescribed in paragraph (d) of this subclause.

(g) (i) An employer may require any employee to work reasonable overtime at overtime rates, and such employee shall work overtime in accordance with such requirements.

(ii) No union or association party to this award, or employee or employees covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this paragraph.

(h) The provisions of this subclause do not operate so as to require payment of more than double time rates, or double time and a half on a holiday prescribed under this award, for any work except and to the extent that the provisions of Clause 13—Special Rates and Provisions of this award apply to that work.

(3) Notwithstanding the foregoing provisions of this clause—

(a) When the employer intends to work overtime on a minor job, i.e. a job which does not involve more than nine hours' overtime per man per week, he shall notify the appropriate shop steward of that portion of the establishment in which it is proposed to work overtime. The shop steward shall be advised of the nature of the emergency, the day or days upon which overtime is to be worked, the names of the men required to work and the number of hours which will be involved. The shop steward may consult with the management if he requires further information and after advising his shop stewards, convenor or senior shop steward, as the case may be, decide whether or not in his opinion the proposed overtime is warranted. If the shop steward agrees with the employer's proposal, or any variation thereof, which the employer is prepared to accept, overtime shall be worked accordingly. If the shop steward considers that the proposed overtime is not warranted, he shall forthwith advise the employer, who may refer the matter to the union secretary or secretaries for review, which secretary or secretaries shall deal with the matter forthwith and if the union secretary or secretaries confirm the shop steward's decision, to the Board of Reference. If the union secretary or

secretaries support the employer, or the Board of Reference so decides, overtime shall be worked accordingly;

- (b) Where the employer intends to work overtime on a major job he shall notify the union secretary or secretaries supplying all relevant particulars. The employer shall be advised of the decision of the union secretary or secretaries within twenty-four hours of such notification, and if consent to the proposed overtime is refused the employer may refer the matter to the Board of Reference. If the decision of the union secretary or secretaries in the first instance, or the Board of Reference on appeal is in favour of the employer's proposal, overtime shall be worked accordingly;
- (c) Notwithstanding anything hereinbefore contained, all overtime worked shall be rostered amongst available employees, and no employee shall be required to work more than nine hours overtime in any one week on a minor job or the maximum number of hours agreed to by the union secretary or secretaries or decided upon by the Board of Reference on a major job;

(4) Employees in such areas as agreed between the parties may be rostered for standby duty outside of the ordinary hours of work and, in addition to any payment due under this award for any overtime worked, each employee so rostered for stand by duty shall be paid—

- (i) three hours pay at ordinary rates if he is rostered on any day Monday to Friday inclusive.
- (ii) four hours pay at ordinary rates if he is rostered on a Saturday or a Sunday.
- (iii) three hours pay at ordinary rates plus a day in lieu if he is rostered on a holiday.

12.—PAYMENT OF WAGES

(1) Each employee shall be paid the appropriate rate shown in First Schedule—Wages of this award. Payment shall be pro rata where less than the full week is worked.

(2) When an employee is discharged before the usual pay day he shall be paid his wages when he ceases work, or it shall be forwarded to his address the day after by registered post, at the employer's risk, unless the employee desires to collect at the office.

(3) Payment will be made fortnightly into an employee's account with a bank, building society or an approved credit union.

13.—SPECIAL RATES AND PROVISIONS

(1) Height Money:

An employee shall be paid an allowance of \$1.49 for each day on which he works at a height of 15.5 metres or more above the nearest horizontal plane but this provision does not apply to linesmen nor to riggers and splicers on ships or buildings.

(2) Dirt Money:

Dirt money of 31 cents per hour shall be paid when work of an exceptionally dirty nature where clothes are necessarily unduly soiled or damaged by the nature of the work done.

(3) Confined Space:

Any employee working in any place the dimensions of which necessitate the employee working in an unusually stooped or otherwise cramped position, or where confinement within a limited space is productive of unusual discomfort shall be paid 37 cents per hour extra.

(4) Hot Work:

An employee shall be paid an allowance of 31 cents per hour when he works in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees Celsius.

(5) (a) Where, in the opinion of the Board of Reference, the conditions under which work is to be performed are, by reason of excessive heat, exceptionally oppressive, the Board may—

- (i) fix an allowance, or allowances, not exceeding the equivalent of half the ordinary rate;

(ii) fix the period (including a minimum period) during which an allowance so fixed is to be paid; and

(iii) prescribe such other conditions, relating to the provision of protective clothing or equipment and the granting of rest periods, as the Board sees fit.

(b) The provisions of paragraph (a) of this subclause do not apply unless the temperature in the shade at the place of work has been raised by artificial means beyond 54.4 degrees Celsius.

(c) An allowance fixed pursuant to paragraph (a) of this subclause includes any other allowance which would otherwise be payable under this clause.

(6) Special Rates not Cumulative

Where more than one of the disabilities entitling an employee to extra rates exists on the same job the employer shall be bound to pay only one rate, namely—the highest for the disabilities so prevailing. Provided that this subclause shall not apply to confined space, dirt money, height money or hot work, the rates for which are cumulative.

14.—MOTOR CAR ALLOWANCE

(1) Where an employee is required and authorised to use his own motor vehicle in the course of his duties he shall be paid an allowance not less than that provided for in the table set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to car allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) Rates of Hire for Use of Employee's Own Vehicle on Employer's Business.

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Metropolitan Area	34.5	29.7	26.7
South West Land Division	35.5	30.6	27.5
North of 23.5° South Latitude	39.2	33.8	30.5
Rest of the State	36.9	31.7	28.5

(4) "Metropolitan Area" means that area within a radius of fifty kilometres from the Perth Railway Station.

"South West Land Division" means the South West Land Division as defined by Section 28 of the Land Act 1933 excluding the area contained within the Metropolitan Area.

(5) The allowance prescribed in this clause shall be varied in accordance with any movement in the allowances in the Public Service Motor Vehicle Allowances Award 1976.

15.—FARES AND TRAVELLING ALLOWANCES

(1) An employee residing in the suburban area who is required to start work at some place other than his usual workshop or place of employment shall, if the time taken in travelling from his place of residence to the job and return exceeds the time normally taken in travelling from his usual place of residence to his usual workshop or place of employment and return, be paid for such excess travelling time at ordinary rates; and if the fares actually and reasonably incurred in such travelling exceed the fares normally paid by the employee in travelling from his place of residence and return, the employer shall pay the amount by which such fares exceed those usually paid for travelling to and from his usual workshop or place of employment.

16.—DISTANT WORK—CONSTRUCTION

(1) Where an employee is directed by his employer to proceed to construction work at such a distance that he cannot return to his home each night and the employee does so, the employer shall provide the employee with suitable board and lodging or shall pay the expenses reasonably incurred by the employee for board and lodging.

(2) The provisions of subclause (1) of this clause do not apply with respect to any period during which the employee is absent from work without reasonable excuse and in such a case, where the board and lodging is supplied by the employer, he may deduct from moneys owing or which may become owing to the employee an amount equivalent to the value of that board and lodging for the period of absence.

(3) Subject to the provisions of subclause (5) of this clause

(a) The employer shall pay all reasonable expenses including fares, transport of tools, meals and, if necessary, suitable overnight accommodation incurred by an employee or person who is directed by his employer to proceed to the locality of the site and who complies with such direction.

(b) The employee shall be paid at ordinary rate of payment for the time up to a maximum of eight hours in any one day incurred in travelling pursuant to the employer's direction.

(4) Where an employee who, after one month of employment with an employer, leaves his employment, or whose employment is terminated by his employer, except for incompetency, within one working week of his commencing work on the job, or for misconduct and in either instance subject to the provisions of Clause 6—Contract of Service of this award returns to the place from whence he first proceeded to the locality, or to a place less distant than or equidistant to the place whence he first proceeded, the employer shall pay all expenses—including fares, transport of tools, meals and, if necessary, suitable overnight accommodation—incurred by the employee in so returning. Provided that the employer shall in no case be liable to pay a greater amount under this subclause than he would have paid if the employee had returned to the locality from which he first proceeded to the job.

(5) On construction work North of the 26th parallel of south latitude the following provisions apply:

(a) The employer may deduct the amount of the forward fare from the employee's first or later wages but the amount so deducted shall be refunded to the employee if he continues to work for three months or, if the work ceases sooner, for so long as the work continues.

(b) If the employee continues to work for the employer for at least six months the employer shall, on termination of the employee's engagement, pay the fare of the worker back from the place of work to the place of engagement if the employee so desires.

(6) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of eleven dollars and eighty cents for any weekend that he returns to his home from the job but only if—

(a) he advises the employer or his agent of his intention no later than the Tuesday immediately preceding the weekend in which he so returns;

(b) he is not required for work during that weekend;

(c) he returns to the job on the first working day following the weekend; and

(d) the employer does not provide or offer to provide suitable transport.

(7) Where an employee supplied with board and lodging by his employer, is required to live more than eight hundred metres from the job, he shall be provided with suitable transport to and from that job or be paid an allowance of four dollars and twenty cents per day provided that where the time actually spent in travelling either to or from the job exceeds twenty minutes, that excess travelling time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

(8) The provisions of subclauses (1), (2), (3), (6) and (7) of this clause shall be deemed to apply to an employee who is in the regular employment of an employer and who is sent by his employer to distant work (whether construction work or not) but the provisions of subclause (4) of this clause do not apply to such a worker.

17.—DISTRICT ALLOWANCES

(1) For the purposes of this clause the following terms shall have the following meaning:

“Dependant” in relation to an employee means:

(a) a spouse; or

(b) where there is no spouse, a child or any other relative resident within the State who relies on the employee for their main support;

who does not receive a district or location allowance of any kind.

“Partial Dependant” in relation to an employee means:

(a) a spouse; or

(b) where there is no spouse, a child or any other relative resident within the State who relies on the employee for their main support;

who receives a district or location allowance of any kind less than that applicable to an employee without dependants under any award, agreement or other provision regulating the employment of the partial dependant.

“Spouse” means an employee's spouse including de facto spouse.

“De facto Spouse” means a person of the opposite sex to the employee who lives with the employee as the husband or wife of the employee on a bona fide domestic basis, although not legally married to that person.

(2) For the purpose of this clause, the boundaries of the various districts shall as described hereunder and as delineated on the plan at subclause (16) of this clause.

District:

1. The area within a line commencing on coast; thence east along latitude 28 to a point north of Talling Peak; thence due south to Talling Peak; thence southeast to Mt Gibson and Burracoppin; thence to a point southeast at the junction of latitude 32 and longitude 119; thence south along longitude 119 to coast.

2. That area within a line commencing on the south coast at longitude 119 then east along the coast to longitude 123; then north along longitude 123 to a point on latitude 30; thence west along latitude 30 to the boundary of No. 1 District.

3. The area within a line commencing on coast at latitude 26; thence along latitude 26 to longitude 123; thence south along longitude 123 to the boundary of No. 2 District.

4. The area within a line commencing on the coast at latitude 24; thence east to the South Australian border; thence south to the coast; thence along the coast to longitude 123; thence north to the intersection of latitude 26; thence west along latitude 26 to the coast.

5. That area of the State situated between the latitude 24 and a line running east from Carnot Bay to the Northern Territory border.

6. That area of the State north of a line running east from Carnot Bay to the Northern Territory border.

(3) An employee shall be paid a district allowance at the standard rate prescribed in Column II of subclause (6) of this clause, for the district in which the employee's headquarters is located. Provided that where the employee's headquarters is situated in a town or place specified in Column III of subclause (6), the employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of subclause (6).

(4) An employee who has a dependant shall be paid double the district allowance prescribed by subclause (3) of this clause for, the district, town or place in which the employee's headquarters is located.

(5) Where an employee has a partial dependant the total district allowance payable to the employee shall be the district allowance prescribed by subclause (3) of this clause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full

time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.

(6) The weekly rate of district allowance payable to employees pursuant to subclause (3) of this clause shall be as follows:

COLUMN I DISTRICT	COLUMN II STANDARD RATE \$ per week	COLUMN III EXCEPTIONS TO STANDARD RATE Town or Place	COLUMN IV RATE \$ per week
6	50.40	Nil	Nil
5	41.20	Fitzroy Crossing Halls Creek Turner River Camp Nullagine Liveringa (Camballin) Marble Bar Wittenoom	51.60
4	20.70	Karratha Port Hedland Warburton Mission	48.60 45.10 55.90
3	13.10	Camarvon Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	19.50 20.70
2	9.30	Kalgoorlie Boulder Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	3.10 12.40
1	Nil	Nil	Nil

Note: In accordance with subclause (4) of this clause employees with dependants shall be entitled to double the rate of district allowance shown.

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after 1 January 1991.

(7) When an employee is on approved annual recreation leave, the employee shall for the period of such leave, be paid the district allowance to which the employee would ordinarily be entitled.

(8) When an employee is on long service leave or other approved leave with pay (other than annual recreational leave), the employee shall only be paid district allowance for the period of such leave if the employee, dependants or partial dependants remain in the district in which the employee's headquarters is situated.

(9) When an employee leaves his or her district on duty, payment of any district allowance to which the employee would ordinarily be entitled shall cease after the expiration of two weeks unless the employee's dependant/s or partial dependant/s remain in the district or as otherwise approved by the employer.

(10) Except as provided in subclause (9) of this clause, a district allowance shall be paid to any employee ordinarily entitled thereto in addition to reimbursement of any travelling transfer or relieving expenses or camping allowance.

(11) Where an employee whose headquarters is located in a district in respect of which no allowance is prescribed in subclause (6) of this clause, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, the employee shall be paid for the whole of such period a district allowance at the appropriate rate pursuant to subclauses (3), (4) or (5) of this clause, for the district in which the employee spends the greater period of time.

(12) When an employee is provided with free board and lodging by the employer or a Public Authority the allowance shall be reduced to two-thirds of the allowance the employee would ordinarily be entitled to under this clause.

(13) An employee who is employed on a part-time basis shall be entitled to district allowance on a pro-rata basis. The allowance shall be determined by calculating the hours worked by the employee as a proportion of the full-time hours prescribed by the Award under which the employee is employed.

That proportion of the appropriate district allowance shall be payable to the employee.

(14) An employee who immediately prior to the 1st day of July, 1988 was in receipt of district allowance at a rate which was greater than the amount to which the employee is entitled under this clause shall have the difference reduced in accordance with the following:

- (i) As from the first pay period commencing on or after July 1, 1988 the difference shall be reduced by thirty-three and one third (33 1/3%) per cent; and
- (ii) As from the first pay period commencing on or after January 1, 1989 the difference remaining between the amount being paid pursuant to (i) above and that to which the employee is otherwise entitled under this clause shall be reduced by fifty (50%) per cent; and
- (iii) As from the first pay period commencing on or after July 1, 1989 payment shall be in accordance with the employee's entitlement under this clause.

(15) The rates expressed in subclause (6) of this clause shall be adjusted every twelve (12) months ending on December 31 in accordance with the official "Consumer Price Index" for Perth as published by the Australian Bureau of Statistics.

The adjustment of rates shall be effective from the beginning of the first pay period to commence on or after the first day of January each year.

(16) (District Allowance Boundaries Map immediately after the District Allowances clause)

18.—HOLIDAYS

(1) The following days or the days observed in lieu thereof shall, subject as hereinafter provided, be allowed as holidays without deduction of pay namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of the days in this subclause.

(2) Where any of the days mentioned in subclause (1) hereof falls on a Saturday or Sunday, the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or on a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(3) (a) Whenever any holiday falls on an employee's ordinary working day and the employee is not required to work on such day he shall be paid for the ordinary hours he would have worked on such day if it had not been a holiday.

(b) If any employee is required to work on a holiday he shall be paid for the time worked at the rate of double time and a half. Provided that in lieu of the foregoing provisions of this paragraph, and subject to agreement between the employer and the employee work done on any day prescribed as a holiday under this award shall be paid for at the rate of time and a half and the employee shall, in addition, be allowed a day's leave with pay to be added to his annual leave or be taken at some subsequent date if the employee so agrees.

(c) Payment for holidays shall be in accordance with the usual hours of work.

(4) When an employee is absent on leave without pay, sick leave without pay or workers' compensation, any day observed as a holiday on a day falling during such absence shall not be treated as a paid holiday. Where the employee is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a day observed as a holiday as prescribed by this clause, the employee shall be entitled to be paid for such holiday.

(5) This clause shall not apply to casual employees.

19.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his employer after a period of twelve months' continuous service with such employer.

(2) "Ordinary Wages" for an employee shall mean the rate of wage the employee has received for the greatest proportion of the calendar month prior to his taking the leave.

(3) If any award holiday falls 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 period one day being an ordinary working day for each such holiday observed as aforesaid.

(4) If after one month's continuous service in any qualifying twelve 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 2.92 hours' pay at his ordinary rate of wage in respect of each completed week of continuous service in that qualifying period.

(5) In addition to any payment to which he may be entitled under subclause (4) of this clause, an employee whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period, shall be given payment in lieu of that leave and the loading prescribed in subclause (9) hereof unless—

- (a) he has been justifiably dismissed for misconduct; and
- (b) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(6) An employee may be rostered off and granted annual leave with payment of ordinary wages as prescribed prior to his having completed a period of twelve months' continuous service, in which case should the services of such employee terminate or be terminated prior to the completion of twelve months' continuous service, the said employee shall refund to the employer the difference between the amount received by him for wages in respect of the period of his annual leave and the amount which would have accrued to him by reason of the length of his service up to the date of the termination of his services.

(7) (a) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an employee is on annual leave and/or holidays. Provided that no deduction shall be made for any approved period an employee is absent from duty through sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through accident sustained in the course of employment shall not be considered breaks in continuity of service, but the first six months only of any such period shall count as service for the purpose of computing annual leave.

