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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT—

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Delivered: 20 February 1996.

CORAM: KENNEDY J. (President)
FRANKLYN J.
ANDERSON J.

Appeal IAC 12 of 1995.

Between

The West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers

Appellant

and

Edgar Schmid & Others

Respondents.

Catchwords:

Industrial law (WA)—Direction by President of Commission to perform or observe rules of organisation—Continuing obligation imposed by rules—Misappropriation of funds—Ordinary meaning of misappropriation—Direction to general committee to order trustees of union to institute legal proceedings—Procedural fairness—No right or legitimate expectation on part of prospective defendants to be heard before proceedings commenced.

Industrial Relations Act 1979, s66(2).

Representation:

Counsel:

Appellant: Mr J O Kennedy

First Respondent: In person

Solicitors:

Appellant: Minter Ellison Northmore Hale

First Respondent: In person

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

Darroch v Tanner (1987) 21 IR 284

R v Commonwealth Court of Conciliation and Arbitration; ex parte Barrett (1945) 70 CLR 141

Case(s) also cited:

Carter v Drake (1993) 73 WAIG 3308

McLure v Mitchell (1974) 6 ALR 471

JUDGMENT OF THE COURT:

This is an appeal by the appellant union against the decision of the President of the Western Australian Industrial Commission to make an order against the appellant in the following terms:

"(1) THAT the respondent through its general committee forthwith order the trustees of the respondent organisation to institute legal proceedings in a competent court within 14 days of 21st day of September 1995 to recover the sums paid by the respondent to Mr K Campbell, General President and Mr M Ryan and Mr K Jarrett, General Vice-Presidents, to which they were not entitled by way of honorarium in the years 1991, 1992, 1993 and 1994 should any such amount not be paid to the respondent within seven days of 21st day of September 1995.

(2) THAT in the event that such monies are not repaid or such proceedings are not so instituted by the said trustees then the respondent organisation shall itself institute such proceedings in a competent court within 21 days of 21st day of September 1995.

(3) THAT the said respondents shall, at all times, in any event, take all steps and do all things necessary to recover such monies from the said General President and General Vice-Presidents as expeditiously as is possible.

—"

The rules of the union provide that each the General President and the General Vice-President are to be paid an annual honorarium. In the case of the General President, it is an amount equal to 2½ weeks' total wage of an engine driver special class (r16(4)) and, in the case of the General Vice-President, it is an amount equal to 41 per cent of one week's total wage of an engineer driver special class (r17(2)).

In 1991 the triennial delegates' conference of the union resolved to amend the rules to increase these honoraria, in the case of the General President to an amount equal to 6½ weeks' total wage of an engine driver special class, and, in the case of the General Vice-President, to an amount equal to 50 per cent of one week's total wage of an engine driver special class.

It is common ground that this resolution to amend the rules relating to the subject honoraria was ineffective to amend the rules for want of compliance with the *Industrial Relations Act 1979*, governing amendments to union rules.

The increased honoraria were in fact paid, in the years 1991, 1992, 1993 and 1994. The payments were plainly unauthorised. Indeed, this is not in dispute.

By notice of application filed on 12 May 1995, Mr Edgar Schmid, on behalf of himself and 18 other members of the union, applied to the President of the Industrial Relations Commission, in effect, for enforcement of the rules of the union on the ground that those rules were not being observed.

The rule not being observed was alleged to be r22, which is in the following terms:

"22. POWERS OF GENERAL COMMITTEE

The members of the General Committee shall in the interim between Delegate meetings:

(a) Manage and superintend all affairs of the Union, perform all duties allotted to them by these Rules, so as to further the objects of the Union.

(b) Protect the funds from misappropriation.

(c) Direct the actions of the General Trustees.

(d) Be held responsible for the right administration of the funds of the Union.

(e) Control all property of the Union.

—

(i) Institute legal proceedings (except as provided in Rule 40) on behalf of the Union.

(j) Direct the General Trustees to take legal proceedings against any officer or member of the Union guilty of misappropriating any of its funds.

—"

One of the orders or directions sought was:

"That there be a recovery of monies that have been paid in excess of the provisions of registered rule 16(4) and registered rule 17(2), as honorariums, to the General President and General Vice-Presidents of the West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union."

On the hearing of the application, the learned President of the Commission found that the General President and two General Vice-Presidents of the union had been paid money to which they were not entitled and that there had been "a misappropriation of funds in that funds were put to use in a way which the rules did not and do not authorise them to be put". He held that the General Committee had a duty under r22 to recover the amounts paid by directing the General Trustees to take legal proceedings against the officers or members guilty of the "misappropriation". Purporting to exercise the power conferred by s66(2) of the Act, he thereupon made the orders appealed from which are set out above.

The primary attack made upon the first of the orders, requiring the General Committee to direct the Trustees to institute legal proceedings for recovery of the overpayments, is that there was no power in the President to make that order under s66(2) of the Act which empowers the President:

"(2) On an application made pursuant to this section, ... (to) make such order or give such directions relating to the rules of the organisation, their observance or non-observance or the manner of their observance, either generally or in the particular case, as he considers to be appropriate ... ".

Counsel for the appellant argued that as there was no rule of the union requiring recipients of unauthorised payment of union funds to re-imburse or repay the union, there was nothing upon which the powers conferred by s66(2) could operate. He submitted that power to compel observance of rules could only be exercised to secure performance of existing obligations under the rules and did not extend to the making of orders for the purpose of remedying past breaches of the rules. Reliance was placed upon *Darroch v Tanner* (1987) 21 IR 284. In that case, a union had used funds and resources to produce election material to advance the interests of particular candidates. The resolution to expend the funds in this way was held to be beyond power, and it was held the expenditure was unauthorised. An application was made under s141(1G) of the *Conciliation and Arbitration Act 1904 (Cwth)* for an order requiring the members of the State Executive responsible for authorising the payment, "to perform and observe the rules of the (union) by ... " repaying the amount.

Section 141(1G) of the Act was in the following terms:

"An order under this section may give directions for the performance or observance of any of the rules of an organisation by any person who is under an obligation to perform or observe those rules."

The court held, applying *R v Commonwealth Court of Conciliation and Arbitration; ex parte Barrett* (1945) 70 CLR 141 per Latham CJ at 156-157, and Dixon J at 163, that this section did not empower the court to do other than secure the performance of an existing obligation.

It is to be observed, however, that the court made it clear the result would have been different had the court concluded that, on a proper construction of the rules, there was a continuing obligation on the persons to whom the directions had been given, and the direction was given to secure the performance of that continuing obligation. See at 289.

In our opinion, r22 of the subject rules does impose a continuing obligation upon the General Committee of the union generally to protect the property and funds of the union from misappropriation and specifically (by r22(j)) to direct the General Trustee to take legal proceedings against any officer or member of the union guilty of misappropriating any of its funds.

We are of the opinion that an order directing the General Committee to direct the General Trustees to do so is within the power conferred on the President by s66(2) of the Act.

It is further contended that r22(j) cannot come into operation unless and until there has been a "finding" that the particular officers (in this case the General President and the past and present General Vice-Presidents) have been guilty of misappropriating union funds, and that this finding must be a finding by a court exercising criminal jurisdiction. This is said to be because r22(j) imports the concept of criminal culpability by the use of the word "guilty" in conjunction with "misappropriating".

In our opinion, this is an excessively narrow construction of the rules. The learned President found that the General President and the General Vice-Presidents must have known that they were not entitled to receive honoraria out of union funds otherwise than in the amounts stipulated in the rules and must have known that no valid amendment to the rules had been made authorising higher honoraria. For the purposes of the rules, those facts are sufficient to give rise to a duty in the General Committee to take such action as might be appropriate against those officers for recovery of the sums. Even if there was an offence of "misappropriation" under the *Criminal Code*, which there is not, there would be no reason to limit the meaning of "misappropriate" in r22 to the meaning given to it in the criminal law. The ordinary meaning of "misappropriate" is to apply another's money to a wrong use. There is no difficulty in holding that officers of a union who receive funds of the union to which they know they are not entitled, and who then apply that money for their own use, misappropriate the funds of the union.

The appellant attacks the second order made by the President on a different ground. That is the order which would compel the union itself to institute the proceedings if the General Trustees refuse to do so. It is said that the rules cast no obligation on any but the General Trustees to institute recovery proceedings in a case of misappropriation.

It seems to us that this submission must be upheld.

In so far as the second order made by the President is concerned, this appeal should be allowed.

The third order is challenged on the same basis. For the same reasons, the challenge must be upheld.

All of the orders were challenged on a separate natural justice ground. It was contended on behalf of the appellant that as the learned President's order "purported to interfere with the rights of" the General President and the two General Vice-Presidents in as much as the order would require them to defend recovery proceedings, the order should not have been made without those persons being made parties to the application.

We cannot accept this submission. No relevant rights of the three individuals have been interfered with. No citizen has a right not to have, or a legitimate expectation that there will

not be, proper legal proceedings commenced against him or her without being heard on the question whether such proceedings should be commenced. It is true that the learned President had to find that the officers concerned were persons against whom proceedings ought to be instituted before he could make the order that he did. The question is whether the rules of natural justice require that the three individuals ought to have been made parties to the application so as to have an opportunity to be heard before any such "adverse" finding was made.

Certainly, if the determination by the learned President operated coercively upon the three officers, or was in some way determinative of their rights, they should have been parties and, in that way, given an opportunity to be heard. However, that is not the effect of the order. There has been no juridical or administrative act impinging upon their rights or expectations. Nothing more has happened than that these three officers have been identified as the object of recovery proceedings. It has been determined that they are persons against whom, on the objective evidence, and whatever they might have to say in their own defence, the General Trustees are obliged to institute recovery proceedings in a court of law. It has not been determined in any conclusive way that they must in fact make reparation. They will have every opportunity to be heard on that issue in due course.

Had the General Trustees determined on their own initiative to take proceedings against the President and Vice-Presidents, it could not successfully have been maintained that the latter would have been entitled to be heard before the proceedings were instituted.

For the foregoing reasons the appeal will be allowed to the extent of striking out paras (2) and (3) of the order appealed from.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 12 of 1995.

IN THE MATTER OF an appeal against the decision of The President of the Western Australian Industrial Relations Commission in Matter Numbered 531 of 1995 dated the 21st day of September 1995.

Between

The West Australian Locomotive Engine Drivers' Firemen's and Cleaners' Union of Workers

Appellant

and

Edgar Schmid and Others

Respondents.

Before:
JUSTICE KENNEDY (PRESIDENT)
JUSTICE FRANKLYN
JUSTICE ANDERSON.

20 February 1996.

Order.

HAVING heard Mr J O Kennedy, (of Counsel) for the appellant, and Mr E Schmid, for the respondents, the court hereby orders that the appeal be allowed to the extent of striking out paragraphs (2) and (3) of the order appealed from in matter no 531 of 1995 dated the 21st day of September 1995.

(Sgd.) J.G. CARRIGG,
[L.S] Clerk of the Court.

PRESIDENT—
Unions—Matters dealt with under Section 66—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
(Applicant)

and

The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
(Respondents).

No. 1272 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

23 November 1995.

Order.

THIS matter having come on for hearing before me on the 22nd day of November 1995, and having heard Mr E Schmid on his own behalf as applicant, Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation and the following named respondents, Keith Campbell, Kevin Warren Jarrett, Kalman Balazs Georg Takach De Duka, Brian Fredrick Henderson, Kelvin Eric Wilson, Bevan John Edwin Stephens, Barry Stewart Orbell, and Martin R Thobaven, and Mr D K Hathaway on his own behalf as respondent, and there being no appearance by or on behalf of Darren John Macauley and Michael John Barry as respondents, 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 23rd day of November 1995, ordered and directed as follows—

(1) THAT application No 1272 of 1995 be and is hereby adjourned for hearing and determination to 10.00 am on Friday, the 15th day of December 1995.

(2) THAT leave be and is hereby granted to Mr J O Kennedy (of Counsel) to appear on behalf of the respondent organisation and those abovenamed respondents upon this application.

(3) THAT time be and is hereby extended to 10.15 am on Tuesday, the 21st day of November 1995 to enable the respondent organisation and the abovenamed individual respondents to file their answer.

(4) THAT the respondent organisation herein provide within seven days of the 22nd day of November 1995 to the applicant herein discovery, inspection and a copy of the following documents—

(a) a copy of all accounts issued to the respondent organisation by Minter Ellison Northmore Hale, Solicitors, for professional services provided by them for the respondents in relation to the following proceedings in this Commission—

applications No 927 of 1994, No 1244 of 1994, No 502 of 1995, No 527 of 1995 and No 531 of 1995.

(b) A copy of the minutes of the December 1994 meeting of the Kalgoorlie Branch of the respondent organisation and a copy of the minutes of the January 1995 Executive meeting of the respondent organisation.

(c) A copy of the results of the referendum by the respondent organisation recently conducted on proposed rule changes of the respondent organisation.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
(Applicant)
and

The West Australian Locomotive Engine Drivers',
Firemen's and Cleaners' Union of Workers and Others
(Respondents).

No. 1272 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

21 December 1995.

Reasons for Decision.

THE PRESIDENT: This is an application brought by Mr Edgar Schmid, a member of the respondent organisation, itself an organisation as that is defined in the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). Accordingly, I am satisfied that I have jurisdiction to hear and determine this application.

In addition, the orders which are sought are orders which can be made within jurisdiction in terms of s.66(2) of the Act.

The applicant named as respondent the organisation itself and a number of members of the General Committee. I was not satisfied that Darren John Macauley was served in accordance with the Industrial Relations Commission Regulations 1985, in particular Regulation 89(2)(d), and I will formally strike his name out as a party to these proceedings.

All of the respondents, with the exception of Mr Hathaway who appeared for himself and did not oppose the orders sought, were represented by Mr Kennedy (of Counsel).

By his application, Mr Schmid alleged that the provisions of rule 46 "have not been observed nor has any attempt been made to conduct a referendum, when it is and has been practicable to do so, to meet Legal expenses that will exceed the $800-00 provision of that Registered Rule". By the application, the applicant seeks an order or direction in accordance with s.66(2) of the Act that the respondents observe and continue to observe the provisions of registered rule 46 and conduct a referendum of the members prior to voting an amount in excess of $800.00 for legal expenses in application No 531 of 1995 and subsequent appeal No IAC 12 of 1995.

BACKGROUND

The respondent organisation is governed, amongst other bodies, by a General Committee. Included in that Committee are the General President, the General Vice President, the General Trustees and the General Treasurer, as well as elected district representatives (see rule 13).

The General Committee is required to manage and superintend all affairs of the union, and perform all duties allotted to them by the rules, so as to further the objects of the respondent organisation (see rule 22(a)). The General Committee is to be held responsible for the right administration of the funds of the respondent organisation (see rule 22(d)). There is also power in the General Committee to institute legal proceedings on behalf of the union, except as provided in rule 40 (see rule 22(i)).

The General Trustees have a duty to act and have control of the property of the union, under the direction of the General Committee (see rule 20(1)).

The decisions of the General Committee are binding on all officers, members and branches, but subject to appeals as prescribed (see rule 23)).

A Finance Committee is required to meet at least once a month to examine accounts, recommend payment or otherwise, and to discharge all of the duties prescribed in rule 26.

Rule 40 provides, inter alia, for the General Secretary or a Branch Secretary to sue a member who is in arrears with payment of dues for over three months.

Rule 45 is an important rule for the purposes of this application. Rule 45(2) prescribes as follows—

> "(2) All monies received from the members of the Union for the benefit of those who by these Rules may become entitled thereto shall not be applied otherwise than in the manner prescribed by these Rules."

Rule 45(4) prescribes as follows—

> "(4) No legal expenses, witnesses' fees, or the like, shall on any other account than for the recovery of contributions be authorised or paid, unless specifically approved in each instance by the General Committee."

Rule 46 is of the most significance and prescribes as follows—

> "46. FUNDS (DISBURSEMENT OF)
>
> In no single case shall an amount exceeding eight hundred dollars be voted by the General Committee on any one item without a referendum of the Union being taken thereon; provided also that in all cases involving an amount of eight hundred dollars or over in legal expenses, where a referendum is practicable such a course shall be taken. Any officers rendering themselves responsible for such unauthorised payment shall be called upon to make good the amount so expended, and in default may be prosecuted according to law."

I will turn to what are the interpretations of the relevant rules, in a moment.

In this case, application No 531 of 1995, made by a member of the respondent organisation to this Commission pursuant to s.66 of the Act, was the subject of hearing and determination made on 21 September 1995 (see Schmid and Others v WALEDF&CU 75 WAIG 2950). That decision is presently the subject of a notice of appeal in the Industrial Appeal Court in appeal No IAC 12 of 1995.

In respect of both of those matters, Minter Ellison Northmore and Hale, Solicitors, rendered certain professional services, instructed Counsel, made other disbursements and charged the respondent organisation fees.

Exhibit 5 contains copies of accounts rendered in relation to application No 531 of 1995, including an account dated 29 June 1995 for $2860.90, an account dated 28 July 1995 for $975.80, an account dated 29 August 1995 for $3134.25, and an account dated 27 September 1995 for $1514.25. All of these accounts were passed for payment by the General Committee without first having been passed by referendum of the financial members of the organisation (see exhibit 5 and the relevant minutes of meetings of the General Committee contained therein). There was opposition expressed by members to payment of these accounts without a referendum first having been held (see exhibit 2, pages 2, 3, 5, 14, 15, 21, 22, 27, 51, 66 and 67).

It is, of course, clear from the evidence (see exhibit 6) that referenda can take about 20 days or less to complete. I find that as a fact.

There was no evidence of it nor was it submitted that in terms of time, expenses or logistical difficulty was it impracticable to hold a referendum. In fact, what evidence there was was to the contrary. I so find.

I turn now to the rules. I repeat what I have said in other proceedings under s.66 of the Act. The members of an organisation and the organisation itself are, subject to the Act, bound by the rules of the organisation during the continuance of their membership (see s.61 of the Act).

The rules of the organisation are those registered in this Commission. The General Committee cannot fail to comply with the rules on the basis that the Triennial Delegates' Conference, for example, has voted to alter them. The rules of an organisation are to be interpreted in the same manner as any other legal document. However, in construing a union rule, it is necessary not to place too little an adherence upon the strict technical meaning of words, but to view the matter broadly in an endeavour to give it a meaning consistent with the intention of the draftsman of the rules (see HSOA v Minister for Health 61 WAIG 616 at 618 (IAC) per Brinsden J with Smith J agreeing).

Under rule 45(2), the General Committee may not apply monies received from the members of the respondent organisation except in accordance with the rules.

Legal expenses cannot be authorised or paid unless specifically approved by the General Committee or unless the expenses so incurred relate to the recovery of contributions

(see rule 45(4)). As I read that rule, both the authorisation of the incurring of legal expenses and the payment of the same must be specifically approved by the General Committee.

That is a mandatory rule as I read it.

I go on to rule 46 which is also a mandatory rule. That is the intent to be gleaned from the scope and object of the rules. The consequences which are to flow from the rules also lead me to that conclusion (see Hunter Resources Ltd v Melville and Another (1987-1988) 164 CLR 234 at 251 (HC)).

Rule 46 provides, in quite unambiguous terms, that in no single case shall an amount exceeding $800.00 be voted by the General Committee on any one item ((ie) item of expenditure) without a referendum of the respondent organisation being taken. The words are plain and unequivocal. Only the members in referendum can approve expenditure or payment on any one item of expenditure exceeding $800.00. The General Committee would act ultra vires in purporting to do otherwise. However, in every case involving an amount of $800.00 or over in legal expenses where a referendum is practicable, such a course "shall be taken". The word "shall" indicates that the rule is plainly mandatory. Thus, if a referendum is practicable, the General Committee shall not vote in any case an amount of $800.00 or over, in legal expenses.

There was argument over the meaning of the rules. However, one reads the rule in the context of all of the rules, not the least rule 22(d), and the meaning is plain.

Firstly, the General Committee cannot vote to expend an amount of $800.00 or over for legal expenses in any instance, where it is practicable to hold a referendum (see, too, rule 45(4)). Secondly, since the General Committee is required to approve expenditure (including the payment of accounts), the General Committee is prohibited by the rules from approving the payment of an account for legal expenses in any one case for an amount of $800.00 or over and for paying the same.

Mr Kennedy's submission was that it was not practicable to hold a referendum in relation to the payment of any of these amounts because, (as I understand what he submitted), once the expense was incurred, the respondent organisation would leave itself open to an action for breach of contract if a referendum did not approve payment of the account.

There was no submission that to hold referenda or one referendum was or were impracticable for any other reason, and, as a matter of fact, I am satisfied that they were not.

I turn, however, to Mr Kennedy's argument concerning impracticability. "Practicable" is defined by some authorities in the context of English Statutes, but I do not think those definitions assist more than the dictionary definition to which I am about to refer. "Practicable" means, in its most apposite meaning, "capable of being put into practice, done or effected, especially with the available means or with reason or with prudence; feasible".

Having regard to the rules, the submission is not one which I can accept. The General Committee has a duty to comply with rule 46 in authorising expenditure as it is, in fact, empowered to do under rule 45(4).

Further, there is a separate duty upon the General Committee in approving payment of any such account to comply with rule 46. In that event, the General Committee has to take steps to fix the amount of liability for legal costs in advance so that the amount can be quantified to determine whether it should be put to a referendum. I see no obstacle to that being done. Then, of course, it may not be practicable to hold a second referendum because it would involve unnecessary time and expense when the amount was already authorised.

Alternatively, if it is only a decision to authorise payment of an amount that requires the General Committee to comply with rule 46, then the rule was not complied with, whichever of the two views one holds of the requirements of rule 46. The fact is that in this case wherever an account in excess of $800.00 was approved for payment, it was practicable to do so. I am satisfied, for those reasons, that the payment and the approval for payment of such accounts was unauthorised. If the rule was not complied with, then the General Committee acted ultra vires. It has no authority, nor has the respondent organisation, to pay the account contrary to the rules. To act contrary to the rules is to have acted ultra vires, in breach of a mandatory rule. The action which took place, therefore, was a nullity and that was the act of the respondent organisation in this case in authorising payment of the accounts and in paying them.

I find that the respondent organisation acted in breach of rule 46 and that its decision and action was ultra vires the rules and void. It matters not that the payment was approved before this application was made.

I find that the General Committee consisted at the material times of the respondent individuals, as well as one Darren John Macauley, but I make no finding in relation to him because he is not a party to these proceedings.

I am not disposed to make an order that rule 46 be complied with in every instance in the future. I think that the making of such an order would be quite fruitless, and there is an existing obligation under s.61 of the Act, upon the organisation and its members, including members of the General Committee, to comply with the rules.

Nor do I think it appropriate to make an order for a referendum. The time has passed for that occurring. The better course would be to make a declaration that the General Committee acted ultra vires, as did the respondent organisation, in voting the amounts which it did in payment of each relevant separate item which came before it, and declaring further that each resolution purporting to authorise such payments was void and of no effect. I would, however, invite the parties to address me as to whether those declarations should be made, having regard to the findings which I have made, should they wish to do so.

Appearances: Mr L Young, as agent, on behalf of the applicant.

Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation and the following named respondents, Keith Campbell, Kevin Warren Jarrett, Kalman Balazs Georg Takach De Duka, Brian Fredrick Henderson, Kelvin Eric Wilson, Bevan John Edwin Stephens, Barry Stewart Orbell, Martin R Thobaven, and Michael John Barry.

Mr D K Hathaway on his own behalf as respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
(Applicant)
and

The West Australian Locomotive Engine Drivers',
Firemen's and Cleaners' Union of Workers and Others
(Respondents).

No. 1272 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

23 February 1996.

Supplementary Reasons for Decision.

THE PRESIDENT: Following my issuing of reasons for decision in this matter on 21 December 1995, and following my invitation expressed therein to the parties through the advocate for the applicant, Mr Hathaway on his own behalf as a respondent, and counsel for the remaining respondents, I was addressed on 8 February 1996. I also read the written submissions which were filed on behalf of the parties.

What I was seeking were submissions as to whether I should make declarations declaring that the General Committee acted ultra vires as did the respondent organisation in voting the amounts which it did in payment of each relevant separate item which came before the Committee, and, further, that each resolution purporting to authorise such payments was void and of no effect.

It was not in issue, nor could it be, that s.26(2) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") empowers me to make such orders, even though different orders were sought. Indeed, s.26(1)(a) of the Act would afford me that power also.

Further, it is the duty of the President to exercise the discretionary power conferred by the section where there is a substantial failure to perform or observe the rules (see Wilson v Heydon; re Vehicle Builders Employees' Federation of Australia (1944) 53 CAR 482 at 488 per Kelly J). There must be confidence among members of an organisation that its government and administration will be carried out in conformity with the rules in order that the policy of the Act may be carried out effectively (see Wilson v Heydon; re Vehicle Builders Employees' Federation of Australia (op cit)).

It was submitted to the Commission that it was not appropriate to make the declarations referred to in my reasons for decision of 21 December 1995, even though there was power to do so under s.26(2) of the Act. There is such power.

I have found that rule 46 was breached in the case of those payments voted to be made and set out in my reasons for decision of 21 December 1995 at pages 5 and 11. Exhibits 2 and 5 tendered in these proceedings demonstrate what I found.

There was a clear finding as to the practicability of holding such a referendum in relation to each such account. In fact, I found that it was practicable to hold a referendum. Thus, the submission by Mr Kennedy (of Counsel) that there could not be a declaration of ultra vires (see paragraph 8 of the respondents' submissions) was misconceived. Mr Kennedy also submitted that retrospectivity of declaration was undesirable, and I was referred to observations which I made in Schmid and Others v WALEDF&CU (Application No 531 of 1995) 75 WAIG 2950 at 2951-2952 by Mr Young. Those observations were as follows—

> "I note, too, with disquiet that I was given no assurance that rules 22, 45 and 46 would be complied with in future in regard to these matters. I would observe that the Act might be said to have been breached if the rules were not complied with when they are required to be complied with (see s.61 of the Act). In any event, further failure to comply would constitute further breaches of the rules."

In that decision I set out what rules 45 and 46 meant. Since then, it is submitted that the General Committee formed an opinion of its own of what rules 45 and 46 meant, and particularly and materially what "practicable" meant. I have found that opinion to be wrong. I must observe, however, that having regard to the recent history of rules 45 and 46, that to form such a view (and an erroneous one), particularly having regard to my decision in Schmid and Others v WALEDF&CU (Application No 531 of 1995) (op cit), might be said to be irresponsible and could certainly, in any event, not be said to be a reason why I should not make the declarations which I have asked should be made. That such an opinion was reached cannot suffice as a reason why I should not make declarations as to the breaches of rules, of which there were a number, all committed after Mr Schmid's application, application No 531 of 1995, was filed on 12 May 1995, and one which was committed on 18 September 1995 involving an amount of $3134.25.

That such declarations might affect the rights of innocent payees is not an obstacle to the declarations being made in this case, having regard to my above quoted comments in Schmid and Others v WALEDF&CU (Application No 531 of 1995) (op cit). In any event, it was not demonstrated to me that it was the case that the rights of innocent payees could be affected. I say that because the respondent organisation has first recourse against the General Committee for breach of rule 46. It is also significant that compliance with the resolutions was passed in the face of opposition and warnings from some members.

Further, no assurance was given in these proceedings that there would be no further breach of rule 46 until Mr Kennedy gave me such an assurance in the course of my discussions with him on 8 February 1996 in these proceedings and after my reasons for decision of 21 December 1995 had issued.

The only appropriate way, in accordance with s.26(1)(a) and s.26(1)(c) of the Act, to deal with the matter is to make the declarations which I have proposed. To do so is to recognise the seriousness of what has occurred. The handling of an organisation's finances by the General Committee is a serious and important matter involving a fiduciary duty and that should be recognised by the declarations which I make. That seriousness and the interest of the organisation and the members that monies be disbursed in accordance with the rules are very cogent factors (see s.26(1)(c) of the Act).

I will make the declaration in respect of each such payment, voted to be made by the General Committee, in regard to the conduct of the respondent organisation, since the General Committee is a governing body of such respondent organisation and a mechanism of its operations. I will make a declaration in relation to each member of the General Committee present and voting upon each resolution voting payment of each account which the evidence before me proves was paid, as I found in my reasons for decision of 21 December 1995. I list hereunder the accounts paid, the amounts of such accounts, the name of the payee and the members of the General Committee present and voting for such payment in breach of the rules, as I have found. I will then issue a minute of proposed declaration.

Account Date	Payee	$	Date of General Committee Meeting When Accounts Passed	Present
29 June 1995	Minter Ellison Northmore Hale	2860.90	24 July 1995	K Campbell (General President), K Jarrett (Fremantle), M J Barry (EGR), D Macauley and G Takach De Duka (Forrestfield), B Stephens (Northam), M R Thobaven (GSR), B S Orbell (South West), K E Wilson (Northern)
28 July 1995	Minter Ellison Northmore Hale	975.80	21 August 1995	K Campbell (General President), K Jarrett (Fremantle), M J Barry (EGR), D Macauley, B Henderson and G Takach De Duka (Forrestfield),B Stephens (Northam), D K Hathaway (Merredin), M R Thobaven (GSR), B S Orbell (South West), K E Wilson (Northern)
29 August 1995	Minister Ellison Northmore Hale	3134.25	18 September 1995	K Campbell (General President), K Jarrett (Fremantle), M J Barry (EGR), D Macauley, B Henderson and G Takach De Duka (Forrestfield), B Stephens (Northam), M R Thobaven (GSR), B S Orbell (South West), K E Wilson (Northern)

There was no dissenting vote recorded or no abstention recorded for any of those present and acceptance of the reports of accounts passed for payment was recorded by resolution. Indeed, the reports were received and accepted on the motions of various named General Committee members. On a further consideration of the evidence before me, there is no record and no other evidence to suggest that the account of 27 September 1995 of $1514.25 had been passed for payment, and I expressly now make no finding in relation thereto.

I am not of the opinion that I am precluded from making such a declaration by the words of s.66(2) of the Act. Certainly, the word "declare" is used deliberately in relation to the interpretation of any rules, but I am of opinion that to give a proper meaning to the section the word "order" in s.66(2) of the Act, which must be read as a whole, encompasses the making of the sort of declaration to which I have referred, given that s.66(2) is a wide provision which enables the President to "make such order or give such directions ..., either generally or in the particular case, as he considers to be appropriate and without limiting the generality of the foregoing may ...". I am supported in that view by reading the whole section in the context of the Act, with particular regard to s.6(f) of the Act. In this case I am making a declaration as to the non-observance of the rules, the non-observance of the rules effecting the decision which was made contrary to the rules and declaring that they were null and void, a necessary "order" in the circumstances, having regard to the fact that decisions were made to pay money in a manner unauthorised by the rules and were, as were the payments themselves, made ultra vires the rules.

Declared accordingly

Appearances: Mr L Young, as agent, on behalf of the applicant.

Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation and the following named respondents, Keith Campbell, Kevin Warren Jarrett, Kalman Balazs Georg Takach De Duka, Brian Fredrick Henderson, Kelvin Eric Wilson, Bevan John Edwin Stephens, Barry Stewart Orbell, Martin R Thobaven and Michael John Barry.

Mr D K Hathaway on his own behalf as respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
(Applicant)

and

The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
(Respondents).

No. 1272 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

11 March 1996.

Further Reasons for Decision—Declarations.

THE PRESIDENT: On the speaking to the minutes in these proceedings held on 8 March 1996, the applicant sought an amendment to add further total amounts voted for payment by the General Committee on 29 June 1995, being a total amount of $3434.05, to the declaration. That amount was not specifically referred to in evidence, nor was it referred to in my reasons for decision. Indeed, the amounts concerned did not relate to legal expenses in respect of application No 531 of 1995 and appeal No IAC 012 of 1995, which were the only legal expenses, the payment of which was complained about in the application herein. I will not therefore amend the minute, since to do so would not reflect my reasons for decision, nor would it reflect the subject of the application, which was not amended, in this matter.

For the respondents, it was submitted that the minutes should be amended to add reference to all members of the General Committee, even if they failed to attend and vote against the resolution, the subject of complaint in these proceedings, or, indeed, voted against it. The declarations which I make relate to resolutions of the General Committee of the respondent organisation. They declare these resolutions null and void. The resolutions were passed ultra vires the respondent organisation's rules, as I have found. Whilst I agree that the General Committee is a governing body of the respondent organisation as prescribed by rule 22(a), the breaches complained of relate to rule 46, which refers to the obligation cast on members of the General Committee as individuals, in relation to payments of items of expense, as well as to the General Committee itself. In any event, nothing was said to persuade me, nor was authority cited to me to persuade me that persons not attending or voting against the resolution should be mentioned in the declaration as having been instrumental in passing them. I am not therefore disposed to amend the minute so that my declaration issues in terms of the amendments sought by the respondents.

For those reasons, the declaration will issue in terms of the minutes of proposed declaration issued by me on 23 February 1996. A declaration will issue in those terms forthwith.

Appearances: Mr L Young, as agent, on behalf of the applicant.

Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation and the following named respondents, Keith Campbell, Kevin Warren Jarrett, Kalman Balazs Georg Takach De Duka, Brian Fredrick Henderson, Kelvin Eric Wilson, Bevan John Edwin Stephens, Barry Stewart Orbell, Martin R Thobaven and Michael John Barry.

Mr D K Hathaway on his own behalf as respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Edgar Schmid
(Applicant)

and

The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers and Others
(Respondents).

No. 1272 of 1995.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

11 March 1996.

Declaration.

THIS matter having come on for hearing before me on the 15th day of December 1995 and the 8th day of February 1996, and having heard Mr L Young, as agent, on behalf of the applicant, Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation and the following named respondents, Keith Campbell, Kevin Warren Jarrett, Kalman Balazs Georg Takach De Duka, Brian Fredrick Henderson, Kelvin Eric Wilson, Bevan John Edwin Stephens, Barry Stewart Orbell, Martin R Thobaven and Michael John Barry, and Mr D K Hathaway on his own behalf as respondent, and having reserved my decision, and reasons for decision being delivered on the 21st day of December 1995, and supplementary reasons for decision being delivered on the 23rd day of February 1996, and this matter having come on for a speaking to the minutes on the 8th day of March 1996, and having heard Mr L Young, as agent, on behalf of the applicant, Mr J O Kennedy (of Counsel), by leave, on behalf of the respondent organisation and the following named respondents, Keith Campbell, Kevin Warren Jarrett, Kalman Balazs Georg Takach De Duka, Brian Fredrick Henderson, Kelvin Eric Wilson, Bevan John Edwin Stephens, Barry Stewart Orbell, Martin R Thobaven and Michael John Barry, and Mr D K Hathaway on his own behalf as respondent, and further reasons for decision being delivered on the 11th day of March 1996, it is this day, the 11th day of March 1996, ordered and declared as follows—

(1) (a) THAT I am not satisfied that Darren John Macauley was served in accordance with regulation 89(2)(d) of the Industrial Relations Commission Regulations 1985, and I hereby order that his name be and is hereby struck out as a party to these proceedings.

(b) THAT I make no finding against the said Darren John Macauley.

(2) THAT on the 24th day of July 1995, the 21st day of August 1995 and the 18th day of September 1995 the respondent organisation and the individual named respondent members of the General Committee did action breach of rule 46 of the rules of the respondent organisation herein.

(3) THAT the resolution passed on the 24th day of July 1995 by the individual named respondent members, Keith Campbell, Kevin Warren Jarrett, Michael John Barry, Kalman Balazs Georg Takach De Duka, Bevan John Edwin Stephens, Martin R Thobaven, Barry Stewart Orbell and Kelvin Eric Wilson, as respondent members of the General Committee of the said respondent organisation, whereby they voted to pay the account dated the 29th day of June 1995 of Minter Ellison Northmore Hale in the sum of $2860.90, be and is hereby declared null and void.

(4) THAT the resolution passed on the 21st day of August 1995 by the individual named respondent members, Keith Campbell, Kevin Warren Jarrett, Michael John Barry, Brian Fredrick Henderson, Kalman Balazs Georg Takach De Duka, Bevan John Edwin Stephens, David Kimberley Hathaway, Martin R Thobaven, Barry Stewart Orbell and Kelvin Eric Wilson, as respondent members of the General Committee of the said respondent organisation, whereby they voted to pay the account dated the 28th day of

July 1995 of Minter Ellison Northmore Hale in the sum of $975.80, be and is hereby declared null and void.

(5) THAT the resolution passed on the 18th day of September 1995 by the individual named respondent members, Keith Campbell, Kevin Warren Jarrett, Michael John Barry, Brian Fredrick Henderson, Kalman Balazs Georg Takach De Duka, Bevan John Edwin Stephens, Martin R Thobaven, Barry Stewart Orbell and Kelvin Eric Wilson, as respondent members of the General Committee of the said respondent organisation, whereby they voted to pay the account dated the 29th day of August 1995 of Minter Ellison Northmore Hale in the sum of $3134.25, be and is hereby declared null and void.

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

AWARDS/AGREEMENTS— Application for—

THE ALBANY HARBOUR MASTER-MARINE PILOTS SALARY AGREEMENT 1995 No. AG 24 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

and

Albany Port Authority.

No. AG 24 of 1996.

The Albany Harbour Master-Marine Pilots Salary Agreement 1995.

COMMISSIONER A.R. BEECH.

28 February 1996.

Order.

HAVING heard Mr P. Grant Smith on behalf of the Applicant and Mr P. Connell 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 Albany Harbour Master-Marine Pilots Salary Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule on and from the 23rd day of February 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be referred to as The Albany Harbour Master-Marine Pilots Salary Agreement 1995.

2.—ARRANGEMENT

3.—PARTIES

(1) This agreement shall be binding on the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers (the union), its officers and members and The Albany Port Authority.

(2) The number of officers covered by this agreement is one.

4.—PREAMBLE

This agreement is intended to supersede the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984. It is designed to accommodate, amongst other things, working arrangement and the interface of relevant officers covered by this agreement with the Integrated Port Labour Force. This will enhance the operation of a multi-skilled workforce with the competency to perform port, marine and stevedore work in the Port of Albany.

This agreement is the result of discussion between the parties with a view to continuing and enhancing the fundamental restructuring of operations in Western Australian Regional Ports and the unique and specialised functions performed by the Harbour Master/Pilot, consistent with:

* those findings of the Interstate Commission report on the waterfront industry endorsed by the Federal and Western Australian Governments;
* introduction of the Integrated Port Labour Force in Albany in 1992 and renegotiation of Integrated Port Labour Force Albany Agreement in 1995;
* ensuring that working patterns and arrangements enhance flexibility and efficiency of regional ports;
* being commercially efficient in terms of port authority functions;
* the section 118A Order, Mis 072/95 Print M2421 handed down on 31 May 1995.

This agreement also has regard to developments in 1993 where, as a consequence of the merge of several state government departments, including Marine and Harbours, a new department was created, known as the Western Australian Department of Transport. In 1993 an agreement was negotiated between Marine and Harbours and the Albany Port Authority whereby Marine and Harbours would cease to provide pilotage services to the Port of Albany and persons employed as Harbour Masters/Pilots by Marine and Harbours would have their contracts of employment transferred to the Albany Port Authority, thus ceasing to be officers of Marine and Harbours and become officers of the Albany Port Authority.

The Albany Port Authority since 1993 has, as a consequence, had responsibility of the provision of pilotage services in that Port.

In 1994 the Albany Port Authority became a respondent to the Federal Marine Pilots Award 1991.

5.—AMBIT

This agreement shall:

(1) Provide the basis of payment of annual salaries and various allowances by the Albany Port Authority to relevant officers who are members of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(2) Supersede previous memorandum of agreement between the parties.

(3) Shall be read in conjunction with the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984 and the Marine Pilots Award 1991 and, in the event of any inconsistency, the terms of this agreement shall take precedence over the terms of the aforementioned agreement and awards.

6.—AGREEMENT

This agreement shall be effective on and from the 23rd day of February 1996 and shall continue for a period of one year.

7.—REVIEW

The terms and conditions of this agreement shall be reviewed three months prior to the expiry of this agreement.

8.—SALARIES

(1) Harbour Master/Marine Pilots shall receive an annual salary of $69,679.00.

(2) The amount in subclause (1) of this clause shall be an aggregated analysed salary for performance of all duties specified in this agreement.

9.—HOURS OF DUTY

(1) Hours

The salaries and allowances in this agreement are based upon hours being 75 hours at an average of 37.5 hours per week over a two week cycle.

In the event that any such duties do not require the presence of the Harbour Master at the office, the Harbour Master may choose not to attend the office, subject to the Albany Port Authority being advised where the Harbour Master can be contacted.

The Harbour Master can leave the port provided that there are no duties requiring his/her attention and or immediate presence, subject to the Albany Port Authority being advised where he/she can be contacted.

(2) Roster

Harbour Masters/Pilots shall be employed on a self organised basis which shall provide for four days off duty (RDO) each calendar fortnight. RDOs not able to be taken by the time of the officer's annual leave shall be taken in addition to such annual leave.

(3) Fatigue—Exhaustion Break

Harbour Masters/Marine Pilots shall not be required to perform any duties having been on duty for 16 hours without an eight hours' exhaustion break between the time of completing and returning to duty.

10.—DUTIES

(1) Pilotage of vessels for the Port of Albany.

(2) Liaise with ship agents regarding departure and arrival arrangements for vessels having regard to tides, weather, sea states and draught/channel limitation of the port.

(3) Co-ordination and development of port emergency plans.

(4) Involvement in the planning, construction and maintenance of marine structures.

(5) Management of port navigational aids.

(6) Sea search and rescue as required by State and Federal Maritime Agencies.

(7) Control of marine oil pollution operations within the port boundaries and supervise ongoing maintenance of equipment and initial response in Albany.

(8) Undertake matters relating to hydrographic surroundings as required.

(9) Advise and liaise regarding port state control matters with AMSA.

(10) The engagement of tugs.

(11) Berthing Master/Wharf Manager functions under the Port Authority Act.

(12) Stevedoring duties will be carried out when and where required.

(13) Other duties commensurate with technical qualifications and experience.

11.—DEFINITIONS

(1) "Officer" means Harbour Masters and Marine Pilots employed by the Albany Port Authority.

(2) "Permanent Head" means the General Manager of the Albany Port Authority.

(3) "Union" means the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(4) "Employer" means the Albany Port Authority.

12.—CONTRACT OF SERVICE

(1) Every person appointed by the Albany Port Authority as a permanent officer shall be on probation for a period not exceeding six months, unless otherwise determined by the General Manager.

(2) At any time during the period of probation the General Manager, or such other person authorised by the Albany Port Authority to act on its behalf, may annul the appointment and terminate the services of the appointee.

(3) As soon as possible after the expiry of the period of probation the General Manager, or such other authorised person, shall:

(a) confirm the appointment; or

(b) extend the period of probation for up to six months; or

(c) annul the appointment and terminate the services of the appointee.

(4) Every person appointed as a permanent officer shall, either before commencing duty or during the period of probation, satisfy the following conditions unless the General Manager or such other authorised person otherwise determines.

(a) Provide evidence of age in the form of an Extract of Birth Entry or a certified copy of Birth Registration or other evidence acceptable to the General Manager; and

(b) Undertake a medical examination by a registered medical practitioner, nominated by the Albany Port Authority, to satisfy the General Manager that the appointee is in a fit condition to fulfil the duties of the office to be filled. The fee for the examination and certificate of the registered medical practitioner shall be paid by the appointee.

(5) Except where the Albany Port Authority approves of a shorter period of notice, an officer shall give the Albany Port Authority written notice of intention to resign of not less than:

(a) one month in the case of a permanent officer; or

(b) one week in the case of a temporary officer.

(6) The General Manager may terminate the contract of service of any permanent officer by one month's notice given in writing.

(7) The foregoing provisions of this clause do not affect the General Manager's right to dismiss an officer without notice for misconduct, and, in such a case, the salary of the officer shall be paid up to the time of dismissal only.

(8) (a) Where the General Manager considers that a position occupied by an officer is no longer necessary and no other employment is available to that officer, the union shall be notified in writing to that effect.

(b) The union may, within seven days of the date upon which that notification is given, request the General Manager to review that decision, but where an agreement is not reached in discussion between the employer and the union, the contract of service may be terminated in accordance with the provisions of subclause (6) of this clause.

(9) Where the General Manager seeks to terminate the services of an officer in accordance with subclauses (6) and (7) of this clause, upon written request the officer shall be supplied with a written statement setting out details of the

incident, circumstance, event or matters upon which the General Manager based his/her decision.