(8) When work is closed down for the purpose of allowing annual leave to be taken, employees with less than a full year's service shall only be entitled to payment during such period for the number of days leave due to them. Provided that nothing herein contained shall deprive the employer of his right to retain such employees during the close down period as may be required.

(9) In addition to the payment prescribed for annual leave, an employee shall receive a loading calculated on the rate of wage prescribed by subclause (2) hereof. This loading shall be 17-1/2 per cent and shall be paid to an employee who would have worked on day work had he not been on leave.

(10) The provisions of this clause shall not apply to casual employees.

20.—SICK LEAVE

(1) (a) An employee shall be entitled to payment for non-attendance on the ground of personal ill-health or injury for one sixth of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the employee leaves the service of the employer, in the event of the employee being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in paragraph (a) of subclause (1) in any accruing year shall be allowed to accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No employee shall be entitled to the benefit of this clause unless he produces proof to the satisfaction of the employer or his representative of such sickness provided that the employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave, or if termination occurs before then, be paid for in accordance with the provisions of Clause 19.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 19.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Worker's Compensation Act nor to employees whose illness or injury is the result of the employee's own misconduct.

(7) The provisions of this clause do not apply to casual employees.

21.—LONG SERVICE LEAVE

The conditions governing the granting of long service leave to full-time Government wages employees generally shall apply to the employees covered by this award.

22.—SHOP STEWARDS

Subject to the recognition of properly constituted authority, shop stewards, to be appointed by the union, shall be recognised by the management. The management shall be notified in writing by the union of the stewards appointed.

23.—NOTICE BOARDS

A notice board shall be provided by the employer on all jobs where, in the opinion of the officer in charge, it is considered that notices are essential to meet the convenience of the union concerned.

24.—RIGHT OF ENTRY

On notifying the officer in charge, any officer of the union, authorised in writing by the President and Secretary of such

union, shall have the right to enter any place or premises during ordinary working hours wherein members of such union covered by this award are engaged for the purpose of conversing with or interviewing the employees in such place or premises. Provided that such officer shall not hamper or otherwise hinder the employees in the carrying out of their work. The officer in charge shall determine whether employees are being hampered or hindered in their work.

25.—LIBERTY TO APPLY

The parties may, within the term specified in Clause 4.—Term, of this award seek liberty to apply in respect to the provisions of

- (a) Clause 5.—Definitions
- (b) First Schedule—Wages

26.—MATERNITY LEAVE

(1) 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—

- (a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave:

- (a) Subject to subclause (3) and (6) of this clause, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) 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.
- (c) An employee shall give not less than four weeks' notice in writing to her employer if the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
- (d) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job:

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy of hazards connected with the work assigned to the employee make 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 purpose of subclauses (7), (8), (9), and (10) of this clause.

(4) Variation of Period of Maternity Leave:

- (a) 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.
- (b) 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.

(5) Cancellation of Maternity Leave:

- (a) 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.
- (b) 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 four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave:

- (a) 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—
 - (i) 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
 - (ii) 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.
- (b) 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.
- (c) For the purpose of subclauses (7), (8) and (9) of this clause, maternity leave shall include special maternity leave.
- (d) 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 (3) of this clause, to the position 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 to status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements:

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) of this clause does not exceed 52 weeks.

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

(8) 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 the award.

(9) Termination of Employment:

- (a) 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.
- (b) 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.

(10) Return to Work After Maternity Leave:

- (a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) of this clause, 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 (3) of this clause, 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.

(11) Replacement Employees:

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) 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.
- (c) 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.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where the employment continues beyond the 12 months' qualifying period.

27.—PAID LEAVE FOR ENGLISH LANGUAGE TRAINING

(1) Leave during normal working hours without loss of pay shall be granted to employees from a non-English speaking background, who are unable to meet standards of communication to advance career prospects, or who constitute a safety hazard or risk to themselves and/or fellow employees, or are not able to meet the accepted production requirements of that particular occupation or industry, to attend English training conducted by an approved and authorised Authority. The selection of employees for training will be determined by consultation between the employer and the appropriate Unions.

(2) Leave will be granted to enable employees selected to achieve an acceptable level of vocational English proficiency. In this respect the tuition content with specific aims and objectives incorporating the pertinent factors at subclause (3) hereof shall be agreed between the employer, the Unions and the Adult Migrant Education Service or other approved Authority conducting the training.

(3) Subject to appropriate needs assessment participation in training will be on the basis of a minimum of 100 hours per employee per year.

The agreed desired proficiency level will take account of the vocational needs of an employee in respect of communication, safety and welfare and productivity within his/her current position as well as those positions to which he/she may

be considered for promotion or redeployment. It will also take account of issues in relation to training, retraining and multiskilling, award restructuring, industrial relations and safety provisions, and equal opportunity employment legislation.

28.—LEAVE TO ATTEND UNION BUSINESS

(1) (a) The employer shall grant paid leave during ordinary working hours to an employee—

- (i) who is required to give evidence before any Industrial Tribunal;
- (ii) who as a union nominated representative of the employees is required to attend negotiations and/or conferences between the union and employer;
- (iii) when prior agreement between the union and employer has been reached for the employee to attend official union meetings preliminary to negotiations or industrial hearings;
- (iv) who as a union nominated representative of the employees is required to attend joint union/management consultative committees or working parties.

(b) The granting of leave pursuant to paragraph (a) of this subclause shall only be approved—

- (i) where an application for leave has been submitted by an employee a reasonable time in advance;
- (ii) for the minimum period necessary to enable the union business to be conducted or evidence to be given;
- (iii) for those employees whose attendance is essential;
- (iv) when the operation of the organisation is not being unduly affected and the convenience of the employer impaired.

(2) (a) Leave of absence will be granted at the ordinary rate of pay.

(b) The employer shall not be liable for any expenses associated with an employee attending to union business.

(c) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours.

(3) (a) Nothing in this clause shall diminish the existing arrangements relating to the granting of paid leave for union business.

(b) An employee shall not be entitled to paid leave to attend union business other than as prescribed by this clause.

(c) The provisions of this clause shall not apply to special arrangements made between the parties which provide for unpaid leave for employees to conduct union business.

(4) The provisions of this clause shall not apply when an employee is absent from work without the approval of the employer.

FIRST SCHEDULE—WAGES

(1) The total weekly wage payable to employees covered by this Award shall be as follows:

	First Arbitrated		
	On Engagement \$	Safety Net Adjustment \$	Total Rate \$
(a)			
Electronic Technician:			
Level 1	437.40	8.00	445.40
Level 2	467.90	8.00	475.90
Level 3	498.80	8.00	506.80
Level 4	531.20	8.00	539.20
Level 5	563.70	8.00	571.70
(b)			
	After One Year of Service \$	First Arbitrated Safety Net Adjustment \$	Total Rate \$
Electronic Technician:			
Level 1	442.40	8.00	450.50
Level 2	472.90	8.00	480.90
Level 3	503.60	8.00	511.60
Level 4	536.30	8.00	544.30
Level 5	569.00	8.00	577.00

(c)	After Two	First	Total
	Years of	Arbitrated	
	Service	Safety Net	Rate
	\$	\$	\$
Electronic Technician:			
Level 1	446.70	8.00	454.60
Level 2	477.30	8.00	485.30
Level 3	508.00	8.00	516.00
Level 4	540.50	8.00	548.50
Level 5	573.50	8.00	581.50

(d) The rates of pay in this award include the first \$8.00 per week Arbitrated Safety Net Adjustment payable under the December 1994 State Wage Case Decision. This first \$8.00 per week Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset Arbitrated Safety Net Adjustments.

(2) (a) In addition to the appropriate rate of pay prescribed elsewhere in this Schedule an employee shall be paid:

- (i) \$27.90 per week if he is engaged on the construction of a large industrial undertaking or any large civil engineering project;
- (ii) \$24.10 per week if he is engaged on a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employees between the ground floor and the floor upon which he is required to work. A multi-storeyed building is a building which, when completed will consist of at least five storeys.
- (iii) \$14.80 per week if he is engaged otherwise on construction work falling within the definition of construction work in Clause 5.—Definitions of this Award.

(b) Any dispute as to which of the aforesaid allowances applies to particular work shall be determined by the Board of Reference.

(c) An allowance paid under this subclause includes any allowance otherwise payable under Clause 13.—Special Rates and Provisions of this Award.

(3) Casual Employees: An employee who is engaged to work for less than five consecutive days shall be paid twenty per cent of the ordinary rate in addition to the ordinary rate for his class of work.

(4) Leading Hands: A technician placed in charge of three or more other workers shall, in addition to his ordinary rate, be paid:

	\$
(i) if placed in charge of not less than three and not more than ten other workers	15.70
(ii) if placed in charge of more than ten and not more than twenty other workers	24.10
(iii) if placed in charge of more than twenty other workers	31.00

(5) Tool Allowance

- (a) Where an employer does not provide a technician with the tools ordinarily required in the performance of his work as a technician the employer shall pay a tool allowance of \$8.70 per week to such technician for the purpose of such technician supplying and maintaining tools ordinarily required in the performance of his work.
- (b) Any tool allowance paid pursuant to this clause shall be included in, and form part of, the ordinary weekly wage prescribed in this schedule.
- (c) An employer shall provide for the use of technicians all necessary power tools, special purpose tools and precision measuring instruments.

- (d) A technician shall replace or pay for any tools supplied by his employer if lost through his negligence.

SECOND SCHEDULE—38 HOUR WEEK

Implementation of 38 hour week provisions:

(1) Rosters

- (a) The employer is responsible for the preparation of the roster which will allow the rostered day off duty in each twenty day cycle.
- (b) The rostered day off will be observed on either the first or the last working day of the week.
- (c) The maintenance of the roster shall be the responsibility of the Department and alterations may be made to meet the needs of the Department.
- (d) Any dispute concerning rosters shall be referred to a meeting of the Department and the union concerned.

(2) Long Service Leave

There will be no rostered day off duty applicable to employees whilst on long service leave nor any credit accumulated for such periods of leave.

(3) Sick Leave

An employee shall accrue an entitlement of 24 minutes per day whilst on sick leave towards his rostered day off. However, his sick leave entitlement will be debited by 8 hours and not 7.6 hours.

(4) Leave Without Pay

There will be no rostered days off duty applicable to employees whilst on leave without pay nor shall any credit accumulate for such periods of leave.

(5) Allowances

The following allowances as per the award will be the only allowances applicable to employees on rostered days off duty.

- Tool allowance
- Leading hand allowance
- Construction allowance

(6) Substitution

Where an employee is rostered off duty on a particular day, he will not be entitled to claim either sick leave or compassionate leave in substitution for the rostered day off.

(7) Workers Compensation

- (a) Where an employee is on worker's compensation for periods for less than one complete 20 day work cycle, such employee will accrue towards and be paid for the succeeding rostered day off following such leave.
- (b) An employee will not accrue rostered days off for periods of worker's compensation where such period of leave exceeds one or more complete 20 day work cycles.
- (c) Where an employee is on worker's compensation for less than one complete 20 day work cycle and a rostered day falls within that period, the employee will not be re-rostered for an additional day off.

(8) Trade Offs

- (a) There will be no wash-up time prior to knocking off at lunch time or knocking off work for the day, however, staff may be permitted by their overseer to wash after completing particularly dirty assignments as would normally be the case.
- (b) There will be no afternoon tea break (Clause 11.—Hours of Duty).
- (c) Payment will be made fortnightly into a bank, building society or approved credit union (Clause 12.—Payment of Wages).

Dated at Perth this 30th day of August, 1984.

THIRD SCHEDULE—NAMED PARTIES TO
THE AWARD

Unions Parties

Australian Electrical, Electronics, Foundry and Engineering
Union (Western Australian Branch)

Metals and Engineering Workers' Union—Western Austral-
ian Branch

Employer Party

Building Management Authority.

33. Liberty to Apply

34. Training

Schedule One—Schedule of Respondents

Schedule Two—Named Parties to the Award

2A.—STATE WAGE CASE PRINCIPLES—JUNE 1991

It is a term of this award that the unions undertake not to pursue, prior to 15 November 1991, any extra claims, award or overaward, except when consistent with the State Wage Principles as determined by the Commission in Court Session in Application No. 704 of 1991.

3.—AREA AND SCOPE

This award relates to the Security Alarm Industry within the State of Western Australia and to all work done by employees in the classifications shown in Clause 28.—Wages and employed by Respondents in the industry in connection with the wiring, maintenance, installation and repair of all manner of electrical and electronic security surveillance detectors and equipment including, but without limiting the generality of the foregoing, the utilisation of electro-mechanical devices and signalling equipment.

4.—TERM

The term of this award shall be for a period of six months from the beginning of the first pay period to commence on or after the 26th day of September, 1980.

5.—DEFINITIONS

(1) "Cadet" means—

- (a) an employee who is appointed by an employer bound by this award solely for the purpose of being trained for an administrative or supervisory position (not being a supervisory position to which this award applies) in the employer's business; and
- (b) an employee who is a full-time student at a university, school of mines or technical college and who is employed during vacations by an employer bound by this award solely for the purpose of giving the student practical experience necessary for the completion of his course of study.

(2) "Casual employee" means an employee engaged and paid as such.

(3) "Construction work" means work on site in or in connection with—

- (a) the construction of a large industrial undertaking or any large civil engineering project;
- (b) the construction or erection of any multi-storey building; and
- (c) the construction, erection or alteration of any other building, structure, or civil engineering project which the employer and the union agree or, in the event of disagreement, which the Board of Reference declares to be construction work for the purposes of this award.

(4) "Installer and/or Serviceman" means an employee engaged in connection with the wiring, manufacturing, installation, testing and repair of all manner of electrical and electronic security surveillance detectors and equipment.

(5) "Serviceman—Special Class" means, subject to paragraph (c) hereunder, an "Installer and/or Serviceman" who—

- (a) (i) has satisfactorily completed a prescribed post trade course in industrial electronics; or
- (ii) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under sub-paragraph (i) hereof; and
- (b) (i) is engaged on work on or in connection with complicated or intricate circuitry, which work requires for its performance the standard of knowledge referred to in paragraph (a) hereof; and
- (ii) is able, where necessary and practicable, to perform such work without supervision and

**ELECTRICAL TRADES (SECURITY ALARMS
INDUSTRY) AWARD 1980**
No. R 27 of 1979.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 19th day of January, 1996

(Sgd.) J. CARRIGG,
Registrar.

Electrical Trades (Security Alarms Industry) Award

1.—TITLE

This award shall be known as the Electrical Trades (Security Alarms Industry) Award 1980.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
- 2A. State Wage Case Principles—June 1991
3. Area and Scope
4. Term
5. Definitions
6. Contract of Service
7. Higher Duties
8. Under-Rate Employees
9. Cadets
10. Hours
11. Overtime
12. Shift Work
13. Payment of Wages
14. Time and Wages Record
15. Special Rates and Provisions
16. Car Allowance
17. Fares and Travelling Time
18. Distant Work
19. Location Allowances
20. Holidays and Annual Leave
21. Absence Through Sickness
22. Long Service Leave
23. Representative Interviewing Employees
24. Posting of Award and Union Notices
25. Board of Reference
26. Bereavement Leave
27. Supplementary Payments
28. Wages
29. No Reduction
30. Junior Employees—Special Order
31. Avoidance of Industrial Disputes
32. Part Time Employment

to examine, diagnose and modify systems comprising interconnected circuits,

but does not include such an employee unless the work on which he is engaged requires for its performance knowledge in excess of that gained by the satisfactory completion of the appropriate Technical College trade course.

- (c) For the purposes of this award an employee shall be deemed to be a Serviceman—Special Class only for the time during which he meets the foregoing conditions, unless—
- (i) that time exceeds sixteen hours per week; or
 - (ii) in the opinion of his employer or, in the event of disagreement, in the opinion of the Board of Reference that time is likely during the course of his employment to exceed sixteen hours per week on average
- in which case he shall be classified as Serviceman—Special Class for as long as his employment continues on either of those bases.
- (d) In the event of disagreement about the implementation of this Serviceman—Special Class provision, a Board of Reference shall determine the matter.
- (e) For the purpose of this definition the following courses are deemed to be prescribed post trade courses in industrial electronics—
- (i) Post Trade Industrial Electronics Course of the N.S.W. Department of Technical Education.
 - (ii) The Industrial Electronics Course (Grade 1 and 2) as approved by the Education Department of Victoria.
 - (iii) The Industrial Electronics Course of the South Australian School of Electrical Technology.
 - (iv) Industrial Electronics (Course “C”) of the Department of Education, Queensland.
 - (v) The Industrial Electronics Course of the Technical Education Department of Tasmania.
 - (vi) The Certificate in Industrial Electronics of the Technical Education Division, Education Department of Western Australia.

(6) “Union” means the Electrical Trades Union of Workers of Australia (Western Australia Branch), Perth.

6.—CONTRACT OF SERVICE

(1) A contract of service to which this award applies may be terminated in accordance with the provisions of this clause and not otherwise, but this subclause does not operate so as to prevent any party to a contract from giving a greater period of notice than is hereinafter prescribed, nor to affect an employer’s right to dismiss an employee without notice for misconduct and an employee so dismissed shall be paid wages for the time worked up to the time of dismissal only.

(2) Subject to the provisions of this clause, a party to a contract of service may, on any day, give to the other party the appropriate period of notice of termination of the contract prescribed in subclause (5) of this clause and the contract terminates when that period expires.

(3) In lieu of giving the notice referred to in subclause (2) of this clause, an employer may pay the employee concerned his ordinary wages for the period of notice to which he would otherwise be entitled.