13.—PAYMENT OF SALARIES

(1) Salaries shall be paid fortnightly.

(2) Unless otherwise agreed, salaries shall be paid by direct transfer to an account in a bank or other financial institution nominated by the officer and acceptable to the employer.

(3) Salaries may be paid in such other manner as is agreed between the employer and the union in a particular case.

(4) Where salaries are paid in accordance with subclause (2) of this clause the employer shall reimburse each officer in respect of any taxes, charges, duties or fees incurred, an amount of $40.00 per year.

(5) On pay day officers shall be given written advice showing the gross amount of salaries or allowances due and deductions.

(6) In the event of an underpayment of salaries an officer's pay shall be adjusted as soon as practicable but in any event no later than the subsequent pay period.

(7) The employer may make deductions from an officer's salary with the written consent of the officer, but shall not make deductions without such written consent.

14.—ANNUAL LEAVE

(1) Each officer shall be entitled to 42 consecutive days of recreation leave on full pay for each year of service, consisting of 28 calendar days of normal annual leave and 14 calendar days of annual leave in lieu of public holidays and public service holidays.

(2) Annual leave shall be calculated on a pro rata calendar year basis commencing on the first day of employment with the Albany Port Authority.

(3) Pro rata annual leave shall be calculated according to the following formula:

Completed Calendar Months of Service	Pro Rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

Provided that, in the first and last months of an officer's service, the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.

For the purposes of this subclause, an officer who commences on the first working day of a month and works for the remainder of the month and an officer who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(4) The additional two weeks' leave granted in lieu of public holidays shall be credited on a pro rata basis according to the following formula:

Completed months of service	Pro rata annual leave (working days) 10 additional days
1	Nil
2	1
3	2
4	3
5	4
6	5
7	5
8	6
7	7
10	8
11	9

(5) A permanent officer may take annual leave during the calendar year in which it accrues, but the time during which the leave may be taken is subject to the approval of the General Manager.

(6) A temporary officer may not take annual leave before it accrues. The General Manager may approve a temporary officer taking pro rata annual leave. The time during which any annual leave may be taken is subject to the approval of the General Manager.

(7) Annual leave shall be taken in one period unless otherwise approved by the General Manager.

(8) On written application an officer shall be paid salary in advance when proceeding on annual leave:

(a) When the convenience of the Albany Port Authority is served, the General Manager may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for a period of one year.

(b) The General Manager may renew the approval referred to in paragraph (a) of this subclause for a further period of one year or further periods of one year but so that an officer does not at any time accumulate more than three years' entitlement.

(c) Where the convenience of the Albany Port Authority is served, the General Manager may approve the deferment of the commencement date for taking annual leave so that an officer accumulates more than three years' entitlement.

(d) When an officer who has received approval to defer the commencement date for taking annual leave under paragraphs (a), (b) or (c) of this subclause next proceeds on annual leave, the annual leave first accrued shall be the first leave taken.

(9) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an officer.

(10) On application to the General Manager a lump sum payment for the money equivalent to pro rata annual leave shall be made to an officer who resigns, retires, is retired or in respect of an officer who dies, but not to an officer who is dismissed.

(11) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period the incumbent is on annual leave, observing a holiday prescribed by this agreement, absent through sickness with or without pay. This provision applies except for that portion of an absence that exceeds three months, absence on sick leave or exceeds six months on workers' compensation, or any period exceeding two weeks during which the incumbent is absent on leave without pay.

15.—ANNUAL LEAVE LOADING

(1) Subject to the provisions of subclauses (2) and (4) of this clause, a loading equivalent to 17.5% of normal salary shall be paid to officers proceeding on annual leave, including accumulated annual leave.

(2) Subject to the provisions of subclause (4) of this clause the loading is to be paid on a maximum of four weeks' annual leave. Payment of the loading shall not be made for additional leave granted for any other purpose. The maximum payment shall not exceed the Average Weekly Earnings Per Employed Male Unit in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(3) Annual leave commencing in any year and extending without a break into the following year shall attract the loading calculated on the salary applicable on the day the leave commences.

(4) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is taken. Under these circumstances, an officer may receive up to the maximum loading for the approved accumulated annual leave, in addition to loading for the current year's entitlement.

(5) A pro rata loading shall be paid on periods of approved annual leave of less than four weeks.

(6) The loading shall be calculated on the officer's ordinary rate of salary.

(7) Where payment in lieu of accrued or pro rata annual leave is made on the death, resignation or retirement of an officer, a loading calculated in accordance with the terms of this clause for annual leave accrued after January 1, 1974 is to be paid.

(8) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion, but no refund is required in the event of the death of an officer.

16.—LONG SERVICE LEAVE

(1) An officer shall be entitled to thirteen weeks' long service leave on full pay if he/she has completed seven years' continuous service with the Albany Port Authority.

(2) For each and every subsequent period of seven years' continuous service an officer shall be entitled to an additional thirteen weeks' long service leave on full pay.

(3) Upon application by an officer, the General Manager may approve of the taking by the officer:

(a) of double the period of long service leave entitlement on half pay, in lieu of the period of long service leave entitlement on full pay;

(b) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or

(c) or may allow the incumbent to take the leave in not more than three separate periods, subject to the portion of long service leave being taken on full or half pay, shall be not less than four weeks' entitlement and portions in excess of four weeks shall be in multiples of one week's entitlement and providing also that a minimum balance of long service leave of four weeks on full pay is available for utilisation.

(4) Continuous service shall not include the period during which an officer is on long service leave or any period exceeding two weeks an officer is absent on leave without pay or any service an officer may have before reaching the age of eighteen years.

(5) An officer who resigns or is dismissed, shall not be entitled to long service leave or payment for long service other than that leave that had accrued to him/her prior to the date on which he/she resigned or the date of the offence for which the officer is dismissed.

(6) Any public holiday occurring during the period in which an officer is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(7) Long service leave shall be taken as it falls due at the convenience of the General Manager but within seven years next after becoming entitled thereto: Provided that the General Manager may approve the accumulation of long service leave not exceeding six months in all in any particular case.

(8) 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) To an officer who retires at or over the age of fifty five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro rata long service leave unless the officer has completed not less than twelve months' continuous service.

(b) To an officer who has retired for any other cause: Provided that no payment shall be made for pro rata long service leave unless the officer had completed not less that three years' continuous service before the date of his/her retirement.

(c) Where the officer dies after having served up to the date of death continuously for not less than twelve months and leaves a dependant spouse, children, parent or invalid brother or sister in which case the payment shall be made to such a spouse or other dependant.

(9) A calculation of the amount due for long service leave accrued and for pro rata long service leave shall be made at the rate of salary of an officer at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(10) Long service leave accrued prior to the issue of this agreement shall remain to the credit of each officer.

(11) The expression "continuous service" in this clause includes any period during which an officer is absent on full pay or part pay, from his/her duties in the Albany Port Authority's service, but does not include—

(a) any period exceeding two weeks during which the officer is absent on leave without pay;

(b) any period during which the officer is taking his/her long service leave entitlement or any portion thereof;

(c) any service of the officer prior to his/her attaining the age of eighteen years;

17.—SICK LEAVE

In the case of illness or injury of an officer, the General Manager shall grant the officer leave of absence on the following conditions:

(1) An application for leave of absence on the grounds of illness or injury exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of the illness or injury consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.

(2) The number of days' leave of absence which may be granted without production of the certificate required by subclause (1) of this clause shall not exceed, in the aggregate, five working days in any one calendar year.

(3) An officer who is unfit for duty as a consequence of an illness or injury shall inform the Permanent Head, or arrange for him/her to be so informed, forthwith and shall, as soon as reasonably possible thereafter, make a formal application for sick leave to cover his/her absence from duty.

(4) The basis for determining the entitlement to leave of absence on the grounds of illness or injury which an officer may be granted shall be ascertained by crediting the officer concerned with the following cumulative periods:

	Leave on Full Pay Working Days	Leave on Half Pay Working Days
On date of appointment	5	2
On completion of six months' service	5	3
On completion of twelve months' service	10	5
On completion of each additional twelve months' service	10	5

(5) Where an officer suffers illness or injury during the period of his/her—

annual leave for recreation—for a period of at least seven consecutive days; or

long service leave—for a period of at least fourteen consecutive days;

and produced at the time, or as soon as possible thereafter, medical evidence satisfactory to the General Manager that he/she is, or was, as a result of his/her illness or injury, confined to his/her place of residence or a hospital, he/she may, with the approval of the General Manager, be granted, at a time convenient to the Albany Port Authority, additional leave equivalent to the period during which he/she was so confined.

(6) Where an officer is duly absent on account of illness or injury and his/her entitlement to sick leave on full pay is exhausted, he/she may, with the approval of the General Manager, elect to convert any part of his/her entitlement to sick leave on half pay to sick

leave on full pay, but so that his/her sick leave entitlement on half pay is reduced by two days for each day of sick leave on full pay that he/she receives by the conversion.

(7) An officer who is unable to resume duty on the expiration of an approved period of sick leave shall thereupon apply for a further period of sick leave, and any such application shall be supported by a certificate from a registered medical practitioner.

(8) An officer who is duly absent on leave without pay is not eligible for leave of absence on the account of illness or injury under this clause during the currency of that leave without pay.

(9) This clause shall not apply where the officer is entitled to compensation under the Workers' Compensation and Rehabilitation Act, 1981.

(10) No leave of absence on account of illness or injury shall be granted with pay if the illness or injury has been caused by the misconduct of the officer or in any case of absence from duty without sufficient cause.

(11) Where the General Manager has occasion to doubt the case of illness or injury or the reason for the absence, he/she may send a registered medical practitioner to attend on and examine the officer, or may direct the officer to attend the medical practitioner for examination.

If the report of the medical practitioner does not confirm that the officer is ill or injured, or if the officer is not available for examination at the time of the visit of the medical practitioner, or the officer fails, without reasonable cause, to attend the medical practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the officer.

(12) Where an officer, who has resigned, is subsequently reappointed, he/she shall, for the purposes of this clause, be regarded as a new appointee as from the date of his/her reappointment.

(13) Where an officer who has been retired due to ill-health resumes duty his/her sick leave entitlement at the date of his/her retirement shall be reinstated.

(14) An officer who is appointed subject to a medical examination, and whose appointment is deferred for a stated period on the recommendation of the appropriate Medical Officer, shall not be granted sick leave with pay during that period.

(15) If the General Manager has reason to believe that an officer is in such a state of health as to render him/her a danger to his/her fellow workers or the public, he/she may require the officer to obtain and furnish a report as to his/her condition from a registered medical practitioner or may require him/her to submit himself/herself for examination by the medical practitioner.

(16) Upon receipt of the medical report, the General Manager may direct the officer to absent himself/herself from his/her duties for a specified period, or if already on leave of absence, direct him/her to continue on leave for a specified period, and the officer's absence will be regarded as absence on leave owing to illness.

18.—SHORT LEAVE

(1) The General Manager may, upon sufficient cause being shown, grant an officer short leave on full pay not exceeding two consecutive working days, but any leave granted under the provisions of this clause shall not exceed, in the aggregate, three working days in any one calendar year.

(2) An officer who desires short leave shall make written application in a form approved by the General Manager for the purpose.

19.—LEAVE WITHOUT PAY

(1) Subject to the provisions of subclause (2) of this clause, the General Manager may grant an officer leave without pay for any period.

(2) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met:

(a) the work of the Albany Port Authority is not inconvenienced; and

(b) all other leave credits of the officer are exhausted.

20.—TRAVEL ALLOWANCE

The Albany Port Authority will reimburse all reasonable expenses of an officer who travels on official Port Authority business, including and not limited to, travel, accommodation, meal and incidental expenses.

21.—MOTOR VEHICLE ALLOWANCE

An executive standard vehicle or other such vehicle as mutually agreed will be supplied by the Albany Port Authority for business.

22.—TELEPHONES

A telephone shall be installed in the residence of each officer and the rental and the cost of Albany Port Authority calls shall be paid by the Albany Port Authority.

23.—UNIFORMS

(1) Officers shall be supplied uniforms as agreed between the parties in an exchange of letters.

(2) Uniforms shall be replaced on a fair wear and tear basis as is considered necessary by the Permanent Head.

(3) The Permanent Head may require uniforms to be worn at all times when considered necessary.

24.—PROTECTIVE CLOTHING

An officer will be supplied with wet weather gear of good and suitable quality and safety shoes at all times, and an officer engaged on work which requires the provision of protective clothing shall be provided with such protective clothing.

25.—COPIES OF AGREEMENT

Every officer covered by this agreement shall be entitled to have access to a copy of this agreement. Sufficient copies shall be made available by the Permanent Head for this purpose.

26.—PARENTAL LEAVE

Subject to the terms of this clause officers are entitled to maternity and paternity leave in connection with the birth of a child.

PART A—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means the child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Maternity Leave

An officer who becomes pregnant shall, upon production to her employer of the certificate required by subclause (4) of this clause, be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the officer's spouse in relation to the same child and, apart from paternity leave of up to one week at the time of confinement, shall not be taken concurrently with paternity leave.

Subject to subclauses (6) and (9) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An officer shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (4)(a) of this clause.

(b) An officer 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 and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (4)(b) of this clause.

(c) The employer, by not less than 14 days' notice in writing to the officer, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

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

(6) Transfer to a Safe Job

Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy, or hazards connected with the work assigned to the officer, make it inadvisable for the officer to continue at her present work, the officer 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 officer may, or the employer may require the officer to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) of this clause.

(7) Variation of Period of Maternity Leave

(a) Provided the maximum period maternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of maternity leave may be lengthened once only by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the officer.

(b) The period of maternity leave may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(8) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an officer terminates other than by the birth of a living child.

(b) Where the pregnancy of an officer then on maternity leave terminates other than by the birth of a living child, it shall be the right of the officer 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 officer to the employer that she desires to resume work.

(9) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an officer 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 registered 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 officer not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 the period to which the officer is entitled under subclause (3) of this clause.

(c) For the purposes of subclauses (10), (11) and (12) of this clause, maternity leave shall include special maternity leave.

(d) An officer 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 officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position she held immediately before such transfer.

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

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer 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 absences (excluding annual leave or long service leave), shall not be available to an officer during her absence on maternity leave.

(11) Effect of Maternity Leave on Employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(12) Termination of Employment

(a) An officer on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer 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.

(13) Return to Work After Maternity Leave

(a) An officer shall confirm her intention of returning to 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 officer, upon returning to work after maternity leave or 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 any officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position which she held immediately before such transfer or, in relation to an officer who has worked part time during the pregnancy, the position she held immediately before commencing such part time work.

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

(14) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on maternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

PART B—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means a child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Primary care giver" means a person who assumes the principal role of providing care and attention to a child.

(d) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Paternity Leave

(a) A male officer shall, upon production to his employer of the certificate required by subclause (4) of this clause, be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(i) an unbroken period of up to one week at the time of confinement of his spouse;

(ii) a further unbroken period of up to 51 weeks in order to be the primary care giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the officer's spouse and shall not be taken concurrently with that maternity leave.

(b) The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to his employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place;

(b) in relation to any period to be taken under subparagraph (3)(a)(ii) of this clause, a statutory declaration stating:

(i) he will take that period of paternity leave to become the primary care giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The officer shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) of this clause.

(b) The officer shall not be in breach of paragraph (a) of this subclause as a consequence of failure to give the notice required if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The officer shall immediately notify his employer of any change in the information provided pursuant to subclause (4) of this clause.

(6) Variation of Period of Paternity Leave

(a) Provided the maximum period of paternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be lengthened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) The period of leave may be further lengthened by agreement between the employer and the officer.

(b) The period of paternity leave taken under subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (3)(a)(ii) of this clause but not commenced, shall be cancelled when the pregnancy of the officer's spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is then entitled.

(b) paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an officer during his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(10) Termination of Employment

(a) An officer on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer on the ground of his absence on paternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

(a) An officer shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause.

(b) An officer, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an officer who has worked part time under this clause, to the position he held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the officer is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(12) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on paternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer exercising his 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

27.—SALARY CONTINUANCE

The parties agree to develop a salary continuance to be included under this clause. Such clause shall provide salary continuance at a rate not less than the officers' salary for the period of illness. It is the intention that all sick leave accrued under Clause 17.—Sick Leave of this agreement remain accredited after such agreement has been reached.

28.—COMPASSIONATE LEAVE

(1) An officer shall, on the death of the spouse, defacto, father, mother, father-in-law, mother-in-law, child, stepchild, brother, sister, stepfather, stepmother, grandfather or grandmother of the officer be entitled to leave that the funeral of such relation is held on one of those days of leave granted. Such leave, for a period not exceeding three days in respect of any such death, shall be without loss of any ordinary pay which the officer would have received if he/she had not been on such leave.

(2) The right to such paid leave shall be dependent on compliance with the following conditions:

(a) The officer shall give the employer notice of intention to take such leave as soon as reasonably practicable after the death of such relation.

(b) Satisfactory evidence of such death shall be furnished by the officer to the employer.

(c) The officer shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this agreement or otherwise.

(3) The provisions of this clause shall apply in respect of the incapacitating illness of the spouse or dependent child of the officer when the officer establishes, to the satisfaction of the employer by production of a medical certificate, if required, that the spouse or child is in need of the assistance of the officer and that no other person is available for this purpose.

(4) The employer may also, upon sufficient cause being shown, grant an officer paid leave not exceeding two consecutive working days for such other reason, provided that the total leave available to officers under this clause shall not exceed three working days in any one calendar year subject to subclause (1).

29.—STUDY LEAVE

(1) At the discretion of the Albany Port Authority an officer may be granted time off with pay for part time study purposes.

(2) Time off with pay may be granted up to a maximum of five hours per week including travelling time:

(a) where subjects of approved courses are available during normal working hours;

(b) where approved study by correspondence is undertaken where the approved course is outside the State of Western Australia.

(3) Officers shall be granted sufficient time off, with pay, to travel to, and sit for, the examinations of any approved course of study.

(4) In every case the approval of time off to attend lectures and tutorials will be subject to:

(a) Albany Port Authority's convenience;

(b) the course being undertaken on a part time basis;

(c) officers undertaking an acceptable formal study load in their own time;

(d) the course being relevant to the officers' career at the Albany Port Authority; and

(e) officers making satisfactory progress with their studies.

(5) Leave of absence will be granted at the ordinary rate of pay and shall not include penalty rates or overtime.

30.—TRAINING

(1) The parties to this agreement are committed to external, industry and enterprise training of officers to achieve:

- higher skills relevant to the needs of the Albany Port Authority;
- multi-skilling of officers to the level required for operational efficiency and flexibility;
- a career path within the Albany Port Authority;
- retraining to maintain pre-existing skills;
- adjustment to technological change;
- greater efficiency and job satisfaction.

(2) All costs associated with standard fees, prescribed text books and materials incurred by the officer in connection with training required by the Albany Port Authority shall be reimbursed upon the production of receipts.

(3) Travelling costs incurred by an officer undertaking training required by the Albany Port Authority which exceed those normally incurred in travelling to and from work shall be reimbursed.

31.—SUPERSESSION

It is a term of this agreement that all rights and entitlements accrued by an officer formally covered by the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984, shall be carried over into this agreement.

32.—SALARY SACRIFICE

The parties undertake to develop and agree a salary sacrifice provision to be included under this clause.

The salary sacrifice clause shall be developed in accordance with the statutory and taxation provisions so as to enable officers to authorise the employer to pay additional superannuation contributions to approved funds on behalf of the officer and to reduce salary paid directly to the officer accordingly, having regard to the level of superannuation contributions and relevant statutory and taxation provisions.

33.—DISPUTES AVOIDANCE PROCEDURE

(1) Subject to the Public Sector Management Act, the union and the employer undertake to take all necessary steps to ensure that the following procedure herein applies in the event of a

question, dispute or difficulty arising under this agreement; the intention being that any or all disputes shall be promptly resolved by conciliation in good faith.

(2) Matters Likely to Become Industrial Disputes

The employer and the union shall respectively notify each other as soon as possible of any industrial matter which, in the opinion of the party notifying, might give rise to an industrial dispute including consultation prior to the introduction of a new method of work or new technology.

(3) Disputes at Job Level

(a) In the event of a dispute arising at the job level, the officer/s and the General Manager shall confer immediately.

(b) If not resolved the union and officer/s involved and the General Manager shall attempt to resolve the issue without delay.

(c) Where this fails to resolve the matter in dispute, the party in dispute shall notify the other party in writing of the nature of such dispute and the parties shall enter into further discussions in endeavouring to resolve the dispute.

(4) Reference to Conciliator

If agreement has not been reached in accordance with subclause (3) of this clause the employer or the union officer may, where agreed, submit the matter to a mutually agreed independent local conciliator who shall endeavour to reconcile the parties in dispute and for this purpose may make a recommendation or, where the parties agree, arbitrate the matter. The conciliator shall, in all cases, make a written summary of the matters in dispute including the facts as he/she sees them. A copy of such record shall be available for any further non-judicial proceedings between the parties relating to the matters in dispute.

(5) Final Reference

(a) Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Western Australian Industrial Relations Commission.

(b) The dispute settlement procedures shall not preclude the right of either party to refer a dispute to the Western Australian Industrial Relations Commission at any stage of this procedure if the procedures are not being observed or are otherwise inappropriate in the circumstances.

34.—SIGNATORIES

Signed on behalf of Albany Port Authority

BOB EMERY	TERRY ENRIGHT
GENERAL MANAGER	CHAIRMAN

by Authority of the Albany Port Authority dated 22 January 1996

Signed on behalf of Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

TREVOR JOHNSON	16/1/1996

THE BUNBURY HARBOUR MASTER-MARINE PILOTS SALARY AGREEMENT 1995
No. AG 22 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

and

Bunbury Port Authority.

No. AG 22 of 1996.

The Bunbury Harbour Master-Marine Pilots Salary Agreement 1995.

COMMISSIONER A.R. BEECH.

28 February 1996.

Order.

HAVING heard Mr P. Grant Smith on behalf of the Applicant and Mr P. Connell 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 Bunbury Harbour Master-Marine Pilots Salary Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule on and from the 23rd day of February 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be referred to as The Bunbury Harbour Master-Marine Pilots Salary Agreement 1995.

2.—ARRANGEMENT

3.—PARTIES

(1) This agreement shall be binding on the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers (the union), its officers and members and The Bunbury Port Authority.

(2) The number of officers covered by this agreement is two.

4.—PREAMBLE

This agreement is intended to supersede the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984. It is designed to accommodate, amongst other things, working arrangement and the interface of relevant officers covered by this agreement with the Integrated Port Labour Force. This will enhance the operation of a multi-skilled workforce with the competency to perform port, marine and stevedore work in the Port of Bunbury.

This agreement is the result of discussion between the parties with a view to continuing and enhancing the fundamental restructuring of operations in Western Australian Regional Ports and the unique and specialised functions performed by the Harbour Master/Pilot, consistent with:

* those findings of the Interstate Commission report on the waterfront industry endorsed by the Federal and Western Australian Governments;
* introduction of the Integrated Port Labour Force in Bunbury in 1992 and renegotiation of Integrated Port Labour Force Bunbury Agreement in 1995;
* ensuring that working patterns and arrangements enhance flexibility and efficiency of regional ports;
* being commercially efficient in terms of port authority functions;
* the section 118A Order, Mis 072/95 Print M2421 handed down on 31 May 1995.

This agreement also has regard to developments in 1993 where, as a consequence of the merge of several state government departments, including Marine and Harbours, a new department was created, known as the Western Australian Department of Transport. In 1993 an agreement was negotiated between Marine and Harbours and the Bunbury Port Authority whereby Marine and Harbours would cease to provide pilotage services to the Port of Bunbury and persons employed as Harbour Masters/Pilots by Marine and Harbours would have their contracts of employment transferred to the Bunbury Port Authority, thus ceasing to be officers of Marine and Harbours and become officers of the Bunbury Port Authority.

The Bunbury Port Authority since 1993 has, as a consequence, had responsibility of the provision of pilotage services in that Port.

In 1994 the Bunbury Port Authority became a respondent to the Federal Marine Pilots Award 1991.

5.—AMBIT

This agreement shall:

(1) Provide the basis of payment of annual salaries and various allowances by the Bunbury Port Authority to relevant officers who are members of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(2) Supersede previous memorandum of agreement between the parties.

(3) Shall be read in conjunction with the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984 and the Marine Pilots Award 1991 and, in the event of any inconsistency, the terms of this agreement shall take precedence over the terms of the aforementioned agreement and awards.

6.—AGREEMENT

This agreement shall be effective on and from the 23rd day of February 1996 and shall continue for a period of one year.

7.—REVIEW

The terms and conditions of this agreement shall be reviewed three months prior to the expiry of this agreement.

8.—SALARIES

(1) Harbour Master/Marine Pilots shall receive an annual salary of $69,679.00.

(2) The amount in subclause (1) of this clause shall be an aggregated annualised salary for performance of all duties specified in this agreement.

9.—HOURS OF DUTY

(1) Hours

The salaries and allowances in this agreement are based upon hours being 75 hours at an average of 37.5 hours per week over a two week cycle.

(2) Roster

Harbour Masters/Pilots shall be employed on a self organised basis which shall provide for four days off duty (RDO) each calendar fortnight. RDOs not able to be taken by the time of the officers' annual leave shall be taken in addition to such annual leave.

(3) Fatigue—Exhaustion Break

Harbour Masters/Marine Pilots shall not be required to perform any duties having been on duty for 16 hours without an eight hours' exhaustion break between the time of completing and returning to duty.

10.—DUTIES

Duties of Harbour Master/Senior Marine Pilots shall include:

(1) Provision of pilotage services.

(2) Provision of pilotage information for charging purposes.

(3) Co-ordination and development of port emergency plan.

(4) Liaison and management of pilot boat crew.

(5) Assist with port promotion.

(6) Represent Bunbury Port Authority when and where required at meetings, conferences, etc.

(7) Involvement in planning, construction and maintenance of navigational aids and marine structures.

(8) Provide advice to shippers of pilotage availability and marine matters within the port.

(9) Contribute to shipping and maritime matters within the port.

(10) Berthing Master/Wharf Manager functions under the Acts relevant to the port.

(11) Co-ordination of all arrangements for vessels arriving, anchoring, berthing, unberthing, shifting ship, departing and cargo handling operational requirements.

(12) Liaise with ships' agents, port users and Bunbury Port Authority staff regarding arrival and departure arrangements for vessels, including tugs, line boats, mooring gangs etc. having regard to tides, drafts, weather, sea state, and draft/channel limitations of the port.

(13) Co-ordinate maintenance, repairs, surveys of pilot vessels.

(14) Planning and monitoring of maintenance dredging and other areas within the port.

(15) Conduct systematic monitoring soundings of channels and other areas within the port.

(16) Involvement in port trade developments and planning processes.

(17) Liaise with and advise Hydrographic Office with regard to Notices to Mariners, navigational charts, navigational warning, and hydrographic reports.

(18) Advise and liaise with Australian Maritime Safety Authority (AMSA) regarding port state control matters.

(19) Undertake AMSA surveys with regard to repeated defective lifesaving apparatus, firefighting apparatus, fire closing appliances, cargo gear, vessel and hold accesses, hatch closing and other vessels' construction and appliances under the requirements of Load Line certificates; hold surveys, grain surveys, bulk cargo surveys, livestock surveys and other duties as requested by AMSA.

(20) Operate port control radio station as licensed operator.

(21) Involvement in advising, planning, execution and supervision of cargo handling operations.

(22) Conduct in-house training on marine related matters as required.

(23) Act as a port emergency co-ordinator in the event of any port emergency.

(24) Supervise maintenance of oil pollution equipment and liaise with National Plan State Committee with regard to equipment, plans and training.

(25) On scene co-ordination of marine oil and chemical pollution clean up operations within port boundaries.

(26) Initial response and on scene co-ordination of marine oil and chemical pollution clean up operations outside of port boundaries.

(27) Availability to relive General Manager and other port staff as required.

(28) Conduct pilotage exemption certificate examinations.

(29) Carry out any other duties commensurate with qualifications and experience for the Bunbury Port Authority.

(30) Available and on call whilst in the Bunbury area, whether on duty or not, for any emergency for the Bunbury Port Authority.

11.—DEFINITIONS

(1) "Officer" means Harbour Masters and Marine Pilots employed by the Bunbury Port Authority.

(2) "Permanent Head" means the General Manager of the Bunbury Port Authority.

(3) "Union" means the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(4) "Employer" means the Bunbury Port Authority.

12.—CONTRACT OF SERVICE

(1) Every person appointed by the Bunbury Port Authority as a permanent officer shall be on probation for a period not exceeding six months, unless otherwise determined by the General Manager.

(2) At any time during the period of probation the General Manager, or such other person authorised by the Bunbury Port Authority to act on its behalf, may annul the appointment and terminate the services of the appointee.

(3) As soon as possible after the expiry of the period of probation the General Manager, or such other authorised person, shall:

(a) confirm the appointment; or

(b) extend the period of probation for up to six months; or

(c) annul the appointment and terminate the services of the appointee.

(4) Every person appointed as a permanent officer shall, either before commencing duty or during the period of probation, satisfy the following conditions unless the General Manager or such other authorised person otherwise determines.

(a) Provide evidence of age in the form of an Extract of Birth Entry or a certified copy of Birth Registration or other evidence acceptable to the General Manager; and

(b) Undertake a medical examination by a registered medical practitioner, nominated by the Bunbury Port Authority, to satisfy the General Manager that the appointee is in a fit condition to fulfil the duties of the office to be filled. The fee for the examination and certificate of the registered medical practitioner shall be paid by the appointee.

(5) Except where the Bunbury Port Authority approves of a shorter period of notice, an officer shall give the Bunbury Port Authority written notice of intention to resign of not less than:

(a) one month in the case of a permanent officer; or

(b) one week in the case of a temporary officer.

(6) The General Manager may terminate the contract of service of any permanent officer by one month's notice given in writing.

(7) The foregoing provisions of this clause do not affect the General Manager's right to dismiss an officer without notice for misconduct, and, in such a case, the salary of the officer shall be paid up to the time of dismissal only.

(8) (a) Where the General Manager considers that a position occupied by an officer is no longer necessary and no other employment is available to that officer, the union shall be notified in writing to that effect.

(b) The union may, within seven days of the date upon which that notification is given, request the General Manager to review that decision, but where an agreement is not reached in discussion between the employer and the union, the contract of service may be terminated in accordance with the provisions of subclause (6) of this clause.

(9) Where the General Manager seeks to terminate the services of an officer in accordance with subclauses (6) and (7) of this clause, upon written request the officer shall be supplied with a written statement setting out details of the incident, circumstance, event or matters upon which the General Manager based his/her decision.

13.—PAYMENT OF SALARIES

(1) Salaries shall be paid fortnightly.

(2) Unless otherwise agreed, salaries shall be paid by direct transfer to an account in a bank or other financial institution nominated by the officer and acceptable to the employer.

(3) Salaries may be paid in such other manner as is agreed between the employer and the union in a particular case.

(4) Where salaries are paid in accordance with subclause (2) of this clause the employer shall reimburse each officer in respect of any taxes, charges, duties or fees incurred, an amount of $40.00 per year.

(5) On pay day officers shall be given written advice showing the gross amount of salaries or allowances due and deductions.

(6) In the event of an underpayment of salaries an officer's pay shall be adjusted as soon as practicable but in any event no later than the subsequent pay period.

(7) The employer may make deductions from an officer's salary with the written consent of the officer, but shall not make deductions without such written consent.

14.—ANNUAL LEAVE

(1) Each officer shall be entitled to 42 consecutive days of recreation leave on full pay for each year of service, consisting of 28 calendar days of normal annual leave and 14 calendar days of annual leave in lieu of public holidays and public service holidays.

(2) Annual leave shall be calculated on a pro rata calendar year basis commencing on the first day of employment with the Bunbury Port Authority.

(3) Pro rata annual leave shall be calculated according to the following formula:

Completed Calendar Months of Service	Pro Rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

Provided that, in the first and last months of an officer's service, the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.

For the purposes of this subclause, an officer who commences on the first working day of a month and works for the remainder of the month and an officer who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(4) The additional two weeks' leave granted in lieu of public holidays shall be credited on a pro rata basis according to the following formula:

Completed months of service	Pro rata annual leave (working days) 10 additional days
1	Nil
2	1
3	2
4	3
5	4
6	5
7	5
8	6
7	7
10	8
11	9

(5) A permanent officer may take annual leave during the calendar year in which it accrues, but the time during which the leave may be taken is subject to the approval of the General Manager.

(6) A temporary officer may not take annual leave before it accrues. The General Manager may approve a temporary officer taking pro rata annual leave. The time during which any annual leave may be taken is subject to the approval of the General Manager.

(7) Annual leave shall be taken in one period unless otherwise approved by the General Manager.

(8) On written application an officer shall be paid salary in advance when proceeding on annual leave:

(a) When the convenience of the Bunbury Port Authority is served, the General Manager may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for a period of one year.

(b) The General Manager may renew the approval referred to in paragraph (a) of this subclause for a further period of one year or further periods of one year but so that an officer does not at any time accumulate more than three years' entitlement.

(c) Where the convenience of the Bunbury Port Authority is served, the General Manager may approve the deferment of the commencement date for taking annual leave so that an officer accumulates more than three years' entitlement.

(d) When an officer who has received approval to defer the commencement date for taking annual leave under paragraphs (a), (b) or (c) of this subclause next proceeds on annual leave, the annual leave first accrued shall be the first leave taken.

(9) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an officer.

(10) On application to the General Manager a lump sum payment for the money equivalent to pro rata annual leave shall be made to an officer who resigns, retires, is retired or in respect of an officer who dies, but not to an officer who is dismissed.

15.—ANNUAL LEAVE LOADING

(1) Subject to the provisions of subclauses (2) and (4) of this clause, a loading equivalent to 17.5% of normal salary shall be paid to officers proceeding on annual leave, including accumulated annual leave.

(2) Subject to the provisions of subclause (4) of this clause the loading is to be paid on a maximum of four weeks' annual leave. Payment of the loading shall not be made for additional leave granted for any other purpose. The maximum payment shall not exceed the Average Weekly Earnings Per Employed Male Unit in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(3) Annual leave commencing in any year and extending without a break into the following year shall attract the loading calculated on the salary applicable on the day the leave commences.

(4) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is taken. Under these circumstances, an officer may receive up to the maximum loading for the approved accumulated annual leave, in addition to loading for the current year's entitlement.

(5) A pro rata loading shall be paid on periods of approved annual leave of less than four weeks.

(6) The loading shall be calculated on the officer's ordinary rate of salary.

(7) Where payment in lieu of accrued or pro rata annual leave is made on the death, resignation or retirement of an officer, a loading calculated in accordance with the terms of this clause for annual leave accrued after January 1, 1974 is to be paid.

(8) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion, but no refund is required in the event of the death of an officer.

16.—LONG SERVICE LEAVE

(1) An officer shall be entitled to thirteen weeks' long service leave on full pay if he/she has completed seven years' continuous service with the Bunbury Port Authority.

(2) For each and every subsequent period of seven years' continuous service an officer shall be entitled to an additional thirteen weeks' long service leave on full pay.

(3) Upon application by an officer, the General Manager may approve of the taking by the officer:

(a) of double the period of long service leave entitlement on half pay, in lieu of the period of long service leave entitlement on full pay; or

(b) of any portion of his/her long service leave entitlement on full pay or double such period on half pay.

(4) Continuous service shall not include the period during which an officer is on long service leave or any period exceeding two weeks an officer is absent on leave without pay or any service an officer may have before reaching the age of eighteen years.

(5) An officer who resigns or is dismissed, shall not be entitled to long service leave or payment for long service other than that leave that had accrued to him/her prior to the date on which he/she resigned or the date of the offence for which the officer is dismissed.

(6) Any public holiday occurring during the period in which an officer is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(7) Long service leave shall be taken as it falls due at the convenience of the General Manager but within seven years next after becoming entitled thereto: Provided that the General Manager may approve the accumulation of long service leave not exceeding six months in all in any particular case.

(8) 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) To an officer who retires at or over the age of fifty five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro rata long service leave unless the officer has completed not less than twelve months' continuous service.

(b) To an officer who has retired for any other cause: Provided that no payment shall be made for pro rata long service leave unless the officer had completed not less that three years' continuous service before the date of his/her retirement.

(c) Where the officer dies after having served up to the date of death continuously for not less than twelve months and leaves a dependant spouse, children, parent or invalid brother or sister in which case the payment shall be made to such a spouse or other dependant.

(9) A calculation of the amount due for long service leave accrued and for pro rata long service leave shall be made at the rate of salary of an officer at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(10) Long service leave accrued prior to the issue of this agreement shall remain to the credit of each officer.

(11) The expression "continuous service" in this clause includes any period during which an officer is absent on full pay or part pay, from his/her duties in the Bunbury Port Authority's service, but does not include—

(a) any period exceeding two weeks during which the officer is absent on leave without pay;

(b) any period during which the officer is taking his/her long service leave entitlement or any portion thereof;

(c) any service of the officer prior to his/her attaining the age of eighteen years;

17.—SICK LEAVE

In the case of illness or injury of an officer, the General Manager shall grant the officer leave of absence on the following conditions:

(1) An application for leave of absence on the grounds of illness or injury exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of the illness or injury consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.

(2) The number of days' leave of absence which may be granted without production of the certificate required by subclause (1) of this clause shall not exceed, in the aggregate, five working days in any one calendar year.

(3) An officer who is unfit for duty as a consequence of an illness or injury shall inform the Permanent Head, or arrange for him/her to be so informed, forthwith and shall, as soon as reasonably possible thereafter, make a formal application for sick leave to cover his/her absence from duty.

(4) The basis for determining the entitlement to leave of absence on the grounds of illness or injury which an officer may be granted shall be ascertained by crediting the officer concerned with the following cumulative periods:

	Leave on Full Pay Working Days	Leave on Half Pay Working Days
On date of appointment	5	2
On completion of six months' service	5	3
On completion of twelve months' service	10	5
On completion of each additional twelve months' service	10	5

(5) Where an officer suffers illness or injury during the period of his/her—

annual leave for recreation—for a period of at least seven consecutive days; or

long service leave—for a period of at least fourteen consecutive days;

and produced at the time, or as soon as possible thereafter, medical evidence satisfactory to the General Manager that he/she is, or was, as a result of his/her illness or injury, confined to his/her place of residence or a hospital, he/she may, with the approval of the General Manager, be granted, at a time convenient to the Bunbury Port Authority, additional leave equivalent to the period during which he/she was so confined.

(6) Where an officer is duly absent on account of illness or injury and his/her entitlement to sick leave on full pay is exhausted, he/she may, with the approval of the General Manager, elect to convert any part of his/her entitlement to sick leave on half pay to sick leave on full pay, but so that his/her sick leave entitlement on half pay is reduced by two days for each day of sick leave on full pay that he/she receives by the conversion.

(7) An officer who is unable to resume duty on the expiration of an approved period of sick leave shall thereupon apply for a further period of sick leave, and any such application shall be supported by a certificate from a registered medical practitioner.

(8) An officer who is duly absent on leave without pay is not eligible for leave of absence on the account of illness or injury under this clause during the currency of that leave without pay.

(9) This clause shall not apply where the officer is entitled to compensation under the Workers' Compensation and Rehabilitation Act, 1981.

(10) No leave of absence on account of illness or injury shall be granted with pay if the illness or injury has been caused by the misconduct of the officer or in any case of absence from duty without sufficient cause.

(11) Where the General Manager has occasion to doubt the case of illness or injury or the reason for the absence, he/she may send a registered medical practitioner to attend on and examine the officer, or may direct the officer to attend the medical practitioner for examination.

If the report of the medical practitioner does not confirm that the officer is ill or injured, or if the officer is not available for examination at the time of the visit of the medical practitioner, or the officer fails, without reasonable cause, to attend the medical practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the officer.

(12) Where an officer, who has resigned, is subsequently reappointed, he/she shall, for the purposes of this clause, be regarded as a new appointee as from the date of his/her reappointment.

(13) Where an officer who has been retired due to ill-health resumes duty his/her sick leave entitlement at the date of his/her retirement shall be reinstated.

(14) An officer who is appointed subject to a medical examination, and whose appointment is deferred for a stated period on the recommendation of the appropriate Medical Officer, shall not be granted sick leave with pay during that period.

(15) If the General Manager has reason to believe that an officer is in such a state of health as to render him/her a danger to his/her fellow workers or the public, he/she may require the officer to obtain and furnish a report as to his/her condition from a registered medical practitioner or may require him/her to submit himself/herself for examination by the medical practitioner.

(16) Upon receipt of the medical report, the General Manager may direct the officer to absent himself/herself from his/her duties for a specified period, or if already on leave of absence, direct him/her to continue on leave for a specified period, and the officer's absence will be regarded as absence on leave owing to illness.

18.—LEAVE WITHOUT PAY

(1) Subject to the provisions of subclause (2) of this clause, the General Manager may grant an officer leave without pay for any period.

(2) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met:

(a) the work of the Bunbury Port Authority is not inconvenienced; and

(b) all other leave credits of the officer are exhausted.

19.—TRAVEL ALLOWANCE

The Bunbury Port Authority will reimburse all reasonable expenses of an officer who travels on official Port Authority business, including and not limited to, travel, accommodation, meal and incidental expenses.

20.—MOTOR VEHICLE ALLOWANCE

A vehicle may be supplied by the Bunbury Port Authority for business use.

21.—TELEPHONES

A telephone shall be installed in the residence of each officer and the rental and the cost of Bunbury Port Authority calls shall be paid by the Bunbury Port Authority.

22.—UNIFORMS

(1) Officers shall be supplied uniforms as agreed between the parties in an exchange of letters.

(2) Uniforms shall be replaced on a fair wear and tear basis as is considered necessary by the Permanent Head.

(3) The Permanent Head may require uniforms to be worn at all times when considered necessary.

23.—PROTECTIVE CLOTHING

An officer will be supplied with wet weather gear of good and suitable quality and safety shoes at all times, and an officer engaged on work which requires the provision of protective clothing shall be provided with such protective clothing.

24.—COPIES OF AGREEMENT

Every officer covered by this agreement shall be entitled to have access to a copy of this agreement. Sufficient copies shall be made available by the Permanent Head for this purpose.

25.—PARENTAL LEAVE

Subject to the terms of this clause officers are entitled to maternity and paternity leave in connection with the birth of a child.

PART A—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means the child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Maternity Leave

An officer who becomes pregnant shall, upon production to her employer of the certificate required by subclause (4) of this clause, be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the officer's spouse in relation to the same child and, apart from paternity leave of up to one week at the time of confinement, shall not be taken concurrently with paternity leave.

Subject to subclauses (6) and (9) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An officer shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (4)(a) of this clause.

(b) An officer 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 and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (4)(b) of this clause.

(c) The employer, by not less than 14 days' notice in writing to the officer, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

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

(6) Transfer to a Safe Job

Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy, or hazards connected with the work assigned to the officer, make it inadvisable for the officer to continue at her present work, the officer 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 officer may, or the employer may require the officer to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) of this clause.

(7) Variation of Period of Maternity Leave

(a) Provided the maximum period maternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of maternity leave may be lengthened once only by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the officer.

(b) The period of maternity leave may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(8) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an officer terminates other than by the birth of a living child.

(b) Where the pregnancy of an officer then on maternity leave terminates other than by the birth of a living child, it shall be the right of the officer 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 officer to the employer that she desires to resume work.

(9) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an officer 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 registered 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 officer not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 the period to which the officer is entitled under subclause (3) of this clause.

(c) For the purposes of subclauses (10), (11) and (12) of this clause, maternity leave shall include special maternity leave.

(d) An officer 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 officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position she held immediately before such transfer.

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

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer 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 absences (excluding annual leave or long service leave), shall not be available to an officer during her absence on maternity leave.

(11) Effect of Maternity Leave on Employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(12) Termination of Employment

(a) An officer on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer 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.

(13) Return to Work After Maternity Leave

(a) An officer shall confirm her intention of returning to 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 officer, upon returning to work after maternity leave or 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 any officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position which she held immediately before such transfer or, in relation to an officer who has worked part time during the pregnancy, the position she held immediately before commencing such part time work.

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

(14) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on maternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

PART B—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means a child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Primary care giver" means a person who assumes the principal role of providing care and attention to a child.