- (4) (a) Where an employee leaves his employment—
- (i) without giving the notice referred to in subclause (2) of this clause; or

(ii) having given such notice, before the notice expires, he forfeits his entitlement to any monies owing to him under this award except to the extent that those monies exceed his ordinary wages for the period of notice which should have been given.

(b) In a case to which paragraph (a) of this subclause applies—

- (i) the contract of service shall, for the purposes of this award be deemed to have terminated at the time of

which the employee was last ready, willing and available for work during ordinary working hours under the contract; and

- (ii) the provisions of subclause (2) of this clause shall be deemed to have been complied with if the employee pays to the employer, whether by forfeiture or otherwise, an amount equivalent to the employee’s ordinary wages for the period of notice which should have been given.

(5) The period of notice referred to in subclause (2) of this clause is—

- (a) in the case of a casual employee, one hour;
- (b) in any other case—
 - (i) during the first month of employment under the contract, one day; and
 - (ii) after the first month of such employment, one week.

(6) (a) On the first day of engagement, an employee shall be notified by his employer or by the employer’s representative whether the duration of his employment is expected to exceed one month and if he is hired as a casual employee, he shall be advised accordingly.

(b) An employee shall, for the purpose of this award, be deemed to be a casual employee—

- (i) if the expected duration of the employment is less than one month; or
- (ii) if the notification referred to in paragraph (a) of this subclause is not given and the employee is dismissed through not fault of his own within one month of commencing employment.

(7) The employer shall be under no obligation to pay for any day not worked, upon which the employee is required to present himself for duty, except when such absence from work is due to illness and comes within the provisions of Clause 21.—Absence Through Sickness or such absence is on account of holidays to which the employee is entitled under the provisions of this award.

(8) (a) The employer is entitled to deduct payment for any day upon which an employee cannot be usefully employed because of a strike by the union party to this award, or by any other association or union.

(b) The provisions of paragraph (a) of this subclause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented, but only if, and to the extent that, the employer and the union so agree, or, in the event of disagreement the Board of Reference, so determines.

(c) Where the stoppage of work has resulted from a breakdown of the employer’s machinery the Board of Reference, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the employer to repair the breakdown.

7.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate than his ordinary classification shall be paid the higher rate for the time he is so engaged but if he is so engaged for more than two hours of one day or shift he shall be paid the higher rate for the whole day or shift.

8.—UNDER-RATE EMPLOYEES

(1) Any employee who by reason of old age or infirmity is unable to earn the minimum wage may be paid such lesser wage as may from time to time be agreed upon in writing between the union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to the Board of Reference for determination.

(3) After application has been made to the Board, and pending the Board’s decision, the employee shall be entitled to work for and be employed at the proposed lesser rate.

9.—CADETS

(1) An employer who, after the commencement of this award, engages a cadet shall, within fourteen days of the engagement, notify the Industrial Registrar accordingly and shall advise

the Registrar in writing of the terms and conditions of the employment.

(2) Upon receipt of the notification referred to in subclause (1) of this clause, the Registrar shall notify the union and shall afford them the opportunity of examining the terms and conditions of employment referred to in that subclause.

(3) Within fourteen days of being notified by the Registrar the union or unions concerned may object to the employment of the cadet and the Commission may, on hearing the objection—

- (a) allow or refuse permission for the employment of the cadet; and
- (b) make such order as it deems fit with regard to the terms and conditions of employment.

(4) The provisions of this clause do not affect any cadet employed at the date of this award.

10.—HOURS

(1) (a) The provisions of this subclause apply to all employees other than those engaged on continuous shift work.

(b) Subject to the provisions of subclauses (3) and (4) of this clause the ordinary hours of work shall be an average of 38 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.
- (v) For the purposes of paragraph (g) of subclause (3) of this clause any other work cycle during which a weekly average of 38 ordinary hours are worked as may be agreed in accordance with paragraph (g) of subclause (3).

(c) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday, inclusive, and except in the case of shift employees, shall be worked between the hours of 6.30 a.m. and 6.00 p.m. Provided that the spread of hours may be altered by agreement between the employer and the majority of employees in the plant or section or sections concerned.

(d) Where the first night shift in any week commences on Monday night, the night shift commencing on Friday and finishing not later than 8.00 a.m. on Saturday of that week, shall be deemed to have been worked in ordinary working hours.

(e) The ordinary hours of work shall not exceed 10 hours on any day.

Provided that in any arrangement of ordinary working hours, where such ordinary hours are to exceed 8 hours on any day, the arrangement of hours shall be subject to the agreement between the employer and the majority of employees in the plant or section or sections concerned.

(f) The ordinary hours of work shall be consecutive except for a meal interval which shall not exceed one hour, and

- (i) An employee shall not be compelled to work for more than five hours without a meal interval except where an alternative arrangement is entered into as a result of discussions as provided for in subclause (4) of this clause.
- (ii) When an employee is required for duty during the employee's usual meal interval and the employee's meal interval is thereby postponed for more than half an hour, the employee shall be paid at overtime rates until the employee gets the meal interval.

(g) (i) Subject to the provisions of this paragraph, a rest period of seven minutes from the time of ceasing to the time of resumption of work shall be allowed each morning.

(ii) The rest period shall be counted as time off duty without deduction of pay and shall be arranged at a time and in a manner to suit the convenience of the employer.

(iii) Refreshments may be taken by employees during the rest period but the period of seven minutes shall not be exceeded under any circumstances.

(iv) An employer who satisfies the Commission that any employee has breached any condition expressed or implied in this paragraph may be exempted from liability to allow the rest period.

(v) In an establishment in which the majority of employees are not subject to this award, the provisions of this paragraph do not apply but any employee to whom this award applies shall be entitled to the rest period, if any, which may be allowed to the aforesaid majority.

(2) (a) The provisions of this subclause apply only to employees engaged on continuous shift work.

(b) Subject to the provisions of subclauses (3) and (4) of this clause the ordinary hours of continuous shift employees shall average 38 per week (inclusive of crib time) and shall not exceed 152 hours in twenty-eight consecutive days.

Provided that, where the employer and the majority of employees concerned agree, a roster system may operate on the basis that the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days.

(c) The ordinary hours of work prescribed herein shall not exceed 10 hours on any day. Provided that in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight hours on any day, the arrangement of hours shall be subject to the agreement of the employer and the majority of employees in the plant or section or sections thereof.

(3) (a) Except as provided in paragraph (d) of this subclause the method of implementation of the 38 hour week may be any one of the following—

- (i) by employees working less than 8 ordinary hours each day; or
- (ii) by employees working less than 8 ordinary hours on one or more days each week; or
- (iii) by fixing one day of ordinary working hours on which all employees will be off duty during the particular work cycle; or
- (iv) by rostering employees off duty on various days of the week during a particular work cycle so that each employee has one day of ordinary working hours off duty during that cycle.
- (v) Except in the case of continuous shift employees where the ordinary hours of work are worked within an arrangement as provided in placitum (iii) or (iv) of this paragraph, any day off duty shall be arranged so that it does not coincide with a holiday prescribed in subclause (1) of Clause 20.—Holidays and Annual Leave of this Award.

(b) In each plant, an assessment should be made as to which method of implementation best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the method of implementation prior to May 17, 1982.

(c) In the absence of an agreement at plant level, the procedure for resolving special, anomalous or extraordinary problems shall be as follows:

- (i) Consultation shall take place within the particular establishment concerned.
- (ii) If it is unable to be resolved at establishment level, the matter shall be referred to the State Secretary of the union concerned or deputy, at which level a conference of the parties shall be convened without delay.
- (iii) In the absence of agreement either party may refer the matter to the Western Australian Industrial Relations Commission.

(d) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the plant or establishment concerned.

(e) Notice of Days Off

Except as provided in paragraphs (f) and (g) of this subclause in cases where, by virtue of the arrangement of ordinary hours an employee, in accordance with placita (iii) and (iv) of paragraph (a) of this subclause, is entitled to a day off duty during the work cycle, then such employee shall be advised by the employer at least four weeks in advance of the day to be taken

off duty provided that a lesser period of notice may be agreed by the employer and the majority of employees in the plant or section or sections concerned.

(f) (i) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with placita (iii) and (iv) of subclause (3) hereof, for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

(ii) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(g) Flexibility in relation to rostered days off.

Notwithstanding any other provision in this clause, where the hours of work of an establishment, plant or section are organised in accordance with placita (iii) and (iv) of paragraph (a) of this subclause an employer, the union or unions concerned and the majority of employees in the establishment, plant, section or sections concerned may agree to accrue up to a maximum of five (5) rostered days off in special circumstances such as where there are regular and substantial fluctuations in production requirements in any year.

Where such agreement has been reached the accrued rostered days off must be taken within 12 months from the date of agreement and each 12 months thereafter.

It is understood between the parties that the involvement of the union or unions concerned would be necessary in cases where it or they have members in the plants concerned and not in non-union establishments.

(4) (a) Procedures shall be established for in-plant discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with this clause and shall entail an objective review of current practices to establish where improvements can be made and implemented.

(b) The procedures should allow for in-plant discussions to continue even though all matters may not be resolved by May 17, 1982.

(c) The procedures should make suggestions as to the recording of understandings reached and methods of communicating agreements and understandings to all employees, including the overcoming of language difficulties.

(d) The procedures should allow for the monitoring of agreements and understandings reached in-plant.

(e) In cases where agreement cannot be reached in-plant in the first instance or where problems arise after initial agreements or understandings have been achieved in-plant, a formal monitoring procedure shall apply. The basic steps in this procedure shall be as applies with respect to special, anomalous or extraordinary problems as prescribed in paragraph (c) of subclause (3) of this clause.

11.—OVERTIME

(1) (a) The provisions of this subclause apply to all employees other than those engaged on continuous shift work.

(b) Subject to the provisions of this subclause, all work done beyond the ordinary working hours on any day, Monday to Friday, inclusive, shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

For the purposes of this subclause, ordinary hours shall mean the hours of work fixed in an establishment in accordance with Clause 10.—Hours.

(c) (i) Work done on Saturdays after 12.00 noon or on Sundays shall be paid for at the rate of double time.

(ii) Work done on any day prescribed as a holiday under this award shall be paid for at the rate of double time and a half.

(d) Work done on Saturdays prior to 12.00 noon shall be paid for at the rate of time and one half for the first two hours and double time thereafter but this paragraph does not apply in a case to which paragraph (d) of subclause (1) of Clause 10.—Hours applies.

(e) In computing overtime each day shall stand alone but when an employee works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purpose of this subclause.

(2) (a) The provisions of this subclause apply only to employees engaged on continuous shift work.

(b) Subject to the provisions of paragraph (c) of this subclause all time worked in excess of or outside the ordinary working hours, or on a shift other than a rostered shift, shall be paid for at the rate of double time, except where an employee is called upon to work a sixth shift in not more than one week in any four weeks, when the employee shall be paid for such shift at time and a half for the first four hours and double time thereafter.

For the purposes of this subclause, ordinary hours shall mean the hours of work fixed in an establishment in accordance with subclauses (3) and (4) of Clause 10.—Hours.

(c) Time worked in excess of the ordinary working hours shall be paid for at ordinary rates:

(i) If it is due to private arrangements between the employees themselves; or

(ii) if it does not exceed two hours and is due to a relieving employee not coming on duty at the proper time; or

(iii) if it is for the purpose of effecting the customary rotation of shifts.

(3) (a) The provisions of this subclause apply to all employees.

(b) Overtime on shift work shall be based on the rate payable for shift work.

(c) (i) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an employee has at least ten consecutive hours off duty between the work of successive days.

(ii) An employee (other than a casual employee) who works so much overtime between the termination of the employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not had at least ten consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) If, on the instructions of the employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, the employee shall be paid at double rates until released from duty and shall then be entitled to be absent for such period of ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iv) Where an employee (other than a casual employee or an employee engaged on continuous shift work) is called into work on a Sunday or holiday prescribed under this award preceding an ordinary working day, the employee shall, wherever reasonably practicable, be given ten consecutive hours off duty before the employee's usual starting time on the next day. If this is not practicable, then the provisions of placita (ii) and (iii) of this paragraph shall apply *mutatis mutandis*.

(v) The provisions of this paragraph shall apply in the case of shift employees who rotate from one shift to another, as if eight hours were substituted for ten hours when overtime is worked:

(aa) for the purpose of changing shift rosters; or

(bb) where a shift employee does not report for duty; or

(cc) where a shift is worked by arrangement between the employees themselves.

(vi) Overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this paragraph when the actual time worked is less than three hours on such recall or on each of such recalls.

(d) When an employee is recalled to work after leaving the job:

(i) the employee shall be paid for at least three hours at overtime rates;

(ii) time reasonably spent in getting to and from work shall be counted as time worked.

(e) When an employee is instructed by the employer to hold in readiness at the employee's place of residence or other agreed place of residence for a call to work after ordinary hours, the

employee shall be paid at ordinary rates for the time the employee so holds in readiness.

(f) Subject to the provisions of paragraph (g) of this subclause, an employee required to work overtime for more than two hours shall be supplied with a meal by the employer or be paid \$6.65 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required he/she shall be supplied with each such meal by the employer or be paid \$4.50 for each meal so required.

(g) The provisions of paragraph (f) of this subclause do not apply:

- (i) in respect of any period of overtime for which the employee has been notified of the requirement on the previous day or earlier.
- (ii) to any employee who lives in the locality in which the place of work is situated in respect of any meal for which the employee can reasonably go home.

(h) If an employee to whom placitum (i) of paragraph (g) of this subclause applies has, as a consequence of the notification referred to in that paragraph, provided a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, the employee shall be paid, for each meal provided and not required, the appropriate amount prescribed in paragraph (f) of this subclause.

(i) (i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

The assignment of overtime by an employer to an employee shall be based on specific work requirements and the practice of "one in, all in" overtime shall not apply.

(ii) No union or association party to this award, or employee or employees covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation, or restriction upon the working of overtime in accordance with the requirements of this subclause.

(j) In lieu of the provisions of subclause (3) paragraphs (d) and (e), the existing practices of Chubb Alarms (A Division of Chubbs Australia Limited) and Metropolitan Security Services (A Division of Mayne Nickless Limited) shall continue to be applied.

(4) The provisions of this clause do not operate so as to require payment of more than double time rates, or double time and a half on a holiday prescribed under this award, for any work except and to the extent that the provisions of Clause 15.—Special Rates and Provisions of this award apply to that work.

12.—SHIFT WORK

(1) The provisions of this clause apply to shift work whether continuous or otherwise.

(2) An employer may work the establishment on shifts but before doing so shall give notice of the intention to the union or unions concerned and of the intended starting and finishing times of ordinary working hours of the respective shifts.

(3) (a) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, then employees employed on such afternoon or night shifts shall be paid at overtime rates.

Provided that where the ordinary hours of work normally worked in an establishment are worked on less than five days then the provisions of paragraph (a) shall be as if four consecutive shifts were substituted for five consecutive shifts.

(b) The sequence of work shall not be deemed to be broken under the preceding paragraph by reason of the fact that work on the process is not carried out on a Saturday or Sunday or any other day that the employer observes a shut down for the purpose of allowing a 38 hour week or on any holiday.

(4) Where a shift commences at or after 11.00 p.m. on any day, the whole of that shift shall be deemed, for the purposes of this award, to have been worked on the following day.

(5) A shift employee when on afternoon or night shift shall be paid, for such shift fifteen per cent more than his ordinary rate prescribed by this award.

(6) (a) All work performed on a rostered shift, when the major portion of such shift falls on a Saturday, Sunday or a holiday, shall be paid for as follows:

Saturday	—	at the rate of time one half
Sunday	—	at the rate of time and three quarters
Holidays	—	at the rate of double time.

(b) These rates shall be paid in lieu of the shift allowances prescribed in subclause (5) of this clause.

(7) A continuous shift employee who is not required to work on a holiday which falls on the employee's rostered day off shall be allowed a day's leave with pay to be added to annual leave or taken at some other time if the employee so agrees.

13.—PAYMENT OF WAGES

(1) Each employee shall be paid the appropriate rate shown in Clause 28.—Wages of this award. Subject to subclause (2) of this clause payment shall be pro rata where less than the full week is worked.

(2) From the date that a 38 hour week system is implemented by an employer wages shall be paid as follows:

(a) Actual 38 ordinary hours

In the case of an employee whose ordinary hours of work are arranged in accordance with placitum (i) or (ii) of paragraph (a) of subclause (3) of Clause 10.—Hours of this award so that the employee works 38 ordinary hours each week, wages shall be paid weekly or fortnightly according to the actual ordinary hours worked each week or fortnight.

(b) Average of 38 ordinary hours

Subject to subclauses (3) and (4) hereof, in the case of an employee whose ordinary hours of work are arranged in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 10.—Hours of this award, so that the employee works an average of 38 ordinary hours each week during a particular work cycle, wages shall be paid weekly or fortnightly according to a weekly average of ordinary hours worked even though more or less than 38 ordinary hours may be worked in any particular week of the work cycle.

SPECIAL NOTE—Explanation of Averaging System

As provided in paragraph (b) of this subclause an employee whose ordinary hours may be more or less than 38 in any particular week of a work cycle, is to be paid the wage on the basis of an average of 38 ordinary hours so as to avoid fluctuating wage payments each week. An explanation of the averaging system of paying wages is set out below:

(i) Clause 10.—Hours in subclause (3) paragraph (a) placita (iii) and (iv) provides that in implementing a 38 hour week the ordinary hours of an employee may be arranged so that the employee is entitled to a day off, on a fixed day or rostered day basis, during each work cycle. It is in these circumstances that the averaging system would apply.

(ii) If the 38 hour week is to be implemented so as to give an employee a day off in each work cycle this would be achieved if, during a work cycle of 28 consecutive days (that is, over four consecutive weeks) the employee's ordinary hours were arranged on the basis that for three of the four weeks the employee worked 40 ordinary hours each week and in the fourth week worked 32 ordinary hours. That is, the employee would work for 8 ordinary hours each day, Monday to Friday inclusive for three weeks and 8 ordinary hours on four days only in the fourth week—a total of 19 days during the work cycle.

(iii) In such a case the averaging system applies and the weekly wage rates for ordinary hours of work applicable to the employee shall be the average weekly wage rates set out for the employee's classification in Clause 28.—Wages of this award, and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

In effect, under the averaging system, the employee accrues a "credit" each day the employee works actual ordinary hours in excess of the daily average

which would otherwise be 7 hours 36 minutes. This "credit" is carried forward so that in the week of the cycle that the employee works on only four days, the actual pay would be for an average of 38 ordinary hours even though, that week, the employee works a total of 32 ordinary hours.

Consequently, for each day an employee works 8 ordinary hours the employee accrues a "credit" of 24 minutes (0.4 hours). The maximum "credit" the employee may accrue under this system is 0.4 hours on 19 days; that is, a total of 7 hours 36 minutes.

- (iv) As provided in subclause (3) of this clause, an employee will not accrue a "credit" for each day the employee is absent from duty other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave.

(3) Absences from Duty

- (a) An employee whose ordinary hours are arranged in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 10.—Hours of this award and who is paid wages in accordance with paragraph (a) of subclause (2) hereof and is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave) shall, for each day the employee is so absent, lose average pay for that day calculated by dividing the employee's average weekly wage rate by 5.

An employee who is so absent from duty for part of a day shall lose average pay for each hour the employee is absent by dividing the employee's average daily pay rate by 8.

- (b) Provided when such an employee is absent from duty for a whole day the employee will not accrue a "credit" because the employee would not have worked ordinary hours that day in excess of 7 hours 36 minutes for which the employee would otherwise have been paid. Consequently, during the week of the work cycle the employee is to work less than 38 ordinary hours the employee will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the "credit" the employee does not accrue for each whole day during the work cycle the employee is absent.

The amount by which an employee's average weekly pay will be reduced when the employee is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation or bereavement leave) is to be calculated as follows:

Total of "credits" not accrued during cycle \times average weekly pay \div 38

Examples

(An employee's ordinary hours are arranged so that the employee works 8 ordinary hours on five days of each week for 3 weeks and 8 ordinary hours on four days of the fourth week).

1. Employee takes one day off without authorisation in first week of cycle.

Week of Cycle	Payment
1st week	= average weekly pay <i>less</i> one day's pay (ie. 1/5th)
2nd and 3rd weeks	= average weekly pay each week
4th Week	= average pay <i>less</i> credit not accrued on day of absence
	= $\frac{\text{average pay less } 0.4 \text{ hours } \times \text{ average weekly pay}}{38}$

2. Employee takes each of the 4 days off without authorisation in the 4th week.

Week of Cycle	Payment
1st, 2nd and 3rd weeks	= average pay each week

4th week	= average pay less 4/5ths of average pay for the four days absent less total of credits not accrued that week
	= $\frac{1/5 \text{th average pay less } 4 \times 0.4 \text{ hours } \times \text{ average weekly pay}}{38}$
	= $\frac{1/5 \text{th average pay less } 1.6 \text{ hours } \times \text{ average weekly pay}}{38}$

(4) Alternative Method of Payment

An alternative method of paying wages to that prescribed by subclauses (2) and (3) of this clause may be agreed between the employer and the majority of the employees concerned.

(5) Day Off Coinciding with Pay Day

In the event that an employee, by virtue of the arrangement of the employee's ordinary working hours, is to take a day off duty on a day which coincides with pay day, such employee shall be paid no later than the working day immediately following pay day. Provided that, where the employer is able to make suitable arrangements, wages may be paid on the working day preceding pay day.

(6) Payment by cheque or electronic fund transfer.

Where an employee and the employer agree, the employee's wages may be paid by cheque or direct transfer into the employee's bank (or other recognised financial institution) account. Notwithstanding this provision, if the employer and the majority of employees agree, all employees may be paid their wages by cheque or direct transfer into an employee's bank (or other recognised financial institution) account.

(7) Termination of Employment

An employee who lawfully leaves the employment or is dismissed for reasons other than misconduct shall be paid all moneys due at the termination of service with the employer.

Provided that in the case of an employee whose ordinary hours are arranged in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 10.—Hours of this award and who is paid average pay and who has not taken the day off due to the employee during the work cycle in which the employment is terminated, the wages due to that employee shall include a total of credits accrued during the work cycle as detailed in the Special Note following paragraph (b) of subclause (2) of this clause.

Provided further, where the employee has taken a day off during the work cycle in which the employment is terminated, the wages due to that employee shall be reduced by the total of credits which have not accrued during the work cycle.

(8) Details of Payments to be Given

Where an employee requests the employer to state in writing with respect to each week's wages the amount of wages to which the employee is entitled, the amount of deductions made therefrom, the net amount being paid, and the number of hours worked, the employer shall do so not less than two hours before the employee is paid.

(9) Calculation of Hourly Rate

Except as provided in subclause (3) of this clause the ordinary rate per hour shall be calculated by dividing the appropriate weekly rate by 38.

14.—TIME AND WAGES RECORD

(1) Each employer shall keep a time and wages book showing the name of each employee, the nature of his work, the hours worked each day, and the wages and allowances paid each week. Any system of automatic recording by means of machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office or other convenient place and he shall be allowed to take extracts therefrom. The employer's works shall be deemed to be a convenient place for the purpose of this subclause and if for any reason the record be not available at the works when the official calls to inspect it, it shall be made available for inspection within twelve hours, either at the employer's office or at the works.

15.—SPECIAL RATES AND PROVISIONS

(1) Height Money: An employee shall be paid an allowance of \$1.57 for each day on which he/she works at a height of 15.5 metres or more above the nearest horizontal plane but this provision does not apply to linespersons nor to riggers and splicers on ships or buildings.

(2) Dirt Money: An employee shall be paid an allowance of 33 cents per hour when engaged on work of an unusually dirty nature where clothes are necessarily unduly soiled or damaged or boots are unduly damaged by the nature of the work done.

(3) Confined Space: An employee shall be paid an allowance of 39 cents per hour when, because of the dimensions of the compartment or space in which he/she is working, he/she is required to work in a stooped or otherwise cramped position or without proper ventilation.

(4) Hot Work: An employee shall be paid an allowance of 33 cents per hour when he/she works in the shade in any place where the temperature is raised by artificial means to between 46.1 and 54.4 degrees celsius.

(5) (a) Where, in the opinion of the Board of Reference, the conditions under which work is to be performed are, by reason of excessive heat, exceptionally oppressive, the Board may—

- (i) fix an allowance, or allowances, not exceeding the equivalent of half the ordinary rate;
- (ii) fix the period (including a minimum period) during which any allowance so fixed is to be paid; and
- (iii) prescribe such other conditions, relating to the provision of protective clothing or equipment and the granting of rest periods, as the Board sees fit.

(b) The provisions of paragraph (a) of this subclause do not apply unless the temperature in the shade at the place of work has been raised by artificial means beyond 54.4 degrees celsius.

(c) An allowance fixed pursuant to paragraph (a) of this subclause includes any other allowance which would otherwise be payable under this clause.

(6) Percussion Tools: An employee shall be paid an allowance of 19 cents per hour when working a pneumatic rivetter of the percussion type and other pneumatic tools of the percussion type.

(7) An employee who is required to work from a ladder shall be provided with an assistant on the ground where it is reasonably necessary for the worker's safety.

(8) An employee shall not be required to enter any establishment alone if it is outside the trading hours of that establishment and subject to an alarm condition.

(9) Where an employee is required in the normal course of his work to use a torch, such torch shall be supplied and maintained by the employer.

(10) Where an employee is required in the performance of his work to hold a licence under the Security Agents Act he shall, after twelve months continuous service with his employer, be reimbursed by that employer the cost of obtaining such licence and thereafter the cost of its renewal each year.

(11) Special Rates Not Cumulative:

Where more than one of the disabilities entitling an employee to extra rates exists on the same job, the employer shall be bound to pay only one rate, namely—the highest for the disabilities so prevailing. Provided that this subclause shall not apply to confined space, dirt money, height money, or hot work, the rates for which are cumulative.

(12) Protective Equipment:

- (a) An employer shall have available a sufficient supply of protective equipment (as, for example, goggles (including anti-flash goggles), glasses, gloves, mitts, aprons, sleeves, leggings, gum boots, ear protectors, helmets, or other efficient substitutes thereof) for use by his employees when engaged on work for which some protective equipment is reasonably necessary.
- (b) An employee shall sign an acknowledgement when he receives any article of protective equipment and shall return that article to the employer when he has finished using it or on leaving his employment.

(c) An employee to whom an article of protective equipment has been issued shall not lend that article to another employee and if he does both he and that other employee shall be deemed guilty of wilful misconduct.

(d) An article of protective equipment which has been used by an employee shall not be issued by the employer to another employee until it has been effectively sterilised but this paragraph only applies where sterilisation of the article is practicable and is reasonably necessary.

(e) Adequate safety gear (including insulating gloves, mats and/or shields where necessary) shall be provided by employers for employees required to work on live electrical equipment.

(13) An employee, holding a Third Year First Aid Medalion of the St. John Ambulance Association or a "C" Standard Senior First Aid Certificate of the Australian Red Cross Society, appointed by the employer to perform first aid duties shall be paid \$6.40 per week in addition to his/her ordinary rate.

(14) A Serviceperson—Special Class, a Serviceperson or an Installer who holds, and in the course of his/her employment may be required to use, a current "A" Grade or "B" Grade Licence issued pursuant to the relevant regulation in force on the 28th day of February, 1978 under the Electricity Act 1945 shall be paid an allowance of \$13.20 per week.

(15) Any dispute under this clause may be determined by the Board of Reference.

16.—CAR ALLOWANCE

(1) Where an employee is required and authorised to use his own motor vehicle in the course of his duties he shall be paid an allowance not less than that provided for in the table set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to car allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on 1 July and end on 30 June next following.

RATES OF HIRE FOR USE OF EMPLOYEE'S OWN VEHICLE ON EMPLOYER'S BUSINESS
MOTOR CAR

AREA AND DETAILS	ENGINE DISPLACEMENT (IN CUBIC CENTIMETRES)		
	OVER 2600cc	OVER 1600cc	1600cc -2600cc
RATE PER KILOMETRE (CENTS)			
Metropolitan Area	55.0	49.1	42.7
South West Land Division	56.2	50.3	43.8
North of 23.5° South Latitude	61.6	55.5	48.3
Rest of the State	57.9	52.0	45.1
MOTOR CYCLE (IN ALL AREAS)	18.8 cents per kilometre		

(4) "Metropolitan Area" means that area within a radius of fifty kilometres from the Perth Railway Station.

"South West Land Division" means the South West Land Division as defined by section 28 of the Land Act 1933-1971 excluding the area contained within the Metropolitan Area.

17.—FARES AND TRAVELLING TIME

(1) (a) An employee who, on any day, or from day to day is required to work at a job away from his accustomed workshop or depot shall, at the direction of his employer, present himself for work at such job at the usual starting time.

(b) An employee to whom paragraph (a) of this subclause applies shall be paid at ordinary rates for time spent in travelling between his home and the job and shall be reimbursed for any fares incurred in such travelling, but only to the extent that the time so spent and the fares so incurred exceed the time normally spent and the fares normally incurred in travelling between his home and his accustomed workshop or depot.

(c) An employee who with the approval of his employer uses his own means of transport for travelling to or from outside jobs shall be paid the amount of excess fares and travelling time which he would have incurred in using public transport unless he has an arrangement with his employer for a regular allowance.

(2) For travelling during working hours from and to the employer's place of business or from one job to another, an employee shall be paid by the employer at ordinary rates. The employer shall pay all fares and reasonable expenses in connection with such travelling.

18.—DISTANT WORK

(1) Where an employee is directed by his employer to proceed to work at such a distance that he cannot return to his home each night and the employee does so, the employer shall provide the employee with suitable board and lodging or shall pay the expenses reasonably incurred by the employee for board and lodging.

(2) The provisions of subclause (1) of this clause do not apply with respect to any period during which the employee is absent from work without reasonable excuse and in such a case, where the board and lodging is supplied by the employer, he may deduct from moneys owing or which may become owing to the employee an amount equivalent to the value of that board and lodging for the period of the absence

(3) (a) The employer shall pay all reasonable expenses including fares, transport of tools, meals and, if necessary, suitable overnight accommodation incurred by an employee who is directed by his employer to proceed to work pursuant to subclause (1) of this clause and who complies with such direction.

(b) The employee shall be paid at ordinary rate of payment for the time up to a maximum of eight hours in any one day incurred in travelling pursuant to the employer's direction.

(4) An employee to whom the provisions of subclause (1) of this clause apply shall be paid an allowance of \$22.90 for any weekend that he/she returns to his/her home from the job but only if—

- (a) the employee advises the employer or the employer's agent of their intention no later than the Tuesday immediately preceding the weekend in which the employee so returns;
- (b) the employee is not required for work during that weekend;
- (c) the employee returns to the job on the first working day following the weekend; and
- (d) the employer does not provide or offer to provide suitable transport.

(5) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job the employee shall be provided with suitable transport to and from that job or be paid an allowance of \$10.20 per day provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer.

19.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.50
Argyle (see subclause 12)	37.50
Balladonia	14.20
Barrow Island	24.40
Boulder	5.90
Broome	23.00
Bullfinch	6.90
Carnarvon	11.70
Cockatoo Island	25.30
Coolgardie	5.90

TOWN	PER WEEK \$
Cue	14.70
Dampier	19.90
Denham	11.70
Derby	24.00
Esperance	4.50
Eucla	16.10
Exmouth	20.60
Fitzroy Crossing	28.90
Goldsworthy	13.30
Halls Creek	32.80
Kalbarri	4.90
Kalgoorlie	5.90
Kambalda	5.90
Karratha	23.60
Koolan Island	25.30
Koolyanobbing	6.90
Kununurra	37.50
Laverton	14.60
Learmonth	20.60
Leinster	14.50
Leonora	14.60
Madura	15.20
Marble Bar	35.70
Meekatharra	12.70
Mt Magnet	15.70
Mundrabilla	15.70
Newman	13.90
Norseman	12.20
Nullagine	35.60
Onslow	24.40
Pannawonica	18.70
Paraburdoo	18.50
Port Hedland	19.80
Ravensthorpe	7.70
Roebourne	27.10
Sandstone	14.50
Shark Bay	11.70
Shay Gap	13.30
Southern Cross	6.90
Telfer	33.20
Teutonic Bore	14.50
Tom Price	18.50
Whim Creek	23.40
Wickham	22.80
Wiluna	14.80
Wittenoom	31.60
Wyndham	35.50

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid 66 2/3% of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by 33 1/3%; the difference remaining on 1 January 1989

shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause:

(a) "Dependant" shall mean—

- (i) a spouse or defacto spouse; or
- (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance.

(b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

20.—HOLIDAYS AND ANNUAL LEAVE

(1) (a) The following days or the days observed in lieu shall, subject to this subclause and to paragraph (c) of subclause (1) of Clause 11—Overtime of this award, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall

be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) On any public holiday not prescribed as a holiday under this award, the employer's establishment or place of business may be closed, in which case an employee need not present himself for duty and payment may be deducted but if work be done, ordinary rates of pay shall apply.

(3) (a) Except as hereinafter provided a period of four consecutive weeks' leave with payment as prescribed in paragraph (b) hereof shall be allowed annually to an employee by his employer after a period of twelve months' continuous service with that employer.

(b) (i) An employee before going on leave shall be paid the wages he would have received in respect of the ordinary time he would have worked had he not been on leave during the relevant period.

(ii) Subject to paragraph (c) hereof, an employee shall, where applicable, have the amount of wages to be received for annual leave calculated by including the following where applicable—

(aa) The rate applicable to him as prescribed in Clause 28.—Wages of this award and the rates prescribed by Clause 19.—Location Allowances of this award and;

(bb) Subject to paragraph (c)(ii) hereof the rate prescribed for work in ordinary time by Clause 12.—Shift Work, of the award according to the employee's roster or projected roster including Saturday and Sunday shifts;

(cc) The rate payable pursuant to Clause 7.—Higher Duties calculated on a daily basis, which the employee would have received for ordinary time during the relevant period whether on a shift roster or otherwise.

(dd) Any other rate to which the employee is entitled in accordance with his contract of employment for ordinary hours of work; provided that this provision shall not operate so as to include any payment which is of similar nature to or is paid for the same reasons as or is paid in lieu of those payments prescribed by Clause 11.—

Overtime, Clause 15.—Special Rates and Provisions, Clause 16.—Car Allowance, Clause 17.—Fares and Travelling Time or Clause 18.—Distant Work of this award, nor any payment which might have become payable to the employee as reimbursement for expenses incurred.

(c) In addition to the payment prescribed in paragraph (b) hereof, an employee shall receive a loading calculated on the rate of wage prescribed by that paragraph. This loading shall be as follows:

(i) Day employee—An employee who would have worked on day work had he not been on leave—a loading of 17½ per cent.