(d) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Paternity Leave

(a) A male officer shall, upon production to his employer of the certificate required by subclause (4) of this clause, be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(i) an unbroken period of up to one week at the time of confinement of his spouse;

(ii) a further unbroken period of up to 51 weeks in order to be the primary care giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the officer's spouse and shall not be taken concurrently with that maternity leave.

(b) The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to his employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place;

(b) in relation to any period to be taken under subparagraph (3)(a)(ii) of this clause, a statutory declaration stating:

(i) he will take that period of paternity leave to become the primary care giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The officer shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) of this clause.

(b) The officer shall not be in breach of paragraph (a) of this subclause as a consequence of failure to give the notice required if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The officer shall immediately notify his employer of any change in the information provided pursuant to subclause (4) of this clause.

(6) Variation of Period of Paternity Leave

(a) Provided the maximum period of paternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be lengthened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) The period of leave may be further lengthened by agreement between the employer and the officer.

(b) The period of paternity leave taken under subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (3)(a)(ii) of this clause but not commenced, shall be cancelled when the pregnancy of the officer's spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is then entitled.

(b) paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an officer during his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(10) Termination of Employment

(a) An officer on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer on the ground of his absence on paternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

(a) An officer shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause.

(b) An officer, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an officer who has worked part time under this clause, to the position he held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the officer is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(12) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on paternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer exercising his 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

26.—COMPASSIONATE LEAVE

(1) An officer shall, on the death of the spouse, defacto, father, mother, father-in-law, mother-in-law, child, stepchild, brother, sister, stepfather, stepmother, grandfather, or grandmother of the officer be entitled to leave that the funeral of such relation is held on one of those days of leave granted. Such leave, for a period not exceeding three days in respect of any such death, shall be without loss of any ordinary pay which the officer would have received if he/she had not been on such leave.

(2) The right to such paid leave shall be dependent on compliance with the following conditions:

(a) The officer shall give the employer notice of intention to take such leave as soon as reasonably practicable after the death of such relation.

(b) Satisfactory evidence of such death shall be furnished by the officer to the employer.

(c) The officer shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this agreement or otherwise.

(3) The provisions of this clause shall apply in respect of the incapacitating illness of the spouse or dependent child of the officer when the officer establishes, to the satisfaction of the employer by production of a medical certificate, if required, that the spouse or child is in need of the assistance of the officer and that no other person is available for this purpose.

(4) The employer may also, upon sufficient cause being shown, grant an officer paid leave not exceeding two consecutive working days for such other reason, provided that the total leave available to officers under this clause shall not exceed three working days in any one calendar year subject to subclause (1).

27.—SALARY CONTINUANCE

The parties agree to develop a salary continuance to be included under this clause. Such clause shall provide salary continuance at a rate not less than the officers' salary for the period of illness. It is the intention that all sick leave accrued under Clause 17.—Sick Leave of this agreement remain accredited after such agreement has been reached.

28.—STUDY LEAVE

(1) At the discretion of the Bunbury Port Authority an officer may be granted time off with pay for part time study purposes.

(2) Time off with pay may be granted up to a maximum of five hours per week including travelling time:

(a) where subjects of approved courses are available during normal working hours;

(b) where approved study by correspondence is undertaken where the approved course is outside the State of Western Australia.

(3) Officers shall be granted sufficient time off, with pay, to travel to, and sit for, the examinations of any approved course of study.

(4) In every case the approval of time off to attend lectures and tutorials will be subject to:

(a) Bunbury Port Authority's convenience;

(b) the course being undertaken on a part time basis;

(c) officers undertaking an acceptable formal study load in their own time;

(d) the course being relevant to the officers' career at the Bunbury Port Authority; and

(e) officers making satisfactory progress with their studies.

(5) Leave of absence will be granted at the ordinary rate of pay and shall not include penalty rates or overtime.

29.—TRAINING

(1) The parties to this agreement are committed to external, industry and enterprise training of officers to achieve:

- higher skills relevant to the needs of the Bunbury Port Authority;
- multi-skilling of officers to the level required for operational efficiency and flexibility;
- a career path within the Bunbury Port Authority;
- retraining to maintain pre-existing skills;
- adjustment to technological change;
- greater efficiency and job satisfaction.

(2) All costs associated with standard fees, prescribed text books and materials incurred by the officer in connection with training required by the Bunbury Port Authority shall be reimbursed upon the production of receipts.

(3) Travelling costs incurred by an officer undertaking training required by the Bunbury Port Authority which exceed those normally incurred in travelling to and from work shall be reimbursed.

30.—SUPERSESSION

It is a term of this agreement that all rights and entitlements accrued by an officer formally covered by the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984, shall be carried over into this agreement.

31.—SALARY SACRIFICE

The parties undertake to develop and agree a salary sacrifice provision to be included under this clause.

The salary sacrifice clause shall be developed in accordance with the statutory and taxation provisions so as to enable officers to authorise the employer to pay additional superannuation contributions to approved funds on behalf of the officer and to reduce salary paid directly to the officer accordingly, having regard to the level of superannuation contributions and relevant statutory and taxation provisions.

32.—DISPUTES AVOIDANCE PROCEDURE

(1) Subject to the Public Sector Management Act, the union and the employer undertake to take all necessary steps to ensure that the following procedure herein applies in the event of a question, dispute or difficulty arising under this agreement; the intention being that any or all disputes shall be promptly resolved by conciliation in good faith.

(2) Matters Likely to Become Industrial Disputes

The employer and the union shall respectively notify each other as soon as possible of any industrial matter which, in the opinion of the party notifying, might give rise to an industrial dispute including consultation prior to the introduction of a new method of work or new technology.

(3) Disputes at Job Level

(a) In the event of a dispute arising at the job level, the officer/s and the General Manager shall confer immediately.

(b) If not resolved the union and officer/s involved and the General Manager shall attempt to resolve the issue without delay.

(c) Where this fails to resolve the matter in dispute, the party in dispute shall notify the other party in writing of the nature of such dispute and the parties shall enter into further discussions in endeavouring to resolve the dispute.

(4) Reference to Conciliator

If agreement has not been reached in accordance with subclause (3) of this clause the employer or the union officer may, where agreed, submit the matter to a mutually agreed independent local conciliator who shall endeavour to reconcile the parties in dispute and for this purpose may make a recommendation or, where the parties agree, arbitrate the matter. The conciliator shall, in all cases, make a written summary of the matters in dispute including the facts as he/she sees them. A copy of such record shall be available for any further non-judicial proceedings between the parties relating to the matters in dispute.

(5) Final Reference

(a) Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Western Australian Industrial Relations Commission.

(b) The dispute settlement procedures shall not preclude the right of either party to refer a dispute to the Western Australian Industrial Relations Commission at any stage of this procedure if the procedures are not being observed or are otherwise inappropriate in the circumstances.

33.—SIGNATORIES

Signed on behalf of Bunbury Port Authority

DOM FIGLIOMENI 17/1/1996

Signed on behalf of Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

TREVOR JOHNSON 16/1/1996

COLOURPRESS ENTERPRISE BARGAINING AGREEMENT 1995
No. AG 12 of 1996.

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 Another

and

ColourPress Pty Ltd.

No. AG 12 of 1996.

ColourPress Enterprise Bargaining Agreement 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

16 February 1996.

Order.

REGISTRATION OF AN ENTERPRISE BARGAINING
INDUSTRIAL AGREEMENT
No. AG 12 OF 1996.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr R. Joyce and with him Mr G. Shurman 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 Schedule titled the ColourPress Enterprise Bargaining Agreement 1995, signed for me for identification, be registered as an Enterprise bargaining Industrial Agreement and shall take effect on and from the 14th February, 1996.

(Sgd.) G. G. HALLIWELL,
[L.S] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be referred to as the 'ColourPress Enterprise Bargaining Agreement 1995'.

2.—ARRANGEMENT

3.—APPLICATION OF AGREEMENT

This Agreement shall apply at the establishment of ColourPress Pty Ltd with respect to all four employees engaged in any of the occupations or callings specified in the Electrical, Engineering & Building (WA Newspapers) Award 1988.

4.—PARTIES BOUND

(1) ColourPress Pty Ltd
Cnr Forward & Swansea Streets
EAST VICTORIA PARK WA 6101

(2) Automotive, Food Metals, Engineering, Printing and Kindred Industries Union of Workers—
Western Australian Branch
1111 Hay Street
WEST PERTH WA 6005

(3) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, W.A. Branch
401-403 Oxford Street
MOUNT HAWTHORN WA 6016

5.—DATE AND OPERATION OF AGREEMENT

This Agreement shall operate from the beginning of the first pay period commencing on or after 13th October, 1995 and remain in operation until 31st March, 1997 and remain in place after that date unless replaced or any party withdraws from the Agreement. Two months prior to the expiry date of the agreement discussions between the employer and employees will commence to determine an appropriate course of action in respect of the Agreement, or to facilitate re-negotiation of another Agreement.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Electrical, Engineering & Building (WA Newspapers) Award 1988. Where there is any inconsistency between this Agreement and the Parent Award, the Agreement shall prevail to the extent of such inconsistency.

7.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

A Consultative Committee has been established at ColourPress Pty Ltd.

The parties have agreed to achieve real and demonstrable gains in productivity improvements.

Measures designed to effect real demonstrable gains in productivity, efficiency and flexibility have been identified and are detailed in Attachment "A" hereto.

8.—WAGE INCREASES

In recognition of this Agreement and the potential resultant increase in productivity, combined with efficiency and flexibility, a minimum increase of $80.00 per week in wages shall be paid to all employees covered by the Electrical, Engineering & Building (WA Newspapers) Award 1988 who are party to this Enterprise Bargaining Agreement in one instalment as follows:

(1) $80.00 per week from 13th October, 1995.

(2) The actual rate of pay for re-classification C8 will be $650.90 per week. There shall not be any further increases in wages for the life of this Agreement except where consistent with State and National Wage Case decisions.

9.—LEADING HAND

(1) The Leading Hand shall be paid a responsibility allowance of $90.00 per week.

(2) Any person who is appointed to perform the duties of Leading Hand for not less than one week shall receive the allowance of $90.00 per week as above.

10.—AVOIDANCE OF INDUSTRIAL DISPUTES

The parties to this Agreement are committed to observing the provisions of Clause 34.—Settlement of Disputes in the Metal Trades (General) Award 1966 No. 13 of 1965 in respect to any questions, difficulties or disputes arising under this Agreement.

11.—NATIONAL STANDARDS

This Agreement shall not operate to cause an employee to suffer a reduction in ordinary time earnings or in national standards such as standard hours of work, annual leave or long service leave.

12.—LONG TERM OBJECTIVES

The following are long term objectives:

(1) To create a work environment providing job satisfaction and seen as attractive to present and potential employees.

(2) To create an industrial environment based on shared survival goals of the business and its employees.

(3) To achieve a level of technology and relevant skills which are progressively improved through training experience to ensure full utilisation of existing and future equipment and to optimise personal development.

(4) To develop consultative mechanisms to achieve total equality and respect for the views of each other, regardless of position, gender, race, religion or political belief.

13.—CONSULTATIVE COMMITTEE

(1) AIMS:

The Consultative Committee will meet on an as needs basis or at least six monthly and will assist in the implementation of workplace change, improve productivity/efficiency and provide effective involvement of employees in decision making processes.

(2) OBJECTIVES:

The objectives of the Consultative Committee are to investigate, determine, make recommendations and resolutions on:

(a) All matters arising from the re-structuring of the classification structure.

(b) Skills training and career development.

(c) Introduction of new technology.

(d) Changes to work organisation.

(e) Conditions of work.

(f) Enterprise, expansion and investment.

(g) Quality assurance procedures will be adhered to.

(h) Enterprise Bargaining Agreements, but only in consultation with the Union.

(i) Product Improvements.

(j) New management practices.

(k) Equal employment opportunities.

(l) Any other matter agreed by the Committee to be related to the interests of employees and management at the enterprise.

Signed for and on behalf of ColourPress Pty Ltd

G. SHURMAN

09/01/96

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union of Workers—Western Australian Branch

J. FERGUSON

Signed for and on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

J.D. FIALA

20/12/95

Dated this day of 1995.

ATTACHMENT "A"

1.— CONTINUAL PROCESS/PERFORMANCE IMPROVEMENT

1.1 All electrical and mechanical trades employees agree to continue to work together with management on Continual Process/Performance Improvement through the elimination, where achievable, of all non-value added wastes with creative involvement of all employees. In achieving this, these employees will work with management to identify barriers to improved productivity and implement proposed solutions.

The concept of continual improvement within ColourPress Pty Ltd involves commitment by all parties to several principles as follows:

— Striving to find what our customers requirements are and the effect our services have on them and acting on the information.
— Listening to the customer.
— Building customer requirements into the design of new products, services or processes.
— Pleasing the customer by providing services and products better than their expectations.
— Seeking to anticipate and lead customers expectations.
— Holding to long term aims in the face of short term crises.
— Demonstrating enthusiasm for a new way of managing.
— Demonstrating best practices.
— Leading the improvement process and making it irreversible.
— Systematically involving everyone through teamwork.
— Ensuring communication is open, effective and two-way.
— Making decisions only after striving for the widest possible consensus.
— Providing the people who work for ColourPress Pty Ltd with the necessary training to carry out their responsibilities.
— Making decisions on the basis of knowledge not hunch or myth.
— Using a discipline and process to solve problems and improve quality.
— Endeavouring to find the root causes of issues.
— Ensuring that all employees understand their responsibilities, how to measure their effectiveness and how to target improvement.
— Collecting data that is informative and interpreting it correctly.
— Demonstrating the understanding of variability in actions and decisions.
— Providing internal customers with the service you would like to receive yourself.
— Volunteering to participate in cross functional improvement activities.
— Emphasising the process of achieving results more than the end results themselves.
— Ensuring that the process you have responsibility for are mapped, controlled and constantly improved.
— Involving external suppliers as partners in the quality improvement process.
— Treating mistakes and problems as opportunities to learn and improve.
— Spending time planning for improvement and building in quality loss prevention.
— Constantly challenging the status quo and striving for better ways of doing things.
— Being involved in constantly improving and maintaining safe working conditions for all who work at and visit our workplace.

2.—PROBLEM SOLVING

That the Consultative Committee help determine a procedure for domestic problem solving. This will apply to any problem with the spoilage of work, machinery damage and the production of work and appropriate deadlines.

3.—OTHER ISSUES

That the Consultative Committee will address other issues by developing performance indicators to assess any further increases which will include but not be limited to attendance, wastage, lost time injuries, customer returns and production efficiencies.

4.—QUALITY MANAGEMENT

The parties commit themselves to the requirements of revised total quality management systems introduced to maximise quality control and streamline stock control, work flow and plant maintenance procedures.

5.—PRODUCTION ERRORS

It is agreed that every endeavour for real and sustained progress will be made during the life of this Agreement to minimise production error rates. The Consultative Committee will monitor and review the productivity impact of errors on a quarterly basis.

THE ESPERANCE HARBOUR MASTER-MARINE PILOTS SALARY AGREEMENT 1995
No. AG 23 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

and

Esperance Port Authority.

No. AG 23 of 1996.

The Esperance Harbour Master-Marine Pilots Salary Agreement 1995.

COMMISSIONER A.R. BEECH.

28 February 1996.

Order.

HAVING heard Mr P. Grant Smith on behalf of the Applicant and Mr P. Connell 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 Esperance Harbour Master-Marine Pilots Salary Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule on and from the 23rd day of February 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be referred to as The Esperance Harbour Master-Marine Pilots Salary Agreement 1995.

2.—ARRANGEMENT

3.—PARTIES

(1) This agreement shall be binding on the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers (the union), its officers and members and The Esperance Port Authority.

(2) The number of officers covered by this agreement is one.

4.—PREAMBLE

This agreement is intended to supersede the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984. It is designed to accommodate, amongst other things, working arrangement and the interface of relevant officers covered by this agreement with the Integrated Port Labour Force. This will enhance the operation of a multi-skilled workforce with the competency to perform port, marine and stevedore work in the Port of Esperance.

This agreement is the result of discussion between the parties with a view to continuing and enhancing the fundamental restructuring of operations in Western Australian Regional Ports and the unique and specialised functions performed by the Harbour Master/Pilot, consistent with:

* those findings of the Interstate Commission report on the waterfront industry endorsed by the Federal and Western Australian Governments;
* introduction of the Integrated Port Labour Force in Esperance in 1992 and renegotiation of Integrated Port Labour Force Esperance Agreement in 1995;
* ensuring that working patterns and arrangements enhance flexibility and efficiency of regional ports;
* being commercially efficient in terms of port authority functions;
* the section 118A Order, Mis 072/95 Print M2421 handed down on 31 May 1995.

This agreement also has regard to developments in 1993 where, as a consequence of the merge of several state government departments, including Marine and Harbours, a new department was created, known as the Western Australian Department of Transport. In 1993 an agreement was negotiated between Marine and Harbours and the Esperance Port Authority whereby Marine and Harbours would cease to provide pilotage services to the Port of Esperance and persons employed as Harbour Masters/Pilots by Marine and Harbours would have their contracts of employment transferred to the Esperance Port Authority, thus ceasing to be officers of Marine and Harbours and become officers of the Esperance Port Authority.

The Esperance Port Authority since 1993 has, as a consequence, had responsibility of the provision of pilotage services in that Port.

In 1994 the Esperance Port Authority became a respondent to the Federal Marine Pilots Award 1991.

5.—AMBIT

This agreement shall:

(1) Provide the basis of payment of annual salaries and various allowances by the Esperance Port Authority to relevant officers who are members of the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(2) Supersede previous memorandum of agreement between the parties.

(3) Shall be read in conjunction with the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984 and the Marine Pilots Award 1991 and, in the event of any inconsistency, the terms of this agreement shall take precedence over the terms of the aforementioned agreement and awards.

6.—AGREEMENT

This agreement shall be effective on and from the 23rd day of February 1996 and shall continue for a period of one year.

7.—REVIEW

The terms and conditions of this agreement shall be reviewed three months prior to the expiry of this agreement.

8.—SALARIES

(1) Harbour Master/Marine Pilots shall receive an annual salary of $69,679.00

(2) The amount in subclause (1) of this clause shall be an aggregated analysed salary for performance of all duties specified in this agreement.

9.—HOURS OF DUTY

(1) Hours

The salaries and allowances in this agreement are based upon hours being 75 hours at an average of 37.5 hours per week over a two week cycle.

(2) Roster

Harbour Masters/Pilots shall be employed on a self organised basis which shall provide for four days off duty (RDO) each calendar fortnight. RDOs not able to be taken by the time of the officer's annual leave shall be taken in addition to such annual leave.

(3) Fatigue—Exhaustion Break

Harbour Masters/Marine Pilots shall not be required to perform any duties having been on duty for 16 hours without an eight hours' exhaustion break between the time of completing and returning to duty.

10.—DUTIES

Duties of Harbour Master shall include:

(1) Pilotage of vessels for the Port of Esperance.

(2) Management and supervision of pilot vessel crews.

(3) Completion of documentation re: collection of pilotage fees.

(4) Co-ordination of all arrangements for vessels arriving, anchoring, berthing, unberthings, shifting ship, departing and cargo handling operational requirements.

(5) Liaise with ship agents regarding arrival and departure arrangements for vessels having regard to tides, weather, sea states and draft/channel limitations of the port.

(6) Examine candidates for Pilotage Exemption Certificates.

(7) Conduct Certificate of Competency examinations on behalf of the Department of Transport.

(8) The organisation of towage.

(9) Co-ordination and development of port emergency plans.

(10) Liaise with the Hydrographic Office re: notices to mariners, navigation warnings and hydrographic reports.

(11) Management of port navigational aids.

(12) Sea search and rescue as required by State and Federal Marine Authorities.

(13) On-scene co-ordination of marine oil pollution operations within the port boundaries and supervise on-going maintenance of equipment and initial response within Esperance port limits.

(14) Undertake matters relating to hydrographic soundings as required.

(15) Advise and liaise with Australian Maritime Safety Authority regarding port state control matters.

(16) Relieves General Manager.

(17) Determination of practices and co-ordination of IPLF labour allocations with regard to:

(a) mooring and unmooring;

(b) linesboat functions;

(c) stevedoring operations;

(d) any other purposes.

(18) Berthing Master/Wharf Manager functions under the Port Authority Act.

(19) Involvement in port promotions, trade development and corporate planning process.

(20) Representation of the Esperance Port Authority at meetings, conferences and functions.

(21) Involvement in the planning, construction and maintenance of marine structures.

(22) Conduct in-house training programmes for cargo handling supervisory personnel.

(23) Planning and monitoring maintenance dredging operations.

(24) End-of-line responsibility for cargo handling operations.

(25) Arranging and co-ordinating relief pilotage.

11.—DEFINITIONS

(1) "Officer" means Harbour Masters and Marine Pilots employed by the Esperance Port Authority.

(2) "Permanent Head" means the General Manager of the Esperance Port Authority.

(3) "Union" means the Merchant Service Guild of Australia, Western Australian Branch, Union of Workers.

(4) "Employer" means the Esperance Port Authority.

12.—CONTRACT OF SERVICE

(1) Every person appointed by the Esperance Port Authority as a permanent officer shall be on probation for a period not exceeding six months, unless otherwise determined by the General Manager.

(2) At any time during the period of probation the General Manager, or such other person authorised by the Esperance Port Authority to act on its behalf, may annul the appointment and terminate the services of the appointee.

(3) As soon as possible after the expiry of the period of probation the General Manager, or such other authorised person, shall:

(a) confirm the appointment; or

(b) extend the period of probation for up to six months; or

(c) annul the appointment and terminate the services of the appointee.

(4) Every person appointed as a permanent officer shall, either before commencing duty or during the period of probation, satisfy the following conditions unless the General Manager or such other authorised person otherwise determines.

(a) Provide evidence of age in the form of an Extract of Birth Entry or a certified copy of Birth Registration or other evidence acceptable to the General Manager; and

(b) Undertake a medical examination by a registered medical practitioner, nominated by the Esperance Port Authority, to satisfy the General Manager that the appointee is in a fit condition to fulfil the duties of the office to be filled. The fee for the examination and certificate of the registered medical practitioner shall be paid by the appointee.