(ii) Shift employee—An employee who would have worked on shift work had he not been on leave—a loading of 17½ per cent. Provided that where the employee would have received shift loadings prescribed by Clause 12.—Shift Work and, if applicable, payment for work on a regularly rostered sixth shift in not more than one week in any four weeks had he not been on leave during the relevant period and such loadings and payment would have entitled him to a greater amount than the loading of 17½ per cent, then the shift loadings and, if applicable, the payment for the said regularly rostered sixth shift shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) hereof in lieu of the 17½ per cent loading. Provided further, that if the shift loadings and, if applicable, the payment for the said regularly rostered sixth shift would have entitled him to a lesser amount than the loading of 17½ per cent then such loading of 17½ per cent shall be added to the rate of wage prescribed by paragraph (b) but not including paragraph (b)(ii)(bb) hereof in lieu of the shift loadings and the said payment.

Except as provided in paragraph (a) of subclause (6) of this clause, the loading prescribed by this paragraph shall not apply to proportionate leave on termination.

(4) (a) A seven day shift employee, i.e., a shift employee who is rostered to work regularly on Sundays and holidays shall be allowed one week's leave in addition to the leave to which he is otherwise entitled under this clause.

(b) Where an employee with 12 months' continuous service is engaged for part of a qualifying twelve-monthly period as a seven day shift employee he shall be entitled to have the period of annual leave to which he is otherwise entitled under this clause increased by one-twelfth of a week for each completed month he is continuously so engaged.

(5) If any award holiday falls 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 period one day being an ordinary working day for each such holiday observed as aforesaid.

(6) (a) An employee whose employment terminates after he has completed a twelve-monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period, shall be given payment as prescribed in paragraphs (b) and (c) of subclause (3) of this clause in lieu of that leave or, in a case to which subclauses (9), (10) or (11) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

- (i) he has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying twelve monthly period an employee lawfully leaves the employment or the employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.923 hours' pay at the rate of wage prescribed by paragraph (b) of subclause (3) of this clause, divided by thirty-eight, in respect of each completed week of continuous service.

(c) The provisions of paragraph (b) hereof do not apply to the employees of any employer to whom the First Schedule—38-Hour Week Provisions applies.

(7) Any time in respect of which an employee is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his right to annual leave.

(8) In the event of an employee being employed by an employer for a portion only of a year, he shall only be entitled, subject to subclause (6) of this clause, to such leave on full pay as is proportionate to his length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees he shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(9) Annual leave shall be given and taken in one or two continuous periods. If the annual leave is given in two continuous periods then one of those periods must be at least three consecutive weeks. Provided that if the employer and the employee so agree then the employee's annual leave entitlement may be given and taken in two separate periods, neither of which is of at least three consecutive weeks, or in three separate periods.

Provided further that an employee may, with the consent of his/her employer, take short term annual leave not exceeding five days in any calendar year, at a time or times separate from any periods determined in accordance with this subclause. The employer will endeavour to meet such requests for short term leave wherever possible.

(10) Where an employer closes down his business, or a section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the business, or section or sections concerned, the following provisions shall apply:

- (a) He may by giving not less than one month's notice of his intention so to do, stand off for the duration of the close-down all employees in the business or section or sections concerned.

- (b) An employer may close down his business for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the employer closes down his business in two separate periods one of those periods shall be for a period of at least three consecutive weeks. Provided that where the majority of the employees in the business or section or sections concerned agree, the employer may close down his business in accordance with this subclause in two separate periods neither of which is of at least three consecutive weeks, or in three separate periods. In such cases the employer shall advise the employees concerned of the proposed date of each close down before asking them for their agreement.

(11) (a) An employer may close down his business, or a section or sections thereof for a period of at least three consecutive weeks and grant the balance of the annual leave due to an employee in one continuous period in accordance with a roster.

Provided that by agreement with the majority of employees an employer may close down the plant for a period of at least 14 consecutive days including non-working days and grant the balance of the annual leave due to an employee by mutual arrangement.

(b) An employer may close down his business, or a section or sections thereof for a period of less than three consecutive weeks and allow the balance of the annual leave due to an employee in one or two continuous periods, either of which may be in accordance with a roster. In such a case the granting and taking of annual leave shall be subject to the agreement of the employer and the majority of the employees in the business, or a section or sections thereof respectively and before asking the employees concerned for their agreement, the employer shall advise them of the proposed date of the close down or close downs and the details of the annual leave roster.

(12) The provisions of this clause shall not apply to casual employees.

21.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at the place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the provisions of this clause.

- (i) Employee who actually works 38 ordinary hours each week

An employee whose ordinary hours of work are arranged in accordance with placitum (i) or (ii) of paragraph (a) of subclause (3) of Clause 10.—Hours so that the employee actually works 38 ordinary hours each week shall be entitled to payment during such absence for the actual ordinary hours absent.

- (ii) Employee who works an average of 38 ordinary hours each week

An employee whose ordinary hours of work are arranged in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 10.—Hours so that the employee works an average of 38 ordinary hours each week during a particular work cycle shall be entitled to pay during such absence calculated as follows:

duration of absence	X	appropriate weekly rate
ordinary hours normally worked that day		5

An employee shall not be entitled to claim payment for personal ill health or injury nor will the employee's sick leave entitlement be reduced if such ill health or injury occurs on the week day the employee is to take off duty in accordance with placitum (iii) or (iv) of paragraph (a) of subclause (3) of Clause 10.—Hours of this award.

(b) Notwithstanding the provisions of paragraph (a) of this subclause an employer may adopt an alternative method of

payment of sick leave entitlements where the employer and the majority of the employees so agree.

(c) Entitlement to payment shall accrue at the rate of one-sixth of a week for each completed month of service with the employer.

(d) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than the employee's entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of inability to attend for work, the nature of the illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to the place of residence or a hospital as a result of the employee's personal ill health or injury for a period of seven consecutive days or more and the employee produces a certificate from a registered medical practitioner that the employee was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if the employee is unable to attend for work on the working day next following the employee's annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time the employee proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 20.—Holidays and Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 20.—Holidays and Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed

continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in volume 66 of the Western Australian Industrial Gazette at pages 1-4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

22.—LONG SERVICE LEAVE

The Long Service Leave provisions set out in volume 59 of the Western Australian Industrial Gazette at pages 1 to 6 both inclusive, are hereby incorporated in and form part of this award.

23.—REPRESENTATIVE INTERVIEWING EMPLOYEES

(1) On notifying the employer or his representative an accredited representative of the union shall be permitted to interview an employee during the recognised meal hour on the business premises of the employer at the place at which the meal is taken but this permission shall not be exercised without the consent of the employer more than once in any one week.

(2) In the case of a disagreement existing or anticipated concerning any of the provisions of this award, an accredited representative of the union, on notifying the employer or his representative, shall be permitted to enter the business premises of the employer to view the work the subject of any such disagreement but shall not interfere in any way with the carrying out of such work.

24.—POSTING OF AWARD AND UNION NOTICES

The employer shall keep a copy of this award in a convenient place in the workshop, and he shall also provide a notice board for the posting of union notices.

25.—BOARD OF REFERENCE

(1) There shall be a Board of Reference consisting of a Chairman and equal number of employers' and employees' members who shall be appointed pursuant to section 48 of the Industrial Arbitration Act 1979 and Regulation 16 of the Industrial Commission Regulations 1980.

(2) The Board of Reference may allow, approve, fix, determine, or deal with—

- (a) any matter or thing that, under the award, may require to be allowed, approved, fixed, determined or dealt with by a Board of Reference; and
- (b) any matter or thing arising under or out of the provisions of an award, not involving the interpretation of any such provision, which the Commission may at any time, by order, authorise a Board of Reference to allow, approve, fix, determine or deal with,

in the manner and subject to the conditions specified in the award or order, as the case may be.

26.—BEREAVEMENT LEAVE

(1) An employee, other than a casual employee, shall on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

(2) Payment in respect of compassionate leave is to be made only where the worker otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with any shift roster or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

(3) For the purpose of this clause the pay of a employee employed on shift work shall be deemed to include any usual shift allowance.

27.—SUPPLEMENTARY PAYMENTS

(1) (a) In addition to the rates payable under the provisions of Clause 28.—Wages of this Award, other than this provision, an employee, employed in the classifications listed, shall be paid the supplementary payment prescribed:

Classification	Supplementary	Safety Net	Total
	Payment	Adjustment	Supplementary
	Per Week	Payment	Per Week
	\$	\$	\$
Group A Serviceperson (Special Class)	51.90	8.00	59.90
Group B Serviceperson	49.40	8.00	57.40
Group C Installer	49.40	8.00	57.40
Group D Trades Assistant	39.30	8.00	47.30

(b) Safety Net Adjustment payments set out in this clause represent a payment which shall be absorbed into overaward payments.

An "overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment" or any term whatsoever) which an employee would receive in excess of the "award wage" which applied immediately prior to the decision of the Western Australian Industrial Relations Commission dated 24 December 1993 (Application No. 1457 of 1993) for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowances, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the award.

The Safety Net Payment is an adjustment reflecting the application of the arbitrated safety net adjustment principle enunciated in the State Wage Decision of 24 December 1993.

Consistent with the requirements of that principle the \$8.00 safety net adjustment is absorbable to the extent of any equivalent amount in rates of pay—whether overaward, award or industrial agreement—in excess of the minimum rates (classification rate and supplementary payment) prescribed in accordance with the September 1989 State Wage Case decision.

(c) The amount payable to any employee pursuant to the provisions of this subclause:

- (i) shall be for all purposes of this award;
- (ii) shall be reduced by the amount of any payment being made to that employee in addition to the said rates otherwise than pursuant to the provisions of this subclause, whether such payment is being made by virtue of any order, award or agreement or arrangement.

(2) The rate prescribed in this award for any classification is not amended by this clause and shall not, for the purpose of any other award, order or agreement or arrangement, be deemed to have been so amended.

28.—WAGES

(1) (a) The ordinary weekly rate of wage payable to adult employees covered by this award shall be as follows:

CLASSIFICATION	WAGE PER WEEK	
	On Engagement	After 12 months experience with the employer
	\$	\$
Serviceperson (Special Class)	386.60	407.30
Serviceperson	362.80	384.20
Installer	362.80	384.20
Trades Assistant	310.20	310.20

(2) A casual employee shall be paid 20 per cent of the ordinary rate in addition to the ordinary rate for the calling in which he is employed.

(3) (a) Where an employer does not provide a tradesperson with the tools ordinarily required by that tradesperson in the performance of his/her work as a tradesperson the employer shall pay a tool allowance of \$9.20 per week to such

tradesperson for the purpose of such tradesperson supplying and maintaining tools ordinarily required in the performance of his/her work as a tradesperson.

(b) Any tool allowance paid pursuant to paragraph (a) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in this clause.

(c) An employer shall provide for the use of tradesmen all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesman shall replace or pay for any tools supplied by his employer if lost through his negligence.

(4) (a) In addition to the appropriate rates of pay prescribed in this clause an employee shall be paid—

- (i) \$29.40 per week if he/she is engaged on the construction of a large industrial undertaking or any large civil engineering project.
- (ii) \$26.60 per week if he/she is engaged in a multi-storeyed building but only until the exterior walls have been erected and the windows completed and a lift made available to carry the employee between the ground floor and the floor upon which he/she is required to work. A multi-storeyed building is a building which, when completed, will consist of at least five storeys.
- (iii) \$15.30 per week if he/she is engaged otherwise on construction work falling within the definition of construction work in Clause 5.—Definitions of this award.

(b) Any dispute as to which of the aforesaid allowances apply to particular work shall be determined by the Board of Reference.

(c) An allowance paid under this subclause includes any allowance otherwise payable under Clause 15.—Special Rates and Provisions of this award except the allowance for work at heights, the first aid allowance and the licence allowance.

(5) Leading Hand: In addition to the appropriate total wage prescribed in subclause (1) of this clause, a leading hand shall be paid—

- (a) If placed in charge of not less than three and not more than ten other employees.....\$16.60
- (b) If place in charge of more than ten and not more than 20 other employees.....\$25.40
- (c) If placed in charge of more than 20 other employees.....\$32.70

(6) Structural Efficiency

(a) Arising out of the decision of the State Wage Case on 8 September 1989 and in consideration of the wage increases resulting from the first structural efficiency adjustment employees are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

(b) The parties to the Award are committed to implementing a new wage and classification structure. In making this commitment the parties—

- (i) Accept in principle that the descriptions of job functions within a new structure will be more broadly based and generic in nature;
- (ii) Undertake that upon variation to the Award to implement a new wage and classification structure, employees may undertake training for a wider range of duties and/or access to higher levels in accordance with the definitions and training standards laid down in the Award variation relating to a new classification structure;
- (iii) Will co-operate in the transition from the existing classification structure to the proposed new structure to ensure that the transition takes

- place in an orderly manner without creating false expectations or disputation.
- (c) In the event that there is a claim for reclassification by an existing employee to a higher level under any new structure on the ground that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground, the following principles apply—
- (i) The parties agree that the existing award disputes avoidance procedure shall be followed;
 - (ii) Agreed competency standards shall be established by the parties in conjunction with TAFE and SESDA (when operative) for all levels in any new classification structure before any claims for reclassification are processed;
 - (iii) An agreed authority (such as TAFE or SESDA) or agreed accreditation authority (when operative) shall test the validity of an employee's claim for reclassification;
- (d) Reclassification to any higher level shall be contingent upon such additional work being available and required to be performed by the employer.
- (e) The parties to the award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the security alarms industry and to enhance the career opportunities and job security of employees in the industry.
- (f) At each plant or enterprise a consultative mechanism may be established by the employer, or shall be established upon request by the employees or their Union. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of that plant or enterprise. Measures raised by the employer, employees or Union or Unions for consideration consistent with the objectives of paragraph (e) hereof shall be processed through that consultative mechanism and procedures.
- (g) Measures raised for consideration consistent with paragraph (f) hereof shall be related to implementation of the new classification structure, the facilitative provisions contained in the Award and, subject to Clause 34.—Training, matters concerning training and, subject to paragraph (h) hereof, any other measures consistent with the objectives of paragraph (e) of this subclause.
- (h) Without limiting the rights of either an employer or the Union to arbitration, any other measure designed to increase flexibility at the plant or enterprise and sought by any party shall be notified to the Commission and by agreement of the parties involved shall be subject to the following requirements:
- (i) The changes sought shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission;
 - (ii) The majority of employees affected by the change at the plant or enterprise must genuinely agree to the change;
 - (iii) No employee shall lose income as a result of the change;
 - (iv) The Union must be a party to the Agreement;
 - (v) The Union shall not unreasonably oppose any agreement;
 - (vi) Any agreement shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this Award and take precedence over any provision of this Award to the extent of any inconsistency.
- (i) Any disputes arising in relation to the implementation of paragraphs (f) and (g) hereof shall be subject to the provisions of Clause 31.—Avoidance of Industrial Dispute, of this Award.
- (j) The parties to this award agree to finalise outstanding matters relating to the classification structure and

definitions and in respect of further flexibility provisions relating but not limited to hours of work and higher duties within six months of 20 February 1991.

29.—NO REDUCTION

Nothing in this award shall serve to reduce the wages and conditions received by an employee prior to this award coming into operation.

30.—JUNIOR EMPLOYEES—SPECIAL ORDER

Notwithstanding the provisions of this award contained elsewhere than in this clause an employer may pay a junior employee including an apprentice engaged pursuant to this clause after July 4, 1985 at a rate of wage less than that to which the employee would be entitled were it not for this clause if and only if the employee agrees and the Commission approves and so orders.

31.—AVOIDANCE OF INDUSTRIAL DISPUTE

(1) A procedure for the avoidance of industrial disputes shall apply in establishments covered by this award.

The objectives of the procedure shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion; to reduce the level of industrial confrontation; and to avoid interruption to the performance of work and the consequential loss of production and wages.

It is acknowledged that in some companies or sectors of the industry, disputes avoidance/settlement procedures are either now in place or in the process of being negotiated and it may be the desire of the immediate parties concerned to pursue those mutually agreed procedures.

(2) In other cases, the following principles shall apply:

- (a) Depending on the issues involved, the size and function of the plant or enterprise and the union membership of the employees concerned, a procedure involving up to four stages of discussion shall apply. These are:
 - (i) discussions between the employee/s concerned (and shop steward if requested) and the immediate supervisors;
 - (ii) discussions involving the employee/s concerned, the shop steward and the employer representative;
 - (iii) discussions involving representatives from the state branch of the union(s) concerned and the employer representatives;
 - (iv) discussions involving senior union officials (state secretary) and the senior management representative(s);
 - (v) There shall be an opportunity for any party to raise the issue to a higher stage.
- (b) There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.
- (c) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.
- (d) Sensible time limits shall be allowed for the completion of the various stages of the discussions. At least seven days should be allowed for all stages of the discussions to be finalised.
- (e) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.
- (f) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lockouts or any other bans or limitation on the performance of work while the procedures of negotiation and conciliation are being followed.

- (g) The employer shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practices at the workplace.

32.—PART TIME EMPLOYMENT

(1) A part time employee may be engaged to work for a constant number of hours each week which having regard to the various ways of arranging ordinary hours shall average less than 38 hours per week.

(2) An employee so engaged shall be paid per hour one thirty-eighth of the weekly wage prescribed for the classification in which the employee is engaged.

(3) An employee engaged on a part time basis shall be entitled in respect of annual leave, holidays, sick leave and bereavement leave arising under this award payment on a proportionate basis calculated as follows:

(a) Annual Leave

Where a part time employee is entitled to a payment either, on termination or for the purpose of annual leave or at a close down, for continuous service in any qualifying twelve monthly period then the payment of 2.923 hours' pay prescribed by paragraph (b) of subclause (6) of Clause 20.—Holidays and Annual Leave shall be in respect of each cumulative period of 38 ordinary hours worked during the qualifying period.

(b) Holidays

A part time employee shall be allowed the holidays prescribed by Clause 20.—Holidays and Annual Leave without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part time employee.

(c) Absence Through Sickness

Notwithstanding the provisions of paragraph (a) of subclause (1) of Clause 21.—Absence Through Sickness the accrual of one-sixth of a week for each completed month of service shall be calculated on the average number of ordinary hours worked each week for every completed month of service.

(d) Bereavement Leave

Where a part time employee would normally work on either or both of the two working days following the death of a close relative which would entitle an employee on weekly hiring to bereavement leave in accordance with Clause 26.—Bereavement Leave of this award the employee shall be entitled to be absent on bereavement leave on either or both of those two working days without loss of pay for the day or days concerned.

(e) Overtime

A part time employee who works in excess of the hours fixed under the contract of employment shall be paid overtime in accordance with Clause 11.—Overtime of this award.

33.—LIBERTY TO APPLY

Liberty is reserved to apply to amend in respect of—

- (1) Altering the spread of hours prescribed by Clause 10.—Hours from 6.30 a.m. to 6.00 p.m., to 6.00 a.m. to 6.00 pm.
- (2) (a) Increasing the licence allowance prescribed by subclause (15) of Clause 15.—Special Rates and Provisions by the second tier increase of 4%.
- (b) Increasing the tool allowance prescribed by subclause (3) of Clause 28.—Wages by the second tier increase of 4%.

34.—TRAINING

(1) The parties to this award recognise that in order to increase efficiency, productivity and competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to—

- (a) Developing a more highly skilled and flexible workforce;

- (b) Providing employees with career opportunities through appropriate training to acquire additional skills; and

- (c) Removing barriers to the utilisation of skills acquired.

(2) Following proper consultation in accordance with subclause (6) in Clause 28.—Wages, or through the establishment of a Training Committee, an employer shall develop a training programme consistent with—

- (a) The current and future skill needs of the enterprise;
- (b) The size, structure and nature of the operations of the enterprise;
- (c) The need to develop vocational skills relevant to the enterprise and the radio and television industry through courses conducted by accredited educational institutions and providers.

(3) Where it is agreed that a Training Committee be established, such Training Committee shall be constituted by equal numbers of employer and employee representatives and have a charter which clearly states its role and responsibilities, which may include but not be limited to—

- (a) Formulation of a training programme and availability of training courses and career opportunities to employees;
- (b) Dissemination of information on the training programme and availability of training courses and career opportunities to employees;
- (c) The recommending of individual employees for training and reclassification;
- (d) Monitoring and advising management and employees regarding the ongoing effectiveness of the training.

(4) (a) Where, as a result of consultation in accordance with subclause (6) of Clause 28.—Wages, or through a Training Committee and/or with the employee concerned, it is agreed that additional training in accordance with the programme developed pursuant to subclause (2) hereof should be undertaken by and employee, that training may be undertaken either on or off the job and if the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

(b) Any costs associated with standard fees for prescribed courses and prescribed text books (excluding those text books which are available in the employer's technical library) incurred with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that always reimbursement shall be on an annual basis, in arrears, subject to the presentation of reports of satisfactory progress.

(c) Travel costs incurred by an employee undertaking training in accordance with this Clause, which exceed those normally incurred in travelling to and from work, shall be reimbursed by the employer.

(5) Subclauses (2), (3) and (4) hereof shall operate as interim provisions and shall be reviewed after nine months operation. In the meantime, the parties shall monitor the effectiveness of those interim provisions in encouraging the attainment of the objectives detailed in subclause (1) hereof. In this connection, the Unions reserve the right to press for the mandatory prescription of a minimum number of training hours per annum, without loss of pay, for an employee undertaking training to meet the needs of an individual enterprise and the radio and television industry.

(6) Any disputes arising in relation to subclauses (2) and (3) shall be subject to the provisions of Clause 31.—Avoidance of Industrial Dispute, of this award.

DATED at Perth this 17th day of November, 1980.

SCHEDULE ONE—SCHEDULE OF RESPONDENTS

Wormald Security Controls

Chubb Alarms (A Division of Chubb's Australia Limited)

Metropolitan Security Services (A Division of Mayne Nickless Limited)

SCHEDULE TWO—NAMED PARTIES TO THE AWARD

Union Party

Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch)

GAOL OFFICERS' AWARD.**No. 12 of 1968.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 6th day of February, 1996

(Sgd.) J. CARRIGG,
Registrar.

Gaol Officers' Award.

No. 12 of 1968.

1.—TITLE

This award shall be known as the Gaol Officers' Award No. 12 of 1968 as amended and consolidated.

1A.—STATEMENT OF PRINCIPLES DECEMBER 1994

It is a condition of this Award/Industrial Agreement that any variation to its terms on or from the 30th day of December 1994, including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in Matter No. 985 of 1994.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles December 1994
2. Arrangement
3. Term
4. Scope
5. Definitions
- 5A. Flexible Part Time Prison Officers
6. Special Provisions
7. Higher Duties
8. Travelling, Relieving and Transfer Allowances
9. Duty Roster
10. Hours of Duty
11. Additional Hours/Shifts, Special Hours/Shifts, Exceptional Hours/Shifts
12. Annual Leave
13. Public Holidays
14. Long Service Leave
15. Sick Leave
16. Membership of Union
17. Board of Reference
18. Rates of Pay
19. Uniforms
20. Payment of Wages
21. Civilian Clothing Allowance
22. Effect of 38 Hour Week
23. Trade Union Training Leave
24. Leave to Attend Union Business
25. Deduction of Union Subscriptions
26. Introduction of Change
27. Establishment of Consultative Mechanisms
28. Award Modernisation
29. Dispute Settlement Procedure
- Schedule A—List of Respondents
- Schedule B—Memorandum of Agreement

3.—TERM

This award shall operate for a period of three years from the beginning of the first pay period commencing on or after the date hereof.

4.—SCOPE

This award shall apply to the workers enumerated in clause 18 hereof.

5.—DEFINITIONS

(1) The definitions referred to hereunder shall apply only for the purpose of this award and shall not be taken to conflict in any manner whatsoever with the general orders and regulations dealing with the control and management of the Prison Service of Western Australia.

(2) "Officers" shall mean all workers classified in clause 18 hereof and shall include probationary and temporary workers.

(3) "Permanent Officer" shall mean an officer appointed to the permanent staff as provided by the Prison Act Regulations.

(4) "Probationary Officer" shall mean a worker not permanently appointed but undergoing instruction and proving his suitability for permanent employment.

(5) "Practicable" shall mean practicable in the fair and reasonable opinion of the Director provided that if any dispute arises as to whether in any case such opinion is fair and reasonable that matter may be referred to the Board of Reference.

(6) "Temporary worker" shall mean a worker appointed for an emergency and whose service does not exceed a period of three months at any one time.

(7) "Accrued Days Off" shall mean the paid days off which accrued to an Officer pursuant to the provisions of the 38 hour week arrangement prior to 1 July 1994 and remain a residual entitlement until cleared.

(8) "Trainee Prison Officer" shall mean an employee not permanently appointed but undergoing instruction prior to posting to a prison.

5A.—FLEXIBLE PART TIME PRISON OFFICERS

(1) Flexible part time prison officers shall be engaged to perform hospital guard duty within the metropolitan area only.

(2) Subject to paragraphs (a) and (b) hereof, flexible part time prison officers shall be required to escort a prisoner to the prison upon discharge from hospital where a prison officer is not available

(a) there shall be a written agreement between the superintendent of the prison and the local branch of the union as to what circumstances give rise to the non availability of a prison officer

(b) the Prison shall be responsible for the return of the flexible part time prison officer to the hospital.

(3) Flexible part time prison officers shall be engaged by the hour, with a minimum engagement of not less than three (3) hours.

(4) Flexible part time prison officers shall be paid \$16.01 per hour for all time worked.

(5) The following clauses contained in this Award shall not apply to flexible part time prison officers:

Clause 9.—Duty Roster, Clause 10.—Hours of Duty, Clause 11.—Additional Hours/Shifts, Special Hours/Shifts, Exceptional Hours/Shifts, Clause 12.—Annual Leave, Clause 13.—Public Holidays, Clause 14.—Long Service Leave, Clause 15.—Sick Leave, Clause 18.—Rates of Pay and Clause 21.—Civilian Clothing Allowance.

(6) The parties agree to review the provisions of this clause after six (6) months of operation.

6.—SPECIAL PROVISIONS

(1) Officers shall be paid such district allowances as are prescribed from time to time for Officers of the State Public Service.

(2) Where an Officer occupies quarters provided by the Minister, the Minister shall pay the water rates for such quarters. Where the quarters are in an area served by the Country Area Water Supply Act, the Minister shall pay for a reasonable quantity of water. Officers stationed and residing in their own accommodation north of the 26 degree south parallel, shall have paid by the Minister a reasonable quantity of water.

(3) An Officer who prior to 28 June 1990 was qualified as prescribed in the Prison Act Regulations for promotion to the classification of Senior Prison Officer or Chief Officer and who has not been appointed to such position, shall be paid

\$7.50 per week and \$11.00 per week respectively. Officers who qualify after 28 June 1990 shall not be entitled to these allowances.

(4) Officers other than Industrial Officers whose duties may include driving vehicles, engaged in driving duties for more than two hours per shift, shall be paid an allowance of \$2.70 for each shift so worked.

(5) An Officer who is delegated to be Officer in Charge of a shift shall receive \$7.50 for each shift so worked.

(6) (a) Officers employed at Pardelup Prison Farm and Karnet who do not live in quarters, shall be paid a travelling allowance of \$3.56 and \$2.99 respectively for each shift worked.

Officers employed at Wooroloo who do not live in quarters and reside 16 kilometres or more away from the Institution, shall be paid a travelling allowance of \$2.99 per shift.

(b) Officers who were stationed at Geraldton Regional Prison on 3rd May, 1984 and who by reason of the relocation of the facilities thereat to the Greenough Regional Prison and who do not live in quarters, shall be paid \$2.99 per shift.

(7) An Officer who is in charge of and required to use explosives, shall be paid \$2.60 for each shift so worked.

(8) Officers appointed to an Industrial Officers position who have completed 12 months or more service since the end of their probationary period shall be paid the "thereafter" rate from the date of appointment to that Industrial Officer position.

7.—HIGHER DUTIES

An Officer required to carry out the duties of a classification carrying a higher rate than his/her ordinary rate of pay shall be paid such higher rate of pay but only if he/she is required to carry out such duties for a period of two hours or more.

Officers who receive a qualifications allowance in accordance with subclause (5) of Clause 6.—Special Provisions shall not be paid the allowance when acting in a position for which the qualification is required.

8.- TRAVELLING, RELIEVING AND TRANSFER ALLOWANCES

Officers who are required to travel or who are relieving or are transferring shall be paid such travelling, relieving or transfer allowances as are prescribed from time to time for Officers of the State Public Service.

9.—DUTY ROSTER

(1) (a) (i) A four weekly duty board shall be posted up by 11.00 am each pay day to cover shifts for the following two pay periods and shall only be changed in unforeseen circumstances.

(ii) An Officer's rostered hours of duty may be changed providing 36 hours' notice of change is given. No Officer shall be compelled to work different ordinary hours to those shown on the roster within the 36 hour notification period.

(b) Officers shall be allowed to exchange shifts or days off or to perform duty for other employees provided the approval of the Minister or his/her delegate is first had and obtained.

(2) Rosters shall provide for at least eight hours between the ceasing of one shift and the commencement of the next shift.

(3) Where practicable Shift Officers shall be rostered in such a manner that afternoon shifts, night shift and weekend shifts are divided equally between such Officers.

(4) Accrued days off shall be clearly shown on the duty board.

(5) Industrial Officers who work Monday to Friday are not required to work public holidays will not receive the public holiday portion in their annualised salary. However, if a public holiday falls during such an Officers' annual leave, the Officer will receive a paid day in lieu. Such a day in lieu shall be clearly shown on the duty board.

10.—HOURS OF DUTY

(1) The hours of duty shall be 40 per week or 80 per fortnight at the option of the Minister, rostered in accordance with Clause 9.—Duty Roster, of this Award.

(2) The ordinary hours of duty shall be 40 per week or 80 per fortnight to be worked in accordance with Clause 9.—Duty Roster, of this Award unless otherwise agreed by the

Union and the Ministry for the purpose of alternative shift arrangement.

(3) The foregoing hours shall be worked in continuous shifts of eight hours or such other period as agreed between the Union and the Minister.

(4) Each Officer shall be allowed a meal break of 30 minutes during which time Officers other than those on duty shall be on call. Officers on guard duty shall remain on duty at their posts during such meal breaks.

The meal break shall be allowed and taken no earlier than three hours or later than 5.5 hours from the Officer commencing work. Where an Officer is required for duty during his/her meal break and his/her meal break is delayed beyond 5.5 hours from commencement of work, he/she shall be permitted by the Officer in Charge to cease duty 30 minutes before the conclusion of their rostered shift providing the operational requirements of the prison are maintained. If this is not possible the Officer may take the 30 minutes as time in lieu at a mutually agreed time between the Officer and the employer.

Officers who are designated to supervise prisoners or remain at their work area during their paid meal break shall at that time, if they desire, consume an ordered meal without charge.

(5) Accrued days off shall be taken in the agreed non-leave periods at a time mutually agreed between the Officer and the employer.

(6) Trainee Prison Officers will be required to work 38 hour week based on 7.6 hours per day and will not be required to work additional hours or special shifts.

(7) Trainee Prison Officers shall receive a loading for shifts worked at the following rates: 15% for afternoon and night shift, 50% for Saturday and 75% for Sunday.

11.—ADDITIONAL HOURS/SHIFTS, SPECIAL HOURS/SHIFTS, EXCEPTIONAL HOURS/SHIFTS

(1) (a) All Officers other than those specifically excluded may be required to work up to 10 shifts or 80 hours per year in addition to their rostered hours of duty to perform ordinary duties. Remuneration for these additional hours is included in the Officer's annualised salary and no additional payment shall be made.

(b) An Officer may be offered and agree to work Special Shifts outside his/her ordinary working hours, where upon he/she shall be paid at the ordinary rate for that position in addition to the Officer's annualised salary. Special Shifts shall be utilised to cover for Officers absent due to vacancies, secondments, special projects, workers compensation training, trade union training, trade union business, maternity leave or due to prison overcrowding.

(2) An Officer who works on a special shift outside his/her ordinary hours shall be paid at the ordinary rate in addition to the Officer's annualised salary.

(3) An Officer called in for duty under exceptional circumstances outside the Officer's ordinary working hours shall be paid at the rate of double time in addition to the Officer's annualised salary. Exceptional circumstances shall include a major emergency as determined by the Minister or the Chief Executive Officer and includes but is not limited to, a riot, major fire, or hostage situation.

(4) The handover time existing as at September 1, 1985 between Officers for the purpose of effecting the customary rotation of shifts shall be conducted in an Officer's own time without payment in addition to the Officer's annualised salary.

(5) Any Officer who is called in for duty for either additional hours/shifts, special hours/shifts, exceptional hours/shifts will receive a minimum of three hours call in at the following rates:

- (a) Credit against 80 hours for Additional Hours/Shifts;
- (b) Ordinary rate all hours salary for Special Hours/Shifts;
- (c) Double time salary for Exceptional Hours/Shifts.

(6) (a) Where additional and/or exceptional shifts/hours are worked where reasonably practicable they shall be so arranged that Officers have at least 10 hours between the hours of successive shifts.

(b) An Officer who works so much additional and/or exceptional hours/shifts between the termination of his/her ordinary shift and the commencement of his/her next ordinary

shift so that he/she has not had at least ten consecutive hours off duty between such shifts, shall subject to this subclause, be released after completion of such additional or exceptional shifts/hours until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring such absences. If on the instructions of his/her employer such Officer resumes or continues work without having had ten consecutive hours off duty he/she shall be granted time off in lieu for the hours worked until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absences.

(c) No Officer shall be required to work more than two full consecutive shifts, including additional or exceptional hours/shifts, except in the case of an extreme emergency.

(7) The Union or Officer or Officers covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of additional hours/shifts, in accordance with requirements of this clause.

12.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, a period of five consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an officer by the Minister after a period of twelve months' continuous service with the Minister.

(b) Officers employed in the area north of 26 degree south latitude shall receive one week's leave after a period of twelve months' continuous service in such area in addition to the leave prescribed in paragraph (a) hereof.

(c) An Officer who is rostered to work regularly on Sundays and holidays shall be allowed one week's leave in addition to the leave to which he/she is otherwise entitled under this clause.

(2) After one month's continuous service in any qualifying twelve monthly period, an Officer whose employment terminates through no fault of the officer shall be paid in respect of each completed month of service in that qualifying period—

- (a) Five twelfths of a week's pay at his/her ordinary rate of pay if he/she is employed in the area south of the 26° south latitude, or
- (b) On half of a week's pay at his/her ordinary rate of pay if he/she is employed in the north of the 26° south latitude.

(3) Leave Roster:

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
JULY	A	C	D	G	H	F	E	B	A	C
	B	D	C	H	G	E	F	A	B	D
	C	A	G	D	F	H	B	E	C	A
	D	B	H	C	E	G	A	F	D	B
XMAS	E	G	A	F	D	B	H	C	E	G
	F	H	B	E	C	A	G	D	F	H
	G	E	F	A	B	D	C	H	G	E
JUNE	H	F	E	B	A	C	D	G	H	F

The roster shall apply to all Officers who shall be divided into groups A-H.