(5) Except where the Esperance Port Authority approves of a shorter period of notice, an officer shall give the Esperance Port Authority written notice of intention to resign of not less than:

(a) one month in the case of a permanent officer; or

(b) one week in the case of a temporary officer.

(6) The General Manager may terminate the contract of service of any permanent officer by one month's notice given in writing.

(7) The foregoing provisions of this clause do not affect the General Manager's right to dismiss an officer without notice for misconduct, and, in such a case, the salary of the officer shall be paid up to the time of dismissal only.

(8) (a) Where the General Manager considers that a position occupied by an officer is no longer necessary and no other employment is available to that officer, the union shall be notified in writing to that effect.

(b) The union may, within seven days of the date upon which that notification is given, request the General Manager to review that decision, but where an agreement is not reached in discussion between the employer and the union, the contract of service may be terminated in accordance with the provisions of subclause (6) of this clause.

(9) Where the General Manager seeks to terminate the services of an officer in accordance with subclauses (6) and (7) of this clause, upon written request the officer shall be supplied with a written statement setting out details of the incident, circumstance, event or matters upon which the General Manager based his/her decision.

13.—PAYMENT OF SALARIES

(1) Salaries shall be paid fortnightly.

(2) Unless otherwise agreed, salaries shall be paid by direct transfer to an account in a bank or other financial institution nominated by the officer and acceptable to the employer.

(3) Salaries may be paid in such other manner as is agreed between the employer and the union in a particular case.

(4) Where salaries are paid in accordance with subclause (2) of this clause the employer shall reimburse each officer in respect of any taxes, charges, duties or fees incurred, an amount of $40.00 per year.

(5) On pay day officers shall be given written advice showing the gross amount of salaries or allowances due and deductions.

(6) In the event of an underpayment of salaries an officer's pay shall be adjusted as soon as practicable but in any event no later than the subsequent pay period.

(7) The employer may make deductions from an officer's salary with the written consent of the officer, but shall not make deductions without such written consent.

14.—ANNUAL LEAVE

(1) Each officer shall be entitled to 42 consecutive days of recreation leave on full pay for each year of service, consisting of 28 calendar days of normal annual leave and 14 calendar days of annual leave in lieu of public holidays and public service holidays.

(2) Annual leave shall be calculated on a pro rata calendar year basis commencing on the first day of employment with the Esperance Port Authority.

(3) Pro rata annual leave shall be calculated according to the following formula:

Completed Calendar Months of Service	Pro Rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

Provided that, in the first and last months of an officer's service, the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.

For the purposes of this subclause, an officer who commences on the first working day of a month and works for the remainder of the month and an officer who has worked throughout a month and terminates on the last working day of a month shall be regarded as having completed that calendar month of service.

(4) The additional two weeks' leave granted in lieu of public holidays shall be credited on a pro rata basis according to the following formula:

Completed months of service	Pro rata annual leave (working days) 10 additional days
1	Nil
2	1
3	2
4	3
5	4
6	5
7	5
8	6
7	7
10	8
11	9

(5) A permanent officer may take annual leave during the calendar year in which it accrues, but the time during which the leave may be taken is subject to the approval of the General Manager.

(6) Annual leave shall be taken in one period unless otherwise approved by the General Manager.

(7) On written application an officer shall be paid salary in advance when proceeding on annual leave:

(a) When the convenience of the Esperance Port Authority is served, the General Manager may approve the deferment of the commencing date for taking annual leave, but such approval shall only remain in force for a period of one year.

(b) The General Manager may renew the approval referred to in paragraph (a) of this subclause for a further period of one year or further periods of one year but so that an officer does not at any time accumulate more than three years' entitlement.

(c) Where the convenience of the Esperance Port Authority is served, the General Manager may approve the deferment of the commencement date for taking annual leave so that an officer accumulates more than three years' entitlement.

(d) When an officer who has received approval to defer the commencement date for taking annual leave under paragraphs (a), (b) or (c) of this subclause next proceeds on annual leave, the annual leave first accrued shall be the first leave taken.

(8) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave, must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an officer.

(9) On application to the General Manager a lump sum payment for the money equivalent to pro rata annual leave shall be made to an officer who resigns, retires, is retired or in respect of an officer who dies, but not to an officer who is dismissed.

15.—ANNUAL LEAVE LOADING

(1) Subject to the provisions of subclauses (2) and (4) of this clause, a loading equivalent to 17.5% of normal salary shall be paid to officers proceeding on annual leave, including accumulated annual leave.

(2) Subject to the provisions of subclause (4) of this clause the loading is to be paid on a maximum of four weeks' annual leave. Payment of the loading shall not be made for additional leave granted for any other purpose. The maximum payment shall not exceed the Average Weekly Earnings Per Employed Male Unit in Western Australia, as published by the Australian Bureau of Statistics, for the September quarter of the year immediately preceding that in which the leave commences.

(3) Annual leave commencing in any year and extending without a break into the following year shall attract the loading calculated on the salary applicable on the day the leave commences.

(4) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is taken. Under these circumstances, an officer may receive up to the maximum loading for the approved accumulated annual leave, in addition to loading for the current year's entitlement.

(5) A pro rata loading shall be paid on periods of approved annual leave of less than four weeks.

(6) The loading shall be calculated on the officer's ordinary rate of salary.

(7) Where payment in lieu of accrued or pro rata annual leave is made on the death, resignation or retirement of an officer, a loading calculated in accordance with the terms of this clause for annual leave accrued after January 1, 1974 is to be paid.

(8) An officer who has been permitted to proceed on annual leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion, but no refund is required in the event of the death of an officer.

16.—LONG SERVICE LEAVE

(1) An officer shall be entitled to thirteen weeks' long service leave on full pay if he/she has completed seven years' continuous service with the Esperance Port Authority.

(2) For each and every subsequent period of seven years' continuous service an officer shall be entitled to an additional thirteen weeks' long service leave on full pay.

(3) Upon application by an officer, the General Manager may approve of the taking by the officer:

(a) of double the period of long service leave entitlement on half pay, in lieu of the period of long service leave entitlement on full pay;

(b) of any portion of his/her long service leave entitlement on full pay or double such period on half pay.

(4) Continuous service shall not include the period during which an officer is on long service leave or any period exceeding two weeks an officer is absent on leave without pay or any service an officer may have before reaching the age of eighteen years.

(5) An officer who resigns or is dismissed, shall not be entitled to long service leave or payment for long service other than that leave that had accrued to him/her prior to the date on which he/she resigned or the date of the offence for which the officer is dismissed.

(6) Any public holiday occurring during the period in which an officer is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(7) Long service leave shall be taken as it falls due at the convenience of the General Manager but within seven years next after becoming entitled thereto: Provided that the General Manager may approve the accumulation of long service leave not exceeding six months in all in any particular case.

(8) 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) To an officer who retires at or over the age of fifty five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro rata long service leave unless the officer has completed not less than twelve months' continuous service.

(b) To an officer who has retired for any other cause: Provided that no payment shall be made for pro rata long service leave unless the officer had completed not less that three years' continuous service before the date of his/her retirement.

(c) Where the officer dies after having served up to the date of death continuously for not less than twelve months and leaves a dependant spouse, children, parent or invalid brother or sister in which case the payment shall be made to such a spouse or other dependant.

(9) A calculation of the amount due for long service leave accrued and for pro rata long service leave shall be made at the rate of salary of an officer at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(10) Long service leave accrued prior to the issue of this agreement shall remain to the credit of each officer.

(11) The expression "continuous service" in this clause includes any period during which an officer is absent on full pay or part pay, from his/her duties in the Esperance Port Authority's service, but does not include—

(a) any period exceeding two weeks during which the officer is absent on leave without pay;

(b) any period during which the officer is taking his/her long service leave entitlement or any portion thereof;

(c) any service of the officer prior to his/her attaining the age of eighteen years;

17.—SICK LEAVE

In the case of illness or injury of an officer, the General Manager shall grant the officer leave of absence on the following conditions:

(1) An application for leave of absence on the grounds of illness or injury exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of the illness or injury consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.

(2) The number of days' leave of absence which may be granted without production of the certificate required by subclause (1) of this clause shall not exceed, in the aggregate, five working days in any one calendar year.

(3) An officer who is unfit for duty as a consequence of an illness or injury shall inform the Permanent Head, or arrange for him/her to be so informed, forthwith and shall, as soon as reasonably possible thereafter, make a formal application for sick leave to cover his/her absence from duty.

(4) The basis for determining the entitlement to leave of absence on the grounds of illness or injury which an officer may be granted shall be ascertained by crediting the officer concerned with the following cumulative periods:

	Leave on Full Pay Working Days	Leave on Half Pay Working Days
On date of appointment	5	2
On completion of six months' service	5	3
On completion of twelve months' service	10	5
On completion of each additional twelve months' service	10	5

(5) Where an officer suffers illness or injury during the period of his/her—

annual leave for recreation—for a period of at least seven consecutive days; or

long service leave—for a period of at least fourteen consecutive days;

and produced at the time, or as soon as possible thereafter, medical evidence satisfactory to the General Manager that he/she is, or was, as a result of his/her illness or injury, confined to his/her place of residence or a hospital, he/she may, with the approval of the General Manager, be granted, at a time convenient to the Esperance Port Authority, additional leave equivalent to the period during which he/she was so confined.

(6) Where an officer is duly absent on account of illness or injury and his/her entitlement to sick leave on full pay is exhausted, he/she may, with the approval of the General Manager, elect to convert any part of his/her entitlement to sick leave on half pay to sick leave on full pay, but so that his/her sick leave entitlement on half pay is reduced by two days for each day of sick leave on full pay that he/she receives by the conversion.

(7) An officer who is unable to resume duty on the expiration of an approved period of sick leave shall thereupon apply for a further period of sick leave, and any such application shall be supported by a certificate from a registered medical practitioner.

(8) An officer who is duly absent on leave without pay is not eligible for leave of absence on the account of illness or injury under this clause during the currency of that leave without pay.

(9) This clause shall not apply where the officer is entitled to compensation under the Workers' Compensation and Rehabilitation Act, 1981.

(10) No leave of absence on account of illness or injury shall be granted with pay if the illness or injury has been caused by the misconduct of the officer or in any case of absence from duty without sufficient cause.

(11) Where the General Manager has occasion to doubt the case of illness or injury or the reason for the absence, he/she may send a registered medical practitioner to attend on and examine the officer, or may direct the officer to attend the medical practitioner for examination.

If the report of the medical practitioner does not confirm that the officer is ill or injured, or if the officer is not available for examination at the time of the visit of the medical practitioner, or the officer fails, without reasonable cause, to attend the medical practitioner when directed to do so, the fee payable for the examination, appointment or visit shall be paid by the officer.

(12) Where an officer, who has resigned, is subsequently reappointed, he/she shall, for the purposes of this clause, be regarded as a new appointee as from the date of his/her reappointment.

(13) Where an officer who has been retired due to ill-health resumes duty his/her sick leave entitlement at the date of his/her retirement shall be reinstated.

(14) An officer who is appointed subject to a medical examination, and whose appointment is deferred for a stated period on the recommendation of the appropriate Medical Officer, shall not be granted sick leave with pay during that period.

(15) If the General Manager has reason to believe that an officer is in such a state of health as to render him/her a danger to his/her fellow workers or the public, he/she may require the officer to obtain and furnish a report as to his/her condition from a registered medical practitioner or may require him/her to submit himself/herself for examination by the medical practitioner.

(16) Upon receipt of the medical report, the General Manager may direct the officer to absent himself/herself from his/her duties for a specified period, or if already on leave of absence, direct him/her to continue on leave for a specified period, and the officer's absence will be regarded as absence on leave owing to illness.

18.—SHORT LEAVE

(1) The General Manager may, upon sufficient cause being shown, grant an officer short leave on full pay not exceeding two consecutive working days, but any leave granted under the provisions of this clause shall not exceed, in the aggregate, three working days in any one calendar year.

(2) An officer who desires short leave shall make written application in a form approved by the General Manager for the purpose.

19.—LEAVE WITHOUT PAY

(1) Subject to the provisions of subclause (2) of this clause, the General Manager may grant an officer leave without pay for any period.

(2) Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met:

(a) the work of the Esperance Port Authority is not inconvenienced; and

(b) all other leave credits of the officer are exhausted.

20.—TRAVEL ALLOWANCE

The Esperance Port Authority will reimburse all reasonable expenses of an officer who travels on official Port Authority business, including and not limited to, travel, accommodation, meal and incidental expenses.

21.—MOTOR VEHICLE ALLOWANCE

An executive standard vehicle or other such vehicle as mutually agreed will be supplied by the Esperance Port Authority.

22.—TELEPHONES

A telephone shall be installed in the residence of each officer and the rental and the cost of Esperance Port Authority calls shall be paid by the Esperance Port Authority.

23.—UNIFORMS

(1) Officers shall be supplied uniforms as agreed between the parties in an exchange of letters.

(2) Uniforms shall be replaced on a fair wear and tear basis as is considered necessary by the Permanent Head.

(3) The Permanent Head may require uniforms to be worn at all times when considered necessary.

24.—PROTECTIVE CLOTHING

An officer will be supplied with wet weather gear of good and suitable quality and safety shoes at all times, and an officer engaged on work which requires the provision of protective clothing shall be provided with such protective clothing.

25.—COPIES OF AGREEMENT

Every officer covered by this agreement shall be entitled to have access to a copy of this agreement. Sufficient copies shall be made available by the Permanent Head for this purpose.

26.—SALARY CONTINUANCE

The parties agree to develop a salary continuance to be included under this clause. Such clause shall provide salary continuance at a rate not less than the officers' salary for the period of illness. It is the intention that all sick leave accrued under Clause 17.—Sick Leave of this agreement remain accredited after such agreement has been reached.

27.—COMPASSIONATE LEAVE

(1) An officer shall, on the death of the spouse, defacto, father, mother, father-in-law, mother-in-law, child, stepchild, brother, sister, stepfather, stepmother, grandfather or grandmother of the officer be entitled to leave that the funeral of such relation is held on one of those days of leave granted. Such leave, for a period not exceeding three days in respect of any such death, shall be without loss of any ordinary pay which the officer would have received if he/she had not been on such leave.

(2) The right to such paid leave shall be dependent on compliance with the following conditions:

(a) The officer shall give the employer notice of intention to take such leave as soon as reasonably practicable after the death of such relation.

(b) Satisfactory evidence of such death shall be furnished by the officer to the employer.

(c) The officer shall not be entitled to leave under this clause in respect of any period which coincides with any other period of leave entitlement under this agreement or otherwise.

(3) The provisions of this clause shall apply in respect of the incapacitating illness of the spouse or dependent child of the officer when the officer establishes, to the satisfaction of the employer by production of a medical certificate, if required, that the spouse or child is in need of the assistance of the officer and that no other person is available for this purpose.

(4) The employer may also, upon sufficient cause being shown, grant an officer paid leave not exceeding two consecutive working days for such other reason, provided that the total leave available to officers under this clause shall not exceed three working days in any one calendar year subject to subclause (1).

28.—STUDY LEAVE

(1) At the discretion of the Esperance Port Authority an officer may be granted time off with pay for part time study purposes.

(2) Time off with pay may be granted up to a maximum of five hours per week including travelling time:

(a) where subjects of approved courses are available during normal working hours;

(b) where approved study by correspondence is undertaken where the approved course is outside the State of Western Australia.

(3) Officers shall be granted sufficient time off, with pay, to travel to, and sit for, the examinations of any approved course of study.

(4) In every case the approval of time off to attend lectures and tutorials will be subject to:

(a) Esperance Port Authority's convenience;

(b) the course being undertaken on a part time basis;

(c) officers undertaking an acceptable formal study load in their own time;

(d) the course being relevant to the officers' career at the Esperance Port Authority; and

(e) officers making satisfactory progress with their studies.

(5) Leave of absence will be granted at the ordinary rate of pay and shall not include penalty rates or overtime.

29.—TRAINING

The parties to this agreement are committed to external, industry and enterprise training of officers to achieve:

- higher skills relevant to the needs of the Esperance Port Authority.

30.—CONTINUITY OF OPERATIONS

In the event that the union is in dispute with an employer or organisation not party to this agreement and takes industrial action in relation to that dispute, the operations of the Esperance Port Authority shall be exempt from such action, and work by officers shall continue as required to meet the operational requirements of the Esperance Port Authority.

31.—SUPERSESSION

It is a term of this agreement that all rights and entitlements accrued by an officer formally covered by the Department of Marine and Harbours, Harbour Masters, Relieving Harbour Masters and Assistant Harbour Masters Award, 1984, shall be carried over into this agreement.

32.—PARENTAL LEAVE

Subject to the terms of this clause officers are entitled to maternity and paternity leave in connection with the birth of a child.

PART A—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means the child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Maternity Leave

An officer who becomes pregnant shall, upon production to her employer of the certificate required by subclause (4) of this clause, be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the officer's spouse in relation to the same child and, apart from paternity leave of up to one week at the time of confinement, shall not be taken concurrently with paternity leave.

Subject to subclauses (6) and (9) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to her employer:

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An officer shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (4)(a) of this clause.

(b) An officer 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 and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (4)(b) of this clause.

(c) The employer, by not less than 14 days' notice in writing to the officer, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

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

(6) Transfer to a Safe Job

Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy, or hazards connected with the work assigned to the officer, make it inadvisable for the officer to continue at her present work, the officer 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 officer may, or the employer may require the officer to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) of this clause.

(7) Variation of Period of Maternity Leave

(a) Provided the maximum period maternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of maternity leave may be lengthened once only by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the officer.

(b) The period of maternity leave may, with the consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(8) Cancellation of Maternity Leave

(a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an officer terminates other than by the birth of a living child.

(b) Where the pregnancy of an officer then on maternity leave terminates other than by the birth of a living child, it shall be the right of the officer 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 officer to the employer that she desires to resume work.

(9) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an officer 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 registered 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 officer not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 the period to which the officer is entitled under subclause (3) of this clause.

(c) For the purposes of subclauses (10), (11) and (12) of this clause, maternity leave shall include special maternity leave.

(d) An officer 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 officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position she held immediately before such transfer.

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

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer 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 absences (excluding annual leave or long service leave), shall not be available to an officer during her absence on maternity leave.

(11) Effect of Maternity Leave on Employment

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(12) Termination of Employment

(a) An officer on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer 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.

(13) Return to Work After Maternity Leave

(a) An officer shall confirm her intention of returning to 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 officer, upon returning to work after maternity leave or 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 any officer who was transferred to a safe job pursuant to subclause (6) of this clause, to the position which she held immediately before such transfer or, in relation to an officer who has worked part time during the pregnancy, the position she held immediately before commencing such part time work.

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

(14) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on maternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

PART B—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions:

For the purposes of this subclause:

(a) "Child" means a child of the officer or the officer's spouse under the age of one year.

(b) "Spouse" includes a de facto or a former spouse.

(c) "Primary care giver" means a person who assumes the principal role of providing care and attention to a child.

(d) "Continuous service" means service under an unbroken contract of employment and includes:

(i) any period of leave taken in accordance with this clause;

(ii) any period of part time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the award.

(3) Eligibility for Paternity Leave

(a) A male officer shall, upon production to his employer of the certificate required by subclause (4) of this clause, be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

(i) an unbroken period of up to one week at the time of confinement of his spouse;

(ii) a further unbroken period of up to 51 weeks in order to be the primary care giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the officer's spouse and shall not be taken concurrently with that maternity leave.

(b) The officer must have had at least twelve months' continuous service with the employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) of this clause the officer must produce to his employer:

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place;

(b) in relation to any period to be taken under subparagraph (3)(a)(ii) of this clause, a statutory declaration stating:

(i) he will take that period of paternity leave to become the primary care giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The officer shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) of this clause.

(b) The officer shall not be in breach of paragraph (a) of this subclause as a consequence of failure to give the notice required if such failure is due to:

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The officer shall immediately notify his employer of any change in the information provided pursuant to subclause (4) of this clause.

(6) Variation of Period of Paternity Leave

(a) Provided the maximum period of paternity leave does not exceed the period to which the officer is entitled under subclause (3) of this clause:

(i) the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause may, with the consent of the employer, be lengthened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.

(ii) The period of leave may be further lengthened by agreement between the employer and the officer.

(b) The period of paternity leave taken under subparagraph (3)(a)(ii) of this clause may, with the

consent of the employer, be shortened by the officer giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under subparagraph (3)(a)(ii) of this clause but not commenced, shall be cancelled when the pregnancy of the officer's spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Entitlements

(a) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the officer is entitled under subclause (3) of this clause, an officer may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is then entitled.

(b) paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an officer during his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an officer but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(10) Termination of Employment

(a) An officer on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this agreement.

(b) An employer shall not terminate the employment of an officer on the ground of his absence on paternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

(a) An officer shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subparagraph (3)(a)(ii) of this clause.

(b) An officer, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an officer who has worked part time under this clause, to the position he held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the officer is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(12) Replacement Officers

(a) A replacement officer is an officer specifically engaged as a result of an officer proceeding on paternity leave.

(b) Before an employer engages a replacement officer the employer shall inform that person of the temporary nature of the employment and of the rights of the officer who is being replaced.

(c) Before an employer engages a person to replace an officer temporarily promoted or transferred in order to replace an officer exercising his 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 officer who is being replaced.

(d) Nothing in this subclause shall be construed as requiring an employer to engage a replacement officer.

33.—SALARY SACRIFICE

The parties undertake to develop and agree a salary sacrifice provision to be included under this clause.

The salary sacrifice clause shall be developed in accordance with the statutory and taxation provisions so as to enable officers to authorise the employer to pay additional superannuation contributions to approved funds on behalf of the officer and to reduce salary paid directly to the officer accordingly, having regard to the level of superannuation contributions and relevant statutory and taxation provisions.

34.—DISPUTES AVOIDANCE PROCEDURE

(1) Subject to the Public Sector Management Act, the union and the employer undertake to take all necessary steps to ensure that the following procedure herein applies in the event of a question, dispute or difficulty arising under this agreement; the intention being that any or all disputes shall be promptly resolved by conciliation in good faith.

(2) Matters Likely to Become Industrial Disputes

The employer and the union shall respectively notify each other as soon as possible of any industrial matter which, in the opinion of the party notifying, might give rise to an industrial dispute including consultation prior to the introduction of a new method of work or new technology.

(3) Disputes at Job Level

(a) In the event of a dispute arising at the job level, the officer/s and the General Manager shall confer immediately.

(b) If not resolved the union and officer/s involved and the General Manager shall attempt to resolve the issue without delay.

(c) Where this fails to resolve the matter in dispute, the party in dispute shall notify the other party in writing of the nature of such dispute and the parties shall enter into further discussions in endeavouring to resolve the dispute.

(4) Reference to Conciliator

If agreement has not been reached in accordance with subclause (3) of this clause the employer or the union officer may, where agreed, submit the matter to a mutually agreed independent local conciliator who shall endeavour to reconcile the parties in dispute and for this purpose may make a recommendation or, where the parties agree, arbitrate the matter. The conciliator shall, in all cases, make a written summary of the matters in dispute including the facts as he/she sees them. A copy of such record shall be available for any further non-judicial proceedings between the parties relating to the matters in dispute.

(5) Final Reference

(a) Should the foregoing steps fail to resolve the issue within a reasonable time, the matter(s) in dispute shall be referred by either party to the Western Australian Industrial Relations Commission.

(b) The dispute settlement procedures shall not preclude the right of either party to refer a dispute to the Western Australian Industrial Relations Commission at any stage of this procedure if the procedures are not being observed or are otherwise inappropriate in the circumstances.

35.—SIGNATORIES

Signed on behalf of Esperance Port Authority

COLIN STEWART 17/1/1996

Signed on behalf of Merchant Service Guild of Australia, Western Australian Branch, Union of Workers

TREVOR JOHNSON 16/1/1996

FAMILY AND CHILDREN'S SERVICES ENTERPRISE AGREEMENT 1995 No. PSA AG 15 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Department for Family and Children's Services & Others.

No. PSA AG 15 of 1995.

PUBLIC SERVICE ARBITRATOR C.B. PARKS.

27 February 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. PSA AG 15 of 1995.

HAVING heard Ms J. Gaines on behalf of the first named party and Mr K. Keith on behalf of the second named party and;

WHEREAS the parties presented an agreement to the Public Service Arbitrator for registration as an Industrial Agreement on 11 January 1996; and

WHEREAS the Public Service Arbitrator is now satisfied that the agreement complies with Section 41A and Section 49A of the Industrial Relations Act, 1979;

NOW THEREFORE the Public Service Arbitrator pursuant to the powers conferred on him under the Industrial Relations Act, 1979, hereby orders:

THAT the document titled the Family and Children's Services Enterprise Agreement 1995, filed in the Commission on 29 December 1995, and subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,
[L.S] Public Service Arbitrator.

ENTERPRISE BARGAINING AGREEMENT

1.0 TITLE

This agreement shall be known as the Family and Children's Services Enterprise Agreement 1995.

2.0 ARRANGEMENT

3.0 SCOPE

This Enterprise Agreement shall apply to all employees of Family and Children's Services including Senior Executive Service Employees who are members of or eligible to be members of the Associations / Unions party to this Agreement.

As at the 25th January 1996 the number of employees subject to this agreement totalled 1312.

4.0 PARTIES TO THE AGREEMENT

4.1 Employer

The Director General of Family and Children's Services and the Minister for Family and Children's Services;Youth;Seniors.

4.2 Unions

Community and Public Sector Union, SPSF Group, WA Branch—Civil Service Association of Western Australia Incorporated.

Australian Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division. WA Branch.

Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian, Western Australia Branch, Union of Workers

4.3 Exclusion

The parties bound by this Agreement will oppose any subsequent application by another body or organisation to be joined to this Enterprise Agreement.

5.0 DEFINITIONS

"Agreement": the Family and Children's Services Enterprise Bargaining Agreement 1995.

"Department": Family and Children's Services

"Employee": for the purpose of this agreement, someone who is referred to at Clause 3—Scope.

"Employer": the employing authority as defined in the Public Sector Management Act 1994.

"GOSAC" : the Government Officer's Salaries Allowances And Conditions Award 1989

"Government": the State of Western Australia

"Minister": the Minister or Ministers of the Crown responsible for the administration of Family and Children's Services; Youth; Seniors.

"Unions": the unions and Associations listed as parties to this agreement which are listed in Clause 4.2 of this Agreement.

"WAIRC": the Western Australian Industrial Relations Commission.

6.0 DATE AND OPERATION OF THE AGREEMENT

6.1 This Agreement will run for a period of eighteen months from the date of registration in the WAIRC. If this agreement is lodged after the 1st January 1996, but before 31 March 1996, the agreed pay increase will be paid retrospective to the 1st January 1996.

6.2 Negotiations between the parties for renewal of this agreement or for the formation of a new Agreement will commence no later than six (6) months prior to the expiry date of this Agreement.

6.3 Subject to the continuation of the productivity initiatives in this agreement the pay quantum achieved as a result of this agreement will remain and form the base pay rates for future agreements or continue to apply in the absence of a further agreement, except where the award rate is higher in which case the award shall apply.

6.4 The agreement will continue in force after the expiry of its term until such time as any of the parties withdraw from the agreement by notification in writing to the other party and to the WAIRC.

7.0 NO FURTHER CLAIMS

The parties to this Enterprise Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted. Salaries shall be as described in Schedule I.

This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.0 RELATIONSHIP TO PARENT AWARDS

This Enterprise Agreement shall be read in conjunction with the existing Awards and Agreements that apply to the parties bound to this agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies. All parties recognise that the relevant Parent Awards consist of:

Public Service Award 1992

GOSAC

Department For Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990, Award No.PSA A 1 of 1989.

Catering and Tea Attendants (Government) Award 1982

Gardeners (Government) Award 1986

Community Welfare Department Hostels Award 1983

Cleaners and Caretakers (Government) Award 1975

Children's Services (Government) Award 1989

Department for Community Welfare Institution Officers Allowances and Conditions Award 1977, No. 3 of 1977.

Hospital Workers (Government) Award 1966

Miscellaneous Government Conditions and Allowances Award 1992

9.0 SINGLE BARGAINING UNIT

This agreement has been negotiated through a Single Bargaining Unit.

The SBU comprises representatives from Family and Children's Services, the Civil Service Association and the CSA as the agreed representative for the Australian Liquor Hospitality and Miscellaneous Workers Union.

10.0 AUDIT OF SECOND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLE

The parties agree that matters arising from previous industrial agreements or award changes emanating from the Restructuring and Efficiency Principle of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity improvements arising from this agreement

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this agreement.

11.0 OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are:

11.1 To satisfy the requirements of clients and customers through the provision of reliable and efficient resources.

11.2 To achieve the Department's mission and improve productivity and efficiency in the Department through ongoing improvements.

11.3 To promote the development of trust and to continue to foster enhanced employee relations.

11.4 To promote greater flexibility in decision making and allocation of human and other resources.

11.5 To promote increased satisfaction from jobs and secure employment opportunities.

11.6 To develop and pursue changes on a co-operative continuing basis by using participative practices.

11.7 To promote health, safety, welfare and equal opportunity for all employees.

12.0 PRODUCTIVITY IMPROVEMENT

12.1 OBJECTIVES OF PERFORMANCE IMPROVEMENT

Family and Children's Services has as its mission to promote responsibility and growth in family and community life and contribute to the protection and care of children.

Family and Children's Services has as its objectives to enhance the quality of life in communities throughout Western Australia by:

- advancing the general well-being of families, individuals and groups within the community, particularly those who are disadvantaged;
- providing and promoting preventative community support and assistance to people, which may reduce the need for welfare services;
- preventing abuse, neglect and exploitation of children.

12.2 STRATEGIES AND INITIATIVES DEVELOPED TO ACHIEVE

The parties are committed to the continued development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and services delivery of Family and Children's Services.

The parties agree that a broad range of initiatives have already been implemented in Family and Children's Services that have resulted in a more productive, effective and efficient delivery of services within existing resources. These initiatives are on-going and are included in this agreement as part of the continuing productivity initiatives within the agency. These are attached at Schedule A.

In addition to the initiatives that have already been implemented the parties agree to develop and implement further productivity improvements by way of:

12.3 CONTINUOUS IMPROVEMENT

To support the development of quality systems and quality improvement processes, employers and employees will implement processes to support continuous improvement throughout the organisation. For the term of this Agreement this will involve the following:

- Continuous improvement of operations, functions and work processes at workplace level;
- Employee involvement in documenting core procedures critical for operational performance;
- Employee involvement in internal auditing of compliance with procedures;
- Continued implementation of Business Process Reengineering;
- Continued implementation of performance based funding agreements for the non-government sector;
- Continued trialing of assessment strategies to differentiate between child maltreatment and concerns about children;
- The formation of consultative mechanisms to enable employee participation in the decision making process, the formation of procedures, monitoring of performance, and problem solving, productivity and efficiency issues.

12.4 NEW TECHNOLOGY AND INNOVATIONS

To provide services successfully in a changing environment, the development and timely implementation of new technologies and management systems is paramount. Family and Children's Services is committed to the introduction of innovation and the cost effective use of new technology.

During the life of this Agreement all parties are committed to the implementation and continual development of innovations to reduce operating costs, and to improve the productivity and efficiency of Family and Children's Services. Appropriate employee training and development in the use of new technology and innovations will be undertaken to ensure safe and efficient working practices.

12.5 SAFER WORKING ENVIRONMENT

Through the continual identification, correction and removal of work situations which present a potential safety hazard and the training of employees in safe working procedures, Family and Children's Services, through its employees, will strive to maintain a safe workplace through the use of OHSW Representatives.

12.6 HEALTH AND WELFARE

Family and Children's Services has adopted a pro-active role in the provision of a health and welfare services to its employees. The purpose of these services is to provide employees with access to advice and counselling on health and welfare matters that could be adversely affecting work performance. The parties fully support these services.

12.7 TRAINING AND DEVELOPMENT

All employees within Family and Children's Services will be provided with the relevant training and development to enable them to carry out the expanded range of duties required as a consequence of the implementation of Continuous Improvement. As far as possible, all training and development will be accredited under the National Training Guidelines. All training will be documented and recorded in the employee's record of service.

12.7.1 Policy Development

The parties to this agreement are committed to supporting the skills development of all employees through continuous learning and the provision of development opportunities.

During the life of this agreement the parties will develop a 'Training and Development Policy' that shall contain processes and procedures regarding the provision of education and training.

12.7.2 Management Development Programme

To ensure that managers have the skills they need to change the way Family and Children's Services currently works in line with the new corporate direction and associated values, training and development will be provided to enable managers to: develop teams for better customer focus and continuous improvement; develop influencing and negotiation skills; develop problem solving skills.

12.7.3 Management Improvement Process

Managing the performance of employees in a style consistent with Family and Children's Services values is important to the long term achievement of corporate goals. To improve the way managers manage the performance of their staff a programme will be implemented to encourage managers to act promptly and fully on performance problems through the development of Competency Based Management, and by giving recognition to good performance.

12.7.4 New Technology and Innovations

The full achievement of productivity and efficiency gains will only be realised from new technology and innovations if employees are appropriately trained. To support the introduction and development of new technology and innovations within Family and Children's Services, employees will undertake training and development in the efficient implementation of new work processes.

12.8 DISPUTE RESOLUTION PROCEDURES

In the event of any proposed change in employment conditions, employee grievance or other dispute arising, the parties being committed to the principles of consultation and conciliation agree to follow the procedures set out hereunder:

12.8.1 The parties further agree that all disputes shall be resolved as expeditiously as possible.

12.8.2 Procedure for Settlement of Disputes

- The employee/s and the employee's Supervisor shall confer, where appropriate, and clearly identify the facts and, where possible, resolve the issue within 5 working days.
- If not resolved, or if it is inappropriate for the employee/s to directly approach their Supervisor, the employee/s, the union representative, the Supervisor and the relevant Manager shall confer and, where possible, resolve the issue.
- If not resolved, the union shall confer with the Human Resources Manager and, where possible, resolve the issue.
- If the matter is still not settled, either party may submit the matter for conciliation/arbitration by the Western Australian Industrial Relations Commission.

12.8.3 Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

12.8.4 Where the dispute involves proposed changes to this agreement or any relevant award, negotiations shall take place directly between the union/s and the employer.

12.9 FUTURE ISSUES FOR NEGOTIATION

During the life of this agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future agreements. Major agreed prospective productivity improvements to be further considered in a future agreement appear at Schedule H.

13.0 PRODUCTIVITY MEASUREMENT

The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of Family and Children's Services to management, employees and other relevant stakeholders.

The parties agree to assess organisational performance according to the extent to which the objectives of the Agency are achieved.

13.1 The value of the productivity improvements will be shared between the Government, Family and Children's Services and its employees.

13.2 It is agreed that the two $8 flat productivity increases will be deducted from any past productivity calculations.

13.3 It is agreed that any costs resulting from the Amalgamation of the Awards will be deducted from the productivity increases as described in Schedule A attached.

14.0 EMPLOYMENT CONDITIONS

14.1 Award Amalgamation.

Family and Children's Services is a respondent to a number of awards of the WesternAustralian Industrial Relations Commission . This has resulted in the following:

- A lack of uniformity in conditions across all awards causing inequities between employees.
- Difficulty and higher costs associated with the administration of multiple awards.

The parties agree that these problems could be overcome in the CSA areas of coverage with the abolition of the Family Resource Workers Award and the Institutional Officers Award allowing these workers to be covered by the Government Officers, Salaries and Allowances Award providing a common set of conditions of employment and bringing all workers in Family and Children's Services under award coverage.

The parties also agree that while providing a common set of basic conditions of employment there are a number of unique employment practices that both parties wish to maintain. These will be included in this agreement with a commitment from the parties to include them in the parent award during the life of this agreement.

The Parties are committed to developing an agreement providing a common set of conditions for all employees covered by the range of Australian Liquor, Hospitality and Miscellaneous Workers Union Awards (as listed in Schedule B as attached).

The parties agree that the provisional Award amalgamation matters outlined in Schedule B will apply from the date of registration of this agreement.

14.2 Special Leave

The parties recognise that workers have family responsibilities and that employment conditions must be responsive to this. Further they recognise that given the mandate of the Department, Family and Children's Services have a special role to play in promoting work practices that are sensitive to the needs of families.

Further, the parties recognise the need for ceremonial leave to be available to workers who are legitimately required to be absent from work for their tribal/ceremonial purposes.

The parties agree to the provision of three days special leave to be taken as outlined in Schedule C.

The parties agree that the provisions outlined in Schedule C will apply from the date of registration of this agreement.

14.3 Hours Of Service

The parties agree that the amendments to Award Conditions as outlined in Schedule D as attached shall apply from the date of registration.

14.4 Annual Leave Loading

The Parties agree that the amendments outlined in Schedule E shall apply from the date ofregistration.

14.5 Flexi-time

The parties agree that the amendments to the existing flexi-leave provisions as outlined in Schedule F shall apply from the date of registration of this agreement.

14.6 Parental Leave

The parties agree that the Parental Leave provision outlined in Schedule G will apply from the date of registration of this agreement.

15.0 SALARY INCREASES

15.1 The salary rates are contained in Schedule I and are payable from 1st January 1996. They include the following increases:

i) An increase of $16 per week flat rate to be paid to all employees on a fortnightly basis commencing from the first pay period on or after the 1st January 1996.

ii) A 7.2% salary increase on gross salary to be paid to all employees on a fortnightly basis commencing from the first pay period on or after the 1st January 1996.

iii) A 1.5% increase to be payable on the first pay period on or after 1st July 1996 subject to Family and Children's Services making satisfactory progress in the implementation of initiatives and reporting to the Cabinet Sub Committee on Labour Relations.

16.0 DISPUTE SETTLEMENT PROCEDURE

Any question, disputes or difficulties arising under this Industrial Agreement will be dealt with in accordance with the following procedures;

16.1 The Union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a Union representative.

16.2 If the matter is not resolved within 5 working days following the discussion in accordance with subclause (a) hereof the matter shall be referred by the Union representative to the Director General or his/her nominee for resolution.

16.3 If the matter is not resolved within 5 working days of the Union representative's notification of the dispute to Family and Children's Services it may be referred by either party to the Western Australian Industrial Relations Commission.

17.0 SIGNATURES OF PARTIES TO THE AGREEMENT

(Signed by Cheryl Edwardes)
Cheryl Edwardes
For Family and Children's Services;
Youth; Seniors. Date 27/12/95

(Signed by Robert Fisher)
Robert Fisher
For Family and Children's Services Date 22.12.95

(Signed by D Robinson) (Seal Affixed)
David Robinson
For Civil Service Association Date 28/12/95

(Signed by Helen M. Creed) (Seal Affixed)
Helen Creed
For The Australian Liquor
Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers
division, WA Branch. Date 28/12/95

(Signed by E Fry) (Seal Affixed)
Eugene Fry
For The Federated Liquor and
Allied Industries Employees'Union of
Australia, Western Australian, Western
Australia Branch, Union of Workers. Date 11/1/96

SCHEDULE A—PRODUCTIVITY IMPROVEMENTS

1.1 CONTINUING PRODUCTIVITY SAVINGS INITIATED PRIOR TO THISAGREEMENT.

1.1.1 Transfer of Administrative positions to direct Child Protection.

The Union and the Department agree that there has been major productivity improvement where re-structuring efficiencies within the Department has resulted in 50 FTE being transferred largely from Head Office administrative positions to direct Child Protection service in the field, without replacement.

This satisfies criteria within section 1 (a) of the Framework agreement to: increase the efficiency, productivity and flexibility within the agency and the effectiveness of program and service delivery.

1.1.2 Increased workload in investigation of Child Maltreatment allegations.

Total Child Maltreatment allegations increased from 3,620 in 1991 to 6,237 in 1995. This workload increase was met within existing staffing levels by the increased productivity of Departmental staff.

1.1.3 Increased workload to manage Children in Placement.

The number of children in placement increased by 116 between 1994 and 1995. The management of these new placements was absorbed by the increased productivity of Departmental staff.

1.1.4 Increased workload in Adoptions.

There were 34 children placed for adoption in the 1993/94 year as against 46 in the 1994/95 year. This increase was absorbed by the increased productivity of Departmental Staff.

1.1.5 Enquiries to the Adoptions Register.

Changes in legislation have resulted in an increase of 993 in Adoptions queries and contacts over the 1994/95 period. These queries have been met within the resources of the Department by the increased productivity of staff.

1.1.6 Reduced costs in Workers Compensation claims.

A pro-active approach to safety by all staff and Management of Family and Children's Services has resulted in a major decrease in Workers Compensation claims. This productivity increase of staff absorbing the new direction within their current workload, has resulted in an insurance premium reduction of $175,000 between 1991/2 and 1994/95.

1.2 FUTURE PRODUCTIVITY INITIATIVES

1.2.1 Future transfer of Administrative positions to direct Field Services

The Department intends a major productivity improvement where re-structuring efficiencies within the Department will result in a further 11 FTE (7 currently certain, with a prospect of a further four to be clarified) being transferred from Head Office administrative positions to direct Field Services, without replacement.

This satisfies criteria within section 1 (a) of the Framework agreement to: increase the efficiency, productivity and flexibility within the agency and the effectiveness of program and service delivery.

1.2.2 Introducing best practice in Financial Management.

The Department intends to introduce the best practice in Financial Services that is a corner stone of Government policy.

These initiatives will include the introduction of Zero Based Budgeting and Accrual Accounting, and will be achieved within the current FTE of the Department. These changes will make the department more productive, and the additional workload will be absorbed by the increased productivity of staff.

1.2.3 Increase in Freedom of Information workload.

New Freedom of Information legislation has resulted in staff meeting an additional 60 FOI requests within their normal workload. This increased productivity has saved the probable requirement for the employment of three additional FTE.

1.2.4 Increase in Step-parent assessments.

New legislation requires increased numbers of assessment processes in relation to step-parent adoptions.

1.2.5 Introduction of Best Practice to Service and Administration.

A number of major efficiency initiatives are being introduced to Family and Children's Services that will clearly produce productivity benefits by using the same resources to produce a greater output. These productivity increases are spread throughout the Department as a whole, and involve such diverse matters as: the introduction of a new Human

Resources Information System, the continuation and improvement of CCSS, the introduction of Competency Based Management, the outsourcing of services where appropriate, and Regional and District restructuring.

SCHEDULE B—AWARD AMALGAMATION

1.0 Department for Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990, Award No. PSA A 1 of 1989.

From the date of registration of this agreement the provisions of the Department for Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990, Award No PSA A 1 of 1989 will apply except to the extent that they are inconsistent with the following provisions.

1.1 HOURS

1.1.1 The ordinary working hours for employees shall be sixty hours per four week cycle except where agreement in writing is reached between the employee and the manager to vary the hours worked and shall be worked as determined by the employer between the hours of 7.00am and 6.00 pm on any days per week Monday to Friday.

1.1.2 The employer shall give an officer one (1) month's notice of any proposed variation to that officer's ordinary working hours, provided that the employer shall not vary the officer's total weekly hours of duty without the officer's prior written consent, a copy of which shall be forwarded to the Union.

1.1.3 Notwithstanding paragraph (1.1.2) of this subclause whenever agreement in writing is reached for a temporary variation to an officer's ordinary working hours:

i Time worked up to 7 hours on any day, within ordinary working hours, is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.

ii Additional days worked, up to a total of 5 days per week, within ordinary working hours, are also regarded as an extension of the contract and should be paid at the normal rate of pay.

1.1.4 The provisions of Clause 18—Overtime of the GOSAC Award shall apply to all time worked outside the ordinary working hours prescribed by paragraph (1.1.2) of subclause (1) of this clause unless an arrangement pursuant to paragraph (1.1.3) of subclause (1) of this clause is in place.

1.1.5 The provisions of Clause 17—Shiftwork of the GOSAC Award shall apply.

2.0 Department for Community Development Institution Officers Allowances and Conditions Award 1977, No 3 of 1977.

From the date of registration of this agreement the provisions of the Department for Community Welfare Institution Officers Allowances and Conditions Award 1977 No 3 of 1977 will apply to Group Workers employed by Family and Children's Services except to the extent that they are inconsistent with the following provisions.

2.1 Group workers will be paid a commuted allowance of 16%. The allowance is in lieu of all shift and weekend penalties and is payable while Groupworkers and Senior Groupworkers work in accordance with the transfer and rotation policy.

2.2 A rotational policy as agreed to between the parties, within one month of the registration of this agreement, will continue to apply for the life of this agreement.