The roster shall commence on a pay Friday at a date each year agreed between the parties to this Award and shall continue in the order shown for the year with each group commencing at six weekly intervals.

Provided, that where an officer for special reasons wishes to have his/her annual leave at a time other than of his/her particular group he/she shall make written application to the Superintendent or Officer in Charge for permission to be allocated a different date, but if his/her application is approved he/she shall be considered as having taken his/her leave in accordance with the roster.

Officers with less than twelve months' service who have not had annual leave when this roster commences, and officers who commence employment subsequent to the introduction of this roster shall be allocated to those groups due to take annual leave twelve months from the date they commenced employment.

Officers who are transferred or promoted to another Prison shall be allocated a new Annual Leave letter, where there is irresolvable conflict with that Prison's established leave roster.

The allocation of a new leave letter will only be at the conclusion of the procedure for negotiations as provided hereafter.

(4) Annual Leave Letter Procedures for Transfers and Promotions

- (a) An Officer is to be notified prior to transfer or promotion if the leave letter is unavailable at the new prison.
- (b) Discussions are to take place between the Superintendent and the Officer concerned prior to an allocation of a new leave letter.
- (c) Consideration is to be given to situations prior to transfer or promotion where an Officer has made travel bookings and paid a deposit, or in any other situations which make it imperative for Officers to take their annual leave at the time prescribed by the original letter for the leave period in question.
- (d) The allocation of a new leave letter that places an Officer with an immediate second long leave period is to be avoided.

(5) (a) An Officer who, at the commencement of his/her annual leave, has an entitlement to payment for non-attendance on the ground of illness for not less than one week under the provisions of Clause 15.—Sick Leave of this award and who produces to the Minister a certificate from a qualified medical practitioner that during his/her annual leave he/she was confined to his/her home or to a hospital for a period of at least seven consecutive days shall be deemed to be absent from work through sickness for so much of that period as he/she would otherwise have been entitled to payment under Clause 15.—Sick Leave.

(b) An Officer to whom paragraph (a) applies shall take the period deemed to be absence through sickness as annual leave at a time mutually convenient to the Minister and the Officer.

(6) Annual Leave accumulated to an employee as at September 1, 1985, shall be adjusted in hours in the ratio of 38 to 40. Annual Leave accrued from 1 July 1994 shall be accrued on the basis that the Officer works a 40 hour week.

(7) An Officer shall be entitled to take up to 5 days of annual leave as single days of leave subject to the approval of the Superintendent or Officer in Charge. Approval for single days of leave shall not be unreasonably withheld.

13.—PUBLIC HOLIDAYS

(1) (a) The following days, or the days observed in lieu shall, subject as hereinafter provided, be recognised as public holidays, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(b) Industrial Officers who work Monday to Friday and are not required to work public holidays will not receive the public holiday portion in their annualised salary, however, if a public holiday falls during such an Officer's annual leave, the Officer will receive a paid day in lieu which will be taken immediately following the annual leave or at a time mutually acceptable to the employer and employee.

(2) Where—

- (a) a day is proclaimed as a whole holiday or as a half holiday under Section 7 of the Public and Bank Holidays Act, 1972; and
- (b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be recognised as a holiday or, as the case may be, a half holiday for the purposes of this award within the district or locality specified in the proclamation.

(3) Except where specifically provided for remuneration for work performed on all public holidays is included in an Officer's annualised salary as prescribed in Clause 18.—Rates of Pay.

(4) Accrued days off may be taken at a time mutually acceptable between the employer and the employee.

14.—LONG SERVICE LEAVE

(1) Permanent Officers shall be granted long service leave under the provisions of the Public Service Regulations.

(2) Any Officer who has served at least twelve months continuously and who is retired through ill-health shall be paid for long service leave pro rata to the date of leaving the prison service.

(3) Where practicable three months' notice of the commencing date of long service leave shall be given to all Officers.

(4) If a deceased Officer who had served continuously for at least twelve months before his death leaves a widow or children, dependent mother or dependent invalid sister payment pro rata of long service leave up to the date of such officer's death shall be granted to such widow or dependants.

(5) Long Service Leave accumulated to an employee as at September 1, 1985 shall be adjusted in hours in the ratio of 38 to 40. Long Service Leave accumulated as at July 1, 1994, shall be adjusted in the ratio of 40 to 38.

15.—SICK LEAVE

(1) All Officers shall be entitled to sick leave in accordance with the following—

- (a) An Officer who is unable to attend or remain at their place of employment during ordinary hours of work by reason of personal ill health or injury, shall be entitled to payment of 15 days or 120 hours' full pay in the first and successive years of service.
- (b) Entitlement to payment shall accrue at the rate of 10 hours for each completed month of service.
- (c) The unused portions of the entitlement to paid sick leave shall accumulate from year to year and may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence.
- (d) All Officers employed after 28 June 1990 shall at the end of their fourth year of employment have an additional entitlement to 66 days or 528 hours on full pay which shall reduce (if appropriate) in accordance with the following formula—

$$AL = \frac{66(60 - SD)}{60}$$

AL = Additional Leave entitlement

SD = Number of sick days taken in the first four years

- (e) All Officers who prior to 1 July 1994 received a total sick leave entitlement of three months with payment of ordinary wages and three months with payment of half ordinary wages in each period in three years; will receive a credit of 66 days or 528 hours in addition to their entitlements under subclause (1)(a).
- (f) All Officers with more than 10 years continuous service as at 1 July 1994, who had accrued more than 66 days or 528 hours sick leave will be entitled to receive those days in addition to their entitlements under subclause (1)(a).

(2) Sick leave will not be granted when the illness is due to the Officer's own neglect or misconduct.

(3) To be entitled to payment in accordance with this clause, the Officer or the Officer's agent shall advise the employer of his/her inability to attend for work. Provided that such advice in ordinary circumstances be given to the employer prior to the commencement of the Officer's rostered shift. Where possible, an Officer shall also advise the employer of his/her understanding of the nature of the illness and the estimated duration of the absence.

(4) An Officer who is absent from work for a half day shall have the absence recorded by the Prison Administration and debited from the Officer's entitlement as prescribed in subclause (1) of this clause.

(5) The provisions of this clause do not apply to an Officer who fails to produce a certificate from a medical practitioner dated within 14 days from the commencement of his/her absence, provided that the Officer shall not be required to produce a certificate from a medical practitioner for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(6) An employee proceeding on sick leave shall have the accrued entitlement to paid sick leave reduced by the time the employee is absent from work on account of sick leave.

(7) This clause is to be read in conjunction with Clause 14.—Additional Hours of Attendance of the Gaol Officers' Industrial Agreement.

16.—MEMBERSHIP OF UNION

Deleted by section 88 (3) of the Acts Amendment and Repeal (Industrial Relations) Act (No.2) 1984.

17.—BOARD OF REFERENCE

(1) The Commission hereby appoints, for the purpose of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to regulation 60 of the Industrial Arbitration Act (Western Australian Industrial Commission) Regulations, 1971..

(2) The Board of Reference is hereby assigned the function of determining any dispute between the parties in relation to any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

18.—RATES OF PAY

The Rates of Pay in this Award include the second \$8.00 per week Arbitrated Safety Net Adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per Arbitrated Safety Net Adjustment may be offset to the extent of any wage increase payable since 1 November, 1991, pursuant to enterprise agreements insofar as that wage increase has not previously been used to offset Arbitrated Safety Net Adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not be used to offset Arbitrated Safety Net Adjustments.

TITLE RANK	EXISTING SALARY	SECOND ARBITRATED SAFETY NET ADJUSTMENT	TOTAL PER ANNUM	TOTAL WEEKLY RATE
	\$	\$	\$	\$
(a) Trainee Prison Officers	23409.00	417	23826.00	456.73
(b) Prison Officers				
Mon-Fri				
1st Year	27147.00	417	27564.00	528.39
2nd Year	28274.00	417	28691.00	549.99
3-7 Year	29693.00	417	30110.00	577.19
Thereafter	30528.00	417	30945.00	593.19
Shifts				
1st Year	35607.00	417	36024.00	690.56
2nd Year	37168.00	417	37585.00	720.48
3-7 Years	39065.00	417	39482.00	756.84
Thereafter	40188.00	417	40605.00	778.37
Drivers—Casuarina				
1st Year	33666.00	417	34083.00	653.35
2nd Year	35066.00	417	35483.00	680.19
3-7 Year	36816.00	417	37233.00	713.73
Thereafter	37866.00	417	38283.00	733.86
Drivers—CW Campbell Remand Centre				
1st Year	31124.00	417	31541.00	604.62
2nd Year	32417.00	417	32834.00	629.41
3-7 Year	34033.00	417	34450.00	660.38
Thereafter	35003.00	417	35420.00	678.98
Alternate Weekends				
1st year	31516.00	417	31933.00	612.13
2nd Year	32958.00	417	33375.00	639.78
3-7 Year	34505.00	417	34922.00	669.43
Thereafter	35449.00	417	35866.00	687.53
Alternative Weekends—Relief				
1st Year	32077.00	417	32494.00	622.89
2nd Year	33410.00	417	33827.00	648.44
3-7 Year	35077.00	417	35494.00	680.40
Thereafter	36076.00	417	36493.00	699.55
Prison Officers Shift—No Additional Shift				
1st Year	33871.00	417	34288.00	657.28
2nd Year	35354.00	417	35771.00	685.71
3-7 Year	37158.00	417	37575.00	720.29
Thereafter	38226.00	417	38643.00	740.76
First Class Prison Officers				
Mon-Fri Shift				
1st Year	31383.00	417	31800.00	609.58
Thereafter	41247.00	417	41664.00	798.67
Industrial Officer Group 2				
Mon-Fri				
1st Year	32510.00	417	32927.00	631.19
2nd Year	33345.00	417	33762.00	647.19
3rd Year	34179.00	417	34596.00	663.18
Thereafter	35035.00	417	35452.00	679.59
Mon-Fri + Public Holidays				
1st Year	33466.00	417	33883.00	649.51
2nd Year	34335.00	417	34752.00	666.17
3rd Year	35205.00	417	35622.00	682.85
Thereafter	36075.00	417	36492.00	699.53
Alternate Weekends				
1st Year	37782.00	417	38199.00	732.25
2nd Year	38727.00	417	39144.00	750.36
3rd Year	39698.00	417	40115.00	768.98
Thereafter	40700.00	417	41117.00	788.19

TITLE RANK	EXISTING SALARY	SECOND ARBITRATED SAFETY NET ADJUSTMENT	TOTAL PER ANNUM	TOTAL WEEKLY RATE
	\$	\$	\$	\$
Alternate Weekends + Self Relief				
1st Year	38409.00	417	38826.00	744.27
2nd Year	39409.00	417	39826.00	763.44
3rd Year	40409.00	417	40826.00	782.61
Thereafter	41409.00	417	41826.00	801.78
East Perth Lock Up				
1st Year	35958.00	417	36375.00	697.28
2nd Year	36893.00	417	37310.00	715.21
3rd Year	37828.00	417	38245.00	733.13
Thereafter	38763.00	417	39180.00	751.05
Metropolitan Security Unit—Dog Unit				
1st Year	40914.00	417	41331.00	792.29
2nd Year	41980.00	417	42397.00	812.72
3rd Year	43047.00	417	43464.00	833.18
Thereafter	44112.00	417	44529.00	853.59
Bunbury Cook Instructors				
1st Year	40452.00	417	40869.00	783.43
2nd Year	41505.00	417	41922.00	803.62
3rd Year	42559.00	417	42976.00	823.82
Thereafter	43613.00	417	44030.00	844.03
Kitchen—Canning Vale Prison				
1st Year	36366.00	417	36783.00	705.11
2nd Year	37312.00	417	37729.00	723.24
3rd Year	38258.00	417	38675.00	741.37
Thereafter	39204.00	417	39621.00	759.51
Hospital Officers				
1st Year	50143.00	417	50560.00	969.20
2nd Year	51278.00	417	51695.00	990.96
Thereafter	52784.00	417	53201.00	1019.83
Senior Hospital Officer				
	40966.00	417	40383.00	793.28
Industrial Officer Group 1				
Mon-Fri	31383.00	417	31800.00	609.58
Mon-Fri + Public Holidays	32306.00	417	32723.00	627.28
Alternate Weekends	36276.00	417	36693.00	703.38
Alternate Weekends with Reliefs	37076.00	417	37493.00	718.72
Bunbury/Casuarina Canteen	35381.00	417	35798.00	686.22
Canning Vale Prison Canteen	34151.00	417	34568.00	662.65
Wooroloo Canteen	33228.00	417	33645.00	644.95
Metropolitan Security Unit—Dog Unit	39493.00	417	39910.00	765.05
Albany Activities	34612.00	417	35029.00	671.48
Bandyup Activities	37814.00	417	38231.00	732.86
Bunbury Activities	36918.00	417	37335.00	715.69
EAGO Activities	38301.00	417	38718.00	742.20
Greenough Activities	38895.00	417	39312.00	753.58
Karnet Activities	38607.00	417	39024.00	748.06
Wooroloo Activities	37855.00	417	38272.00	733.65
Canning Vale Prison Reception	35657.00	417	36074.00	691.51
CW Campbell Remand Centre—Reception	37076.00	417	37493.00	718.72
(c) Senior Officers				
Mon-Fri	1st Year 32510.00	417	32927.00	631.19
	2nd Year 33345.00	417	33762.00	647.19
	3rd Year 34179.00	417	34596.00	663.18
	Thereafter 35035.00	417	35452.00	679.59
Shift	1st Year 42592.00	417	43009.00	824.45
	2nd Year 43798.00	417	44215.00	847.57
	3rd Year 44909.00	417	45326.00	868.87
	Thereafter 46022.00	714	46439.00	890.20
Security—Albany				
	1st Year 39390.00	417	39807.00	763.07
	2nd Year 40415.00	417	40832.00	782.72
	3rd Year 41441.00	417	41858.00	802.39
	Thereafter 42466.00	417	42883.00	822.04
Security—Canning Vale Prison				
	1st Year 39390.00	417	39807.00	763.07
	2nd Year 40415.00	417	40832.00	782.72
	3rd Year 41441.00	417	41858.00	802.39
	Thereafter 42466.00	417	42883.00	822.04
Reception—Canning Vale Prison				
	1st Year 37592.00	417	38009.00	728.61
	2nd Year 38570.00	417	38987.00	747.35
	3rd Year 39549.00	417	39966.00	766.12
	Thereafter 40527.00	417	40944.00	784.87
Reception—CW Campbell Remand Centre				
	1st Year 37592.00	417	38009.00	728.61
	2nd Year 38593.00	417	39010.00	747.80
	3rd Year 39574.00	417	39991.00	766.60
	Thereafter 40553.00	417	40970.00	785.37
Senior Officer Training				
	1st Year 40511.00	417	40928.00	784.56
	2nd Year 41658.00	417	42075.00	806.55
	3rd Year 42714.00	417	43131.00	826.79
	Thereafter 43772.00	417	44189.00	847.07

(d) In addition to the rates prescribed above, any Officer or Industrial Officer attaining First Class status prior to 12 November, 1987 shall be paid an additional \$8.00 per week.

19.—UNIFORMS

Uniforms shall be provided by the Minister and shall be replaced on a reasonable wear and tear basis.

20.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly into an approved Bank, Building Society Account or other approved Savings Organisation, or by cheque if so agreed between the employer and the employee. Deductions from wages will continue to be made by procuration to other financial institutions.

(2) An employee who regularly performs shifts or weekend work shall be paid for Accrued Days Off, including shift and weekend penalties, when those days are taken as leave and at the rate which applied when they were accumulated.

21.—CIVILIAN CLOTHING ALLOWANCE

(1) An allowance, as provided in subclause (3) hereof, may be paid to an officer covered by this award, where he has received a prior direction from his employer to wear civilian clothes.

(2) The standard of civilian clothes required to qualify for this allowance shall be at the sole discretion of the employer.

(3) The allowance, as provided in subclause (1) hereof, shall be paid where the Officer is directed to wear civilian clothes on any shift in any rostered week. The entitlement under this subclause, shall be on the following scale—

No. of Shifts	Amount
	\$
1 shift per week	3.80
2 shifts per week	4.45
3 shifts per week	6.90
4 shifts per week	9.20
5 or more shifts per week	11.40

(4) The Minister may, at his/her option, allocate all or any duty, the nature of which qualifies for the allowance contained in this clause, to a particular officer in any rostered period.

22.—EFFECT OF 38 HOUR WEEK

Termination

An Officer who terminates his/her employment and has accumulated Accrued Day(s) Off and has not taken those days off, shall be paid the total accumulated hours on termination.

An Officer who terminates his/her employment and has taken Accrued Day(s) Off for which no entitlement has accrued shall have his/her wages reduced on termination by the total hours for which payment has been made out but for which the employee had no entitlement toward those Accrued Day(s) Off.

23.—TRADE UNION TRAINING LEAVE

(1) Subject to the provisions of this clause:

(a) The employer shall grant paid leave of absence to employees who are nominated by their Union to attend short courses conducted by the Australian Trade Union Training Authority.

(b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the parties.

(2) An employee shall be granted up to a maximum of five days' paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five days and up to ten days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten days.

(3) (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a public holiday or rostered day off falls during the duration of a course, a day off in lieu of that day will not be granted.

(4) Subject to subclause (3) of this clause shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

(5) The granting of leave pursuant to the provisions of subclause (1) of this clause is subject to the operation of the

organisation not being unduly affected and to the convenience of the employer.

(6) (a) Any application by an employee shall be submitted to the employer for approval at least four weeks before the commencement of the course, provided that the employer may agree to a lesser period of notice.

(b) All applications for leave shall be accompanied by a statement from the relevant Union indicating that the employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the Authority which is conducting the course.

(7) A qualifying period of 12 months in government employment shall be served before an employee is eligible to attend courses or seminars of more than one-half day duration. An employer may, where special circumstances exist, approve an application to attend a course or seminar where an employee has less than 12 months' government service.

(8) (a) The employer shall not be liable for any expenses associated with an employee's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

24.—LEAVE TO ATTEND UNION BUSINESS

(1) (a) The employer shall grant paid leave during ordinary working hours to an employee:

- (i) who is required to give evidence before any industrial tribunal;
- (ii) who as a union-nominated representative of the employees is required to attend negotiations and/or conferences between the Union and employer;
- (iii) when prior agreement between the Union and employer has been reached for the employee to attend official union meetings preliminary to negotiations or industrial hearings;
- (iv) who as a union-nominated representative of the employees is required to attend joint union/management consultative committees or working parties.

(b) The granting of leave pursuant to paragraph (a) of this subclause shall only be approved:

- (i) where an application for leave has been submitted by an employee a reasonable time in advance;
- (ii) for the minimum period necessary to enable the union business to be conducted or evidence to be given;
- (iii) for those employees whose attendance is essential;
- (iv) when the operation of the organisation is not being unduly affected and the convenience of the employer impaired.

(2) (a) Leave of absence will be granted at the ordinary rate of pay.

(b) The employer shall not be liable for any expenses associated with an employee attending to union business.

(c) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours.

(3) (a) Nothing in this clause shall diminish the existing arrangements relating to the granting of paid leave for union business.

(b) An employee shall not be entitled to paid leave to attend union business other than as prescribed by this clause.

(c) The provisions of this clause shall not apply to special arrangements made between the parties which provide for unpaid leave for employees to conduct union business.

(4) The provisions of this clause shall not apply when an employee is absent from work without the approval of the employer.

25.—DEDUCTION OF UNION SUBSCRIPTIONS

(1) The employer shall deduct normal subscriptions as equal amounts each pay period.

(2) Payroll Deduction Authority forms shall be completed by employees. Where the employer requires a standard procurement form, that form shall be used.

(3) Where required by the employer or union, the Union Secretary, or person acting in his/her stead, shall countersign all forms and forward them to the employer's paymaster.

(4) (a) The employer shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the employee's period of employment, except as provided in subclause (5) of this Clause or until the Authority is cancelled in writing by the employee.

(b) Where the Payroll Deduction Authority form authorises the employer to deduct union subscriptions in accordance with the rules of the Union, the Union shall notify the employer in writing of the level of union subscriptions to be deducted. The employer shall implement any change to union subscriptions no later than one month after being notified by the Union except where the Union nominates a later date.

(5) (a) The collection of any nomination fee, arrears, levies or fines are not the responsibility of the employer.

(b) Where a deduction is not made from an employee in any pay period, either inadvertently or as a result of an employee not being entitled to wages sufficient to cover the subscriptions, it shall be the employee's responsibility to settle the outstanding amount with the Union direct.

(6) The employer shall not make any deduction of subscriptions from an employee's termination pay on termination of service, other than normal deductions for the preceding pay period.

(7) The employer shall forward contributions deducted, together with supporting documentation, to the relevant union party to this award at such intervals as are agreed between the employer and the Union.

26.—INTRODUCTION OF CHANGE

Employer's Duty to Notify

(1) (a) Where the employer has made a decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union.

(b) "Significant effects" include major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where the Award makes provision for alteration of any of the matters referred to in subclause (1)(a) hereof an alteration shall be deemed not to have significant effect.

Employer's duty to discuss change

(2) (a) The employer shall discuss with the employees affected and their union, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.

(b) The discussion shall commence as early as practicable after a decision has been made by the employer to make the changes referred to in subclause (1)(a) hereof.

(c) For the purposes of such discussion, the employer shall provide to the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that the employer shall not be required to disclose confidential information the disclosure of which would be inimical to its interests.

27.—ESTABLISHMENT OF CONSULTATIVE MECHANISMS

The parties to this award are required to establish a consultative mechanism(s) and procedures appropriate to their size, structure and needs, for consultation and negotiation on matters affecting the efficiency and productivity of the Department and its institutions.

28.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the quality of working life, skills and job satisfaction and assists positively in the restructuring process.

(2) In conjunction with testing the current award structure the parties are prepared to discuss all matters raised by the parties for increased flexibility and efficiency. As such, any discussions between the parties must be premised on the understanding that:

- (a) The majority of employees employed under this award and who work in the section, branch or division, must genuinely agree;
- (b) No employee will suffer a reduction in ordinary earnings as a result of the change;
- (c) The Union must be party to the agreement, in particular, where the employees at any section, branch or division are holding discussions which would require any award variation. The Union shall be invited to participate;
- (d) The Union shall not unreasonably oppose any agreement;
- (e) Subject to the provision of this award, any agreement reached may require ratification by the Western Australian Industrial Relations Commission.

(3) Should an agreement be reached pursuant to subclause (2) hereof and that agreement requires an award variation, no party will oppose the award variation.

29.—DISPUTE SETTLEMENT PROCEDURE

(1) Preamble

Subject to the provisions of the Industrial Relations Act, 1979, any grievance, complaint or dispute, or any matter raised by the Union or the Department and its employees, shall be settled in accordance with the procedures set out in subclause (2) of this clause.

The parties agree that no precipitate action will be taken prior to, or during the time this procedure is being followed.

(2) Procedure

Where a matter is raised by any party, or individual, or group of individuals, the following stages shall be observed:

- Stage 1: Local discussion between the prison administration and the prison branch of the Union. If not resolved;
- Stage 2: The matter is referred for discussion between the Department and the Union respective executives. If not resolved;
- Stage 3: Prompt application for a Section 44 conference at the Western Australian Industrial Relations Commission.

(3) Access to the Western Australian Industrial Relations Commission

The settlement procedure provided by this clause shall be applied to all manner of disputes referred to in subclause (1), and no party, or individual, or group of individuals, shall commence any further action, of this kind, which may frustrate a settlement in accordance with its procedures. Observance of these procedures shall in no way prejudice the right of any party in dispute to refer the matter for resolution in the Western Australian Industrial Relations Commission, at any time.

The status quo will remain until the issue is resolved in accordance with the procedure outlined above.

SCHEDULE A—LIST OF RESPONDENTS

The Western Australian Prison Officers' Union of Workers
Attorney-General

SCHEDULE B—MEMORANDUM OF AGREEMENT

The Hon. Minister for Corrective Services and the Western Australian Prison Officers' Union of Workers, agree to the following provisions in respect of the introduction of the Structural Efficiency Adjustment of October 1989.

STATE WAGE PRINCIPLES:

It is a term of this Award that the Union undertakes for the duration of the Principles determined by the Industrial Relations Commission in Court Session in Application No. 1940 of 1989 not to pursue any extra claims, award or over award except when consistent with the State Wage Principles.

HEALTH AND FITNESS:

Officers who are selected for the Senior Officers Qualification Course or the Chief Officers Qualification Course, shall undergo a health and fitness appraisal as part of the course. The appraisal will test, inter alia, lung function, blood pressure and aerobic fitness. The appraisal shall not be used for promotional or assessment purposes, however, participants on the courses are expected to give a serious commitment to and a measurable improvement in fitness.

METROPOLITAN SECURITY UNIT:

Officers appointed to the Metropolitan Security Unit will be required to undergo a health and fitness test as part of the selection process. In addition, upon appointment the Officers will be required to meet fitness standards determined from time to time.

The Officers appointed to the Unit will carry out duties as outlined in the Metropolitan Security Unit Operations Parameters document issued by the Executive Director of the Department of Corrective Services. The structure, functions and administrative arrangements of the Unit are contained in an exchange of letters between the Department of Corrective Services and the Union.

INDUSTRIAL OFFICER CLASSIFICATIONS:

The Industrial Officers Classification Committee, consisting of equal Departmental and Union representation, shall examine classification claims from Industrial Prison Officers. Agreed classifications shall be forwarded to the Industrial Relations Commission for ratification.

Where the Classification Committee is unable to agree on a classification or where an Officer wishes to appeal against the decision of the Committee, the appeal shall be processed in accordance with the Commission's correspondence to the parties pursuant to Application No. 1303 of 1988.

Dated at Perth this 11th day of April, 1968.

PROMOTION APPEALS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Mr C M G Phillips
Appellant

and

Ms C M Leeson
Mr B Treby
Recommended Applicants.

No. PAB 9 of 1995.
No. PAB 10 of 1995.

BEFORE THE PROMOTIONS APPEAL BOARD
COMMISSIONER P E SCOTT, CHAIRPERSON.
MR M COLLINS, MEMBER.
MR N R PEARSON, MEMBER.

18 January 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of proceedings)
THE CHAIRPERSON: This is the unanimous decision of the Board.

The Board has noted Mr Trainer's comments regarding the lack of an interview not precluding the Appellant Mr Phillips from pursuing his appeal and has noted too, his comments regarding the reasons for the interviewing panel not choosing to interview Mr Phillips.

The Board is required by the Industrial Relations Act, 1979 to note the special qualifications and aptitude required for the discharge of the duties of the position concerned, in this case Information Officer, and the merit, diligence and experience of the recommended applicants, Mr Treby and Ms Leeson, and of the Appellant, and we have considered all of those things. The Act requires the Appellant to demonstrate a better claim to promotion to this position than the two recommended applicants.

Having observed the witnesses today the Board is of the view that the Appellant has not demonstrated a better claim to promotion, in particular, in the areas which are of critical importance to an Information Officer being the communication and interpersonal skills set out, being "effective interpersonal skills and attributes in the areas of handling difficult customers, tact and diplomacy, maturity of outlook, listening skills, friendliness and courtesy" and "a high level of written and verbal communications and interactive skills". In these areas we found both the recommended applicants demonstrated superior skills to those of the Appellant.

Whilst length of service in the job often allows a person the opportunity to develop a greater knowledge and skill than someone of lesser service, it was not demonstrated to us that Mr Phillips' greater period of service has allowed him to develop a greater level of knowledge or skill in the relevant areas compared with the two recommended applicants.

On these basis the decision of the Board is that these Appeals be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Mr C M G Phillips
Appellant
and

Ms C M Leeson
Mr B Treby
Recommended Applicants.

No. PAB 9 of 1995.
No. PAB 10 of 1995.

BEFORE THE PROMOTIONS APPEAL BOARD
COMMISSIONER P E SCOTT, CHAIRPERSON.
MR M COLLINS, MEMBER.
MR N R PEARSON, MEMBER.

18 January 1996.

Order.

HAVING heard Mr K Trainer on behalf of the Appellant and Ms M Kovacevich on behalf of the Western Australian Government Railways Commission and the Recommended Applicants, now therefore the Promotions Appeal Board, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT these appeals be and are hereby dismissed.

[L.S] (Sgd.) P.E. SCOTT,
Chairperson,
Promotions Appeal Board.

SCHOOL TEACHERS TRIBUNAL— Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gordon Graham Gudgeon

and

Ministry of Education.

No. T 10 of 1993.

GOVERNMENT SCHOOL TEACHERS TRIBUNAL

COMMISSIONER A.R. BEECH (Chairperson)

MRS M. BEAMAN (Deputy Member)

MR R.J. POLLARD (Member).

7 February 1996.

Order.

WHEREAS on the 5th of February 1996 the Government School Teachers Tribunal received a letter from the applicant's Union requesting that the above matter be discontinued;

AND WHEREAS the Government School Teachers Tribunal is of the opinion that the matter should therefore be discontinued;

NOW THEREFORE the Government School Teachers Tribunal, pursuant to the powers conferred under the Industrial Relations Act, 1979, hereby orders:

THAT the application be discontinued.

[L.S] (Sgd.) A. R. BEECH,
Chairperson.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of W.A. (Inc.)

and

Hon. Minister for Education.

No. TCR 19 of 1994.

GOVERNMENT SCHOOL TEACHERS TRIBUNAL

COMMISSIONER A R BEECH, Chairperson.

DR N.F. REEVES, Member.

MR R.J. POLLARD, Member.

29 January 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the matter was referred for hearing and determination on the 27th of January 1995;

AND WHEREAS the Union wrote to the Commission on the 12th of January 1996 stating that it was their understanding that the above matter is closed;

AND HAVING heard Ms S. Archer on behalf of the Applicant and Mr R. Copeland on behalf of the Respondent;

NOW THEREFORE, the Government School Teachers Tribunal, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be discontinued.

[L.S] (Sgd.) A. R. BEECH,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

State School Teachers Union of W.A. (Inc.)

and

Hon Minister for Education.

No. TCR 1 of 1995.

GOVERNMENT SCHOOL TEACHERS TRIBUNAL

COMMISSIONER A R BEECH, Chairperson.

DR N. REEVES, Member.

MR R.J. POLLARD, Member.

29 January 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the Union wrote to the Commission on the 12th of January 1996 stating that the matter can now be discontinued;

AND HAVING heard Mr A. Lovett on behalf of the Applicant and Mr E. Barlow on behalf of the Respondent;

NOW THEREFORE, the Government School Teachers Tribunal, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be discontinued.

(Sgd.) A. R. BEECH,

Commissioner.

[L.S]

**COAL INDUSTRY TRIBUNAL—
Awards/Agreements—
Application for—**

EWINGTON AGREEMENT.

No. 20 of 1995.

WESTERN AUSTRALIAN
COAL INDUSTRY TRIBUNAL ACT.

(Section 12)

Coal Miners Industrial Union of Workers Western Australia
and

Griffin Coal Mining Company Limited.

No. 20 of 1995.

MEMORANDUM OF AGREEMENT

WHEREAS conferences between the Coal Miners Industrial Union of Workers Western Australia and Griffin Coal Mining Company were convened by me pursuant to section 12(1) of the Western Australian Coal Industry Tribunal Act, 1978 on the 1st, 3rd, 17th and 24th days of November, 1995 for the purpose of resolving differences between the parties concerning the use by Griffin Coal Mining Company Limited of contractors to construct the Ewington II Mine;

AND WHEREAS agreement was subsequently reached between the parties annexed hereto and signed by me in accordance with section 12(3) of the Act is a memorandum of the matters upon which agreement has been reached and the terms and conditions agreed upon. The agreement is to be "without prejudice" to proceedings involving the Union under section 118A of the Federal Industrial Relations Act 1988 as amended.

Dated at Collie this 24th day of November, 1995.

G. L. FIELDING,

Chairman,

Western Australian Coal Industry Tribunal.

8 November 1995

"Without Prejudice"

EWINGTON AGREEMENT

The Coal Miners' Union propose there be agreement between ourselves which clearly separates the Development of the Ewington Mine and civil construction works at the Ewington site.

The extent of the agreement relates only to the civil works associated with the construction of the rail loop, coal plant facility, the light vehicle access road, surge dam and the heavy vehicle access road from the pipeline civil crossing construction to Coalfields highway.

It is agreed that should the contractor be required to engage labour the contractor will be encouraged to hire suitably qualified local personnel. The wage schedule for the above works undertaken by plant and equipment operators employed by contractors on the Ewington II construction work will be in accordance with the Coal Mining Industry (Miners') Award 1990 Schedule—2, Griffin Coal Mining Company Pty Ltd. for the ordinary weeks work as specified by the Award to which their employer is respondent.

GCM agree to maintain the permanent production workforce at 168 employees at least until the end of the current Memorandum of Agreement should the existing coal contracts be maintained. GCM re-affirm that all pre-stripping and development of the Ewington mine along with all current duties including rehabilitation work as currently agreed will be done by GCM employees.

The crushing and liberating of laterite will be done by GCM employees as previously agreed. The contractor carrying out the laterite crushing shall not use a dozer, all ripping and pushing will be done by GCM employees. The contractor for the civil construction will be responsible for acquiring and crushing such material require from outside the mining area.

All ongoing exploration drilling will be carried out by GCM employees with the exception of holes of a dimension that cannot be undertaken by our drill. Where there is a pressing time frame to complete a programme every effort will be made to maximise the use of the GCM drill in the first instance. Should there still be a requirement for additional drilling the parties undertake to have full Consultation on the issue, should no agreement be forthcoming the parties shall seek the assistance of the C.I.T.

It is agreed the contractors responsible for the H.V. road construction shall not acquire any materials from the mining area, if this is required GCM employees will supply. The use of material from the mining area shall be confined to use only in the civil construction works associated with the rail loop, coal crushing, plant facility and light vehicle access road and shall be kept to a minimum. The total amount required shall be regularly monitored and should it be deemed to be excessive the parties commit to have discussion on the matter with the view to an amicable resolution to the matter. The construction of one side of the R.O.M. pad will be carried out by the contractor for the tying in of the retaining wall and associated infrastructure and with GCM employees being responsible for completing the area and doing the laterite connected with the R.O.M. pad.

It is agreed the issue of sand removal from the Ewington lease is to be left in abeyance until further information becomes available. GCM commit to provide the Union with regular updates and status for the civil construction development at the Ewington site at intervals not in excess of two weeks apart.

GCM re-affirm their commitment to development of the Ewington mine with GCM employees and ongoing clearing will be done by GCM employees.

This proposal of no involvement on the listed civil construction works shall not be used to establish a precedent for future works and GCM agree this settlement will not be used in any form before the Industrial Commission in the current 118 application.

To conclude all other works at GCM's operation will be carried out by CMU members unless agreed otherwise.

G. N. WOOD,

Secretary,

Coal Miners Industrial Union of
Workers of Western Australia.

J. F. HUGHES,

Assistant General Manager,
Operations The Griffin Coal Mining
Company Pty Limited.