3.0 *The parties agree during the life of this agreement they are committed to amending the Government Officers Salaries, Allowances and Conditions Award to apply to employees covered by the awards listed in items (1) & (2) of this schedule.*

4.0 *The parties are committed to developing an agreement providing a common set of conditions for all employees covered by the range of ALHMWU Awards listed as follows—*

*Gardeners (Government) Award 1986

*Community Welfare Department Hostels Award 1983

*Cleaners and Caretakers (Government) Award 1975

*Children's Services (Government) Award 1989

*Miscellaneous Government Conditions and Allowances Award 1992

*Hospital Workers (Government) Award 1966

SCHEDULE C—SPECIAL LEAVE

The following provisions shall replace Short Leave provisions in the relevant Parent Awards.

1.0 An employee shall be entitled to up to 6 days paid Special Leave every two years. Special Leave will be available on an hourly basis.

2.0 The leave may be used in the following circumstances:

2.1 to care for a sick member of their family or otherwise attend to urgent family responsibilities. The definition of family shall be the definition contained in the Equal Opportunity Act 1986. That is, a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee.

2.2 to workers who are legitimately required to be absent from work for their tribal/ceremonial purposes. Such ceremonial leave will include leave to meet the employee's customs, traditional law and to participate in ceremonial customs. It would be available to, but not limited to, Aboriginals and Torres Strait Islanders.

2.3 to attend to other urgent business when sufficient cause can be shown.

3.0 Part-time Officers will be eligible for short leave on a pro rata basis.

SCHEDULE D —HOURS OF SERVICE

Prescribed Hours of Duty to be observed by officers in this Enterprise Agreement shall be seven hours thirty-six minutes per day to be worked between 7.00 am and 6.00 pm Monday to Friday, except where this is inconsistent with Clause 1.1 of Schedule B of this Agreement.

SCHEDULE E—ANNUAL LEAVE LOADING

Leave Loading provisions in the relevant Parent Awards will no longer apply during the life of this Agreement but will be compensated for by a payment of increased salary. Leave Loading will continue to be paid when annual leave, which has accrued prior to the commencement of the Enterprise Agreement is taken. However payment for leave loading on annual leave accrued prior to the Agreement will be made at the Employee's salary rate prior to the commencement of the Enterprise Agreement.

SCHEDULE F—FLEXITIME

The following provisions shall be read in conjunction with the existing flexitime provisions in awards and agreements that apply to the parties bound to this agreement. These provisions replace Clause 16 (3)(h)(i) and (ii) of the Public Service Award 1992 and Clause 16 (7)(I)(i) and (ii) of the Government Officer's Salaries Allowances and Conditions Award 1989.

Credit Hours

(i) Credit hours in excess of the required 152 hours to a maximum of 15 hours and twelve minutes are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(ii) Credit hours in excess of 15 hours and twelve minutes at the end of a settlement period shall be lost.

SCHEDULE G—PARENTAL LEAVE

(a) Definition

(i) "Employee" includes full time, part time, permanent and fixed term contract employees.

(ii) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(b) Eligibility for Parental Leave

(i) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(ii) Where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(iii) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.

(iv) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional day's leave. The employee may take any paid leave entitlement in lieu of this leave.

(v) Subject to sub-clause (ii) of this clause where both partners are employed by Family and Children's Services the leave shall not be taken concurrently except under exceptional circumstances and with the approval of the Chief Executive Officer.

(c) Other Leave Entitlements

(i) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave.

(ii) An employee may extend the maximum period of parental leave with a period of annual leave, long service leave or leave without pay subject to the Chief Executive Officer's approval.

(iii) An employee on parental leave is not entitled to paid sick leave and other paid award absences excluding Annual Leave and Long Service Leave.

(iv) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(v) Where a pregnant employee not on parental leave suffers illness related to the employee'spregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(d) Notice and Variation

(i) The employee shall give not less than ten weeks' notice in writing to Family and Children's Services of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(ii) An employee proceeding on parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(e) Transfer to Safe Job

(i) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.

(ii) If the transfer to a safe position is not practicable, the employee may take leave for such a period as is certified necessary by a registered medical practitioner.

(f) Replacement Employee

Prior to engaging a replacement employee Family and Children's Services shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

(g) Return to Work

(i) An employee shall confirm the intention to return to work by notice in writing to Family and Children's Services not less than four weeks prior to the expiration of the period of parental leave.

(ii) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee as transferred to a safe job pursuant to sub-clause (e) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.

(iii) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the relevant award.

(iv) Where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

(h) Effect of Leave on Employment Contract

(i) Fixed Term Contract

An employee for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(ii) Continuous Service

Absence on parental 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 under the relevant award or this agreement.

(iii) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

SCHEDULE H—MAJOR IDENTIFIED PROSPECTIVE PRODUCTIVITY IMPROVEMENTS

(This is not an exhaustive list, but are matters to be pursued in any future agreement)

BUSINESS PROCESS RE-ENGINEERING
NON-GOVERNMENT FUNDING
CHILDREN'S SERVICES
INTRODUCTION OF CLIENT COMMUNITY SERVICES SYSTEM
INCREASED ACCOUNTABILITY REQUIREMENTS
MCCALL REVIEW
OHPAC REVIEW
RE-CONTEXTUALISATION
DUTY AND INTAKE PROCEDURES

SCHEDULE I—PROPOSED SALARY RATES FROM THE FAMILY AND CHILDREN'S SERVICES ENTERPRISE BARGAINING AGREEMENT 1995

PUBLIC SERVICE AWARD 1992

ANNUAL	ANNUAL RATE RATE 14.07.95 $	ANNUAL RATE Plus 7.2% 1.01.96 $	ANNUAL Plus $32 pfn 1.01.96 $	RATE plus 1.5% 1.07.96 $
LEVEL 1				
Under 17 Years	10,873	11,656	12,491	12,654
17 Years	12,707	13,622	14,457	14,648
18 Years	14,822	15,889	16,724	16,946
19 Years	17,157	18,392	19,227	19,484
20 Years	19,267	20,654	21,489	21,778
21 Years or 1st year	21,165	22,689	23,524	23,841
22 Years or 2nd year	21,817	23,388	24,223	24,550
23 Years or 3rd year	22,468	24,086	24,921	25,258
24 Years or 4th year	23,115	24,779	25,614	25,961
25 Years or 5th year	23,766	25,477	26,312	26,668
26 Years or 6th year	24,417	26,175	27,010	27,376
27 Years or 7th year	25,166	26,978	27,813	28,190
28 Years or 8th year	25,684	27,533	28,368	28,753
29 Years or 9th year	26,450	28,354	29,189	29,586
LEVEL 2				
1st Year	27,367	29,337	30,172	30,583
2nd Year	28,070	30,091	30,926	31,347
3rd Year	28,809	30,883	31,718	32,150
4th Year	29,590	31,720	32,555	32,999
5th Year	30,407	32,596	33,431	33,887
LEVEL 3				
1st Year	31,530	33,800	34,635	35,108
2nd Year	32,405	34,738	35,573	36,059
3rd Year	33,307	35,705	36,540	37,040
4th Year	34,233	36,698	37,533	38,046

ANNUAL	ANNUAL RATE RATE 14.07.95 $	ANNUAL Plus 7.2% 1.01.96 $	Plus $32 pfn 1.01.96 $	RATE plus 1.5% 1.07.96 $
LEVEL 4				
1st Year	35,503	38,059	38,894	39,427
2nd Year	36,498	39,126	39,961	40,508
3rd Year	37,522	40,224	41,059	41,622
LEVEL 5				
1st Year	39,494	42,338	43,173	43,765
2nd Year	40,827	43,767	44,602	45,214
3rd Year	42,212	45,251	46,086	46,719
4th Year	43,649	46,792	47,627	48,282
LEVEL 6				
1st Year	45,960	49,269	50,104	50,793
2nd Year	47,531	50,953	51,788	52,501
3rd Year	49,157	52,696	53,531	54,268
4th Year	50,893	54,557	55,392	56,155
LEVEL 7				
1st Year	53,555	57,411	58,246	59,049
2nd Year	55,397	59,386	60,221	61,052
3rd Year	57,401	61,534	62,369	63,230
LEVEL 8				
1st Year	60,658	65,025	65,860	66,770
2nd Year	62,991	67,526	68,361	69,306
3rd Year	65,884	70,628	71,463	72,451
LEVEL 9				
1st Year	69,497	74,501	75,336	76,378
2nd Year	71,938	77,118	77,953	79,032
3rd Year	74,722	80,102	80,937	82,058
CLASS 1	78,932	84,615	85,450	86,634
CLASS 2	83,142	89,128	89,963	91,210
CLASS 3	87,350	93,639	94,474	95,784
CLASS 4	91,560	98,152	98,987	100,360
LEVEL 2/4 CL 11				
1st Year	27,367	29,337	30,172	30,583
2nd Year	28,809	30,883	31,718	32,150
3rd Year	30,407	32,596	33,431	33,887
4th Year	32,405	34,738	35,573	36,059
5th Year	35,503	38,059	38,894	39,427
6th Year	37,522	40,224	41,059	41,621

(1) Officers, who possess a relevant tertiary level qualification, or equivalent determined by the Commissioner, and who are employed in the callings of Agricultural Scientist, Architect, Dental Officer, Education Officer, Engineer, Forestry Officer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Planning Officer, Probation and Parole Officer, Psychiatrist, Clinical Psychologist, Psychologist, Quantity Surveyor, Scientific Officer, Social Worker, Superintendent of Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the Commissioner, shall be entitled to annual salaries as contained in Schedule B.

INSTITUTION OFFICERS ALLOWANCES AND CONDITIONS AWARD OF 1977

AWARD ID : DCSAFS (76 HRS/PFN)

	ANNUAL RATE (BASE) 14.07.95 $	ANNUAL RATE Plus 7.2% 1.01.96 $	Plus $32 pfn 1.01.96 $	Plus 16% COMTD ALL 1.01.96 $	ANNUAL RATE Plus 1.5% 1.07.96 $	Plus 16% COMTD ALL 1.07.96 $
GROUP WORKER Unqualified (F18503) LEVEL 2.1						
1st Year	27,367	29,337	30,172	35,000	30,583	35,476
GROUP WORKER (F14798) LEVEL 2						
1st Year	27,367	29,337	30,172	35,000	30,583	35,476
2nd Year	28,070	30,091	30,926	35,874	31,347	36,363
3rd Year	28,809	30,883	31,718	36,793	32,150	37,294
4th Year	29,590	31,720	32,555	37,764	32,999	38,279
5th Year	30,407	32,596	33,431	38,780	33,887	39,309
SNR GROUP WORKER (F14799) LEVEL 3						
1st Year	31,530	33,800	34,635	40,177	35,108	40,725
2nd Year	32,405	34,738	35,573	41,265	36,059	41,829
3rd Year	33,307	35,705	36,540	42,387	37,040	42,966
4th Year	34,233	36,698	37,533	43,538	38,046	44,133

CATERING EMPLOYEES AND TEA ATTENDANTS (GOVERNMENT) AWARD 1982

	12.01.91 (WEEKLY) $	1.01.96 Plus 7.2% (WEEKLY) $	1.01.96 Plus $16 pw (WEEKLY) $	1.07.96 Plus 1.5% (WEEKLY) $
Tea Attendant	297.20	318.60	334.60	339.06

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD OF 1989

ANNUAL	ANNUAL RATE RATE 14.07.95 $	ANNUAL Plus 7.2% 1.01.96 $	Plus $32 pfn 1.01.96 $	RATE plus 1.5% 1.07.96 $
LEVEL 1				
Under 17 Years	10,873	11,656	12,491	12,654
17 Years	12,707	13,622	14,457	14,648
18 Years	14,822	15,889	16,724	16,946
19 Years	17,157	18,392	19,227	19,484
20 Years	19,267	20,654	21,489	21,778
21 Years or 1st year	21,165	22,689	23,524	23,841
22 Years or 2nd year	21,817	23,388	24,223	24,550
23 Years or 3rd year	22,468	24,086	24,921	25,258
24 Years or 4th year	23,115	24,779	25,614	25,961
25 Years or 5th year	23,766	25,477	26,312	26,668
26 Years or 6th year	24,417	26,175	27,010	27,376
27 Years or 7th year	25,166	26,978	27,813	28,190
28 Years or 8th year	25,684	27,533	28,368	28,753
29 Years or 9th year	26,450	28,354	29,189	29,586
LEVEL 2				
1st Year	27,367	29,337	30,172	30,583
2nd Year	28,070	30,091	30,926	31,347
3rd Year	28,809	30,883	31,718	32,150
4th Year	29,590	31,720	32,555	32,999
5th Year	30,407	32,596	33,431	33,887
LEVEL 3				
1st Year	31,530	33,800	34,635	35,108
2nd Year	32,405	34,738	35,573	36,059
3rd Year	33,307	35,705	36,540	37,040
4th Year	34,233	36,698	37,533	38,046
LEVEL 4				
1st Year	35,503	38,059	38,894	39,427
2nd Year	36,498	39,126	39,961	40,508
3rd Year	37,522	40,224	41,059	41,622
LEVEL 5				
1st Year	39,494	42,338	43,173	43,765
2nd Year	40,827	43,767	44,602	45,214
3rd Year	42,212	45,251	46,086	46,719
4th Year	43,649	46,792	47,627	48,282
LEVEL 6				
1st Year	45,960	49,269	50,104	50,793
2nd Year	47,531	50,953	51,788	52,501
3rd Year	49,157	52,696	53,531	54,268
4th Year	50,893	54,557	55,392	56,155
LEVEL 7				
1st Year	53,555	57,411	58,246	59,049
2nd Year	55,397	59,386	60,221	61,052
3rd Year	57,401	61,534	62,369	63,230
LEVEL 8				
1st Year	60,658	65,025	65,860	66,770
2nd Year	62,991	67,526	68,361	69,306
3rd Year	65,884	70,628	71,463	72,451
LEVEL 9				
1st Year	69,497	74,501	75,336	76,378
2nd Year	71,938	77,118	77,953	79,032
3rd Year	74,722	80,102	80,937	82,058
CLASS 1	78,932	84,615	85,450	86,634
CLASS 2	83,142	89,128	89,963	91,210
CLASS 3	87,350	93,639	94,474	95,784
CLASS 4	91,560	98,152	98,987	100,360
LEVEL 2/4 CL 11				
1st Year	27,367	29,337	30,172	30,583
2nd Year	28,809	30,883	31,718	32,150
3rd Year	30,407	32,596	33,431	33,887
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5th Year	35,503	38,059	38,894	39,427
6th Year	37,522	40,224	41,059	41,621

(1) Officers, who possess a relevant tertiary level qualification, or equivalent determined by the Commissioner, and who are employed in the callings of Agricultural Scientist, Architect, Dental Officer, Education Officer, Engineer, Forestry Officer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Planning Officer, Probation and Parole Officer, Psychiatrist, Clinical Psycholo-

gist, Psychologist, Quantity Surveyor, Scientific Officer, Social Worker, Superintendent of Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the Commissioner, shall be entitled to annual salaries as contained in Schedule B.

FAMILY RESOURCE WORKERS, WELFARE ASSISTANTS AND PARENT HELPERS AWARD 1990

ANNUAL	ANNUAL RATE RATE 14.07.95 $	Plus 7.2% 1.01.96 $	Plus $32 pfn 1.01.96 $	RATE plus 1.5% 1.07.96 $
LEVEL 1				
Under 17 Years	10,873	11,656	12,491	12,654
17 Years	12,707	13,622	14,457	14,648
18 Years	14,822	15,889	16,724	16,946
19 Years	17,157	18,392	19,227	19,484
20 Years	19,267	20,654	21,489	21,778
21 Years or 1st year	21,165	22,689	23,524	23,841
22 Years or 2nd year	21,817	23,388	24,223	24,550
23 Years or 3rd year	22,468	24,086	24,921	25,258
24 Years or 4th year	23,115	24,779	25,614	25,961
25 Years or 5th year	23,766	25,477	26,312	26,668
26 Years or 6th year	24,417	26,175	27,010	27,376
27 Years or 7th year	25,166	26,978	27,813	28,190
28 Years or 8th year	25,684	27,533	28,368	28,753
29 Years or 9th year	26,450	28,354	29,189	29,586

AWARD FREE HOSTELS

	ANNUAL RATE (BASE) 14.07.95 $	ANNUAL RATE Plus 7.2% 1.01.96 $	Plus $32 pfn 1.01.96 $	Plus 18% COMTD ALL 1.01.96 $	ANNUAL RATE Plus 1.5% 1.07.96 $	Plus 18% COMTD ALL 1.07.96 $
HOSTEL ASSISTANT (F20107)						
LEVEL 1						
Under 17 Years	10,873	11,656	12,491	14,739	12,654	14,932
17 Years	12,707	13,622	14,457	17,059	14,648	17,285
18 Years	14,822	15,889	16,724	19,734	16,946	19,996
19 Years	17,157	18,392	19,227	22,688	19,484	22,991
20 Years	19,267	20,654	21,489	25,357	21,778	25,698
21 Years or 1st year	21,165	22,689	23,524	27,758	23,841	28,132
22 Years or 2nd year	21,817	23,388	24,223	28,583	24,550	28,969
23 Years or 3rd year	22,468	24,086	24,921	29,407	25,258	29,804
24 Years or 4th year	23,115	24,779	25,614	30,225	25,961	30,634
25 Years or 5th year	23,766	25,477	26,312	31,048	26,668	31,468
26 Years or 6th year	24,417	26,175	27,010	31,872	27,376	32,304
27 Years or 7th year	25,166	26,978	27,813	32,819	28,190	33,264
28 Years or 8th year	25,684	27,533	28,368	33,474	28,753	33,928
29 Years or 9th year	26,450	28,354	29,189	34,443	29,586	34,911
HOSTEL SUPERVISOR (F19088)						
LEVEL 2						
1st Year	27,367	29,337	30,172	35,603	30,583	36,088
2nd Year	28,070	30,091	30,926	36,493	31,347	36,989
3rd Year	28,809	30,883	31,718	37,427	32,150	37,937
4th Year	29,590	31,720	32,555	38,415	32,999	38,939
5th Year	30,407	32,596	33,431	39,449	33,887	39,987
HOSTEL MANAGER (F19426)						
LEVEL 3						
1st Year	31,530	33,800	34,635	40,869	35,108	41,427
2nd Year	32,405	34,738	35,573	41,976	36,059	42,550
3rd Year	33,307	35,705	36,540	43,117	37,040	43,707
4th Year	34,233	36,698	37,533	44,289	38,046	44,894

COMMUNITY WELFARE DEPARTMENT HOSTELS AWARD, 1983

FUNCTION TITLE	FUNCTION ID	YEAR	16.06.95 (Weekly)	1.01.96 Plus 7.2% (Weekly)	1.01.96 Plus $16 pw (Weekly)	1.07.96 Plus 1.5% (Weekly)
		1ST YR	$413.70	$443.49	$459.49	$465.70
COOK	F05951	2ND YR	$418.00	$448.10	$464.10	$470.37
		3RD YR	$422.10	$452.50	$468.50	$474.84
		1ST YR	$399.60	$428.38	$444.38	$450.38
GROUNDSMAN/ GARDENER	F05952	2ND YR	$401.10	$429.98	$445.98	$452.00
		3RD YR	$408.30	$437.70	$453.70	$459.83
		1ST YR	$385.70	$413.47	$429.47	$435.26
DOMESTIC	F05953	2ND YR	$390.30	$418.41	$434.41	$440.27
		3RD YR	$394.40	$422.80	$438.80	$444.72
		U/16 YRS	60% OF 1ST YR			
JUNIORS		U/17 YRS	70% OF 1ST YR			
		U/18 YRS	80% OF 1ST YR			

GARDENERS GOVERNMENT AWARD 16 OF 1983

FUNCTION TITLE	FUNCTION ID	YEAR	16.06.95 (Weekly)	1.01.96 Plus 7.2% (Weekly)	1.01.96 Plus $16 pw (Weekly)	1.07.96 Plus 1.5% (Weekly)
		1ST YR	$388.70	$416.69	$432.69	$438.52
GARDENER/ GROUND ATTENDANT	F20315	2ND YR	$392.50	$420.76	$436.76	$442.65
		3RD YR	$396.60	$425.16	$441.16	$447.11

CLEANERS & CARETAKERS (GOVERNMENT) AWARD 32 OF 1975

FUNCTION TITLE	FUNCTION ID	YEAR	16.06.95 (Weekly)	1.01.96 Plus 7.2% (Weekly)	1.01.96 Plus $16 pw (Weekly)	1.07.96 Plus 1.5% (Weekly)
		1ST YR	$386.10	$413.90	$429.90	$435.70
CLEANERS	F17521	2ND YR	$390.10	$418.19	$434.19	$440.05
		3RD YR	$394.30	$422.69	$438.69	$444.61
		1ST YR	$404.10	$433.20	$449.20	$455.27
CARETAKERS	F05534	2ND YR	$407.90	$437.27	$453.27	$459.39
		3RD YR	$411.80	$441.45	$457.45	$463.63

HOSPITAL WORKERS (GOVERNMENT) AWARD 21 OF 1966

FUNCTION TITLE	FUNCTION ID	YEAR	16.06.95 (Weekly)	1.01.96 Plus 7.2% (Weekly)	1.01.96 Plus $16 pw (Weekly)	1.07.96 Plus 1.5% (Weekly)
		1ST YR	$419.00	$449.17	$465.17	$471.46
DRIVER (> 3 tonnes)	F06031	2ND YR	$422.40	$452.82	$468.82	$475.16
		3RD YR	$425.80	$456.46	$472.46	$478.85

CHILDREN'S SERVICES (GOV'T) AWARD 1989

CHILD CARE GIVER

FUNCTION ID:

	16.06.95 $ Per Annum	1.01.96 Plus 7.2% $ Per Annum	1.01.96 Plus $32 pfn $ Per Annum	1.07.96 Plus 1.5% $ Per Annum
1st Year	20,477	21,951	22,786	23,093
2nd Year	20,894	22,398	23,233	23,546
3rd Year	21,294	22, 823	23,658	23,977
4th Year	21,845	23,418	24,253	24,581

* NOTE: For casual employees only the year 1 rate + 20% is payable. Employees are considered casual if they are employed for 4 weeks or less.

FORMSTRUCT INDUSTRIAL AGREEMENT.

No. AG 9 of 1995.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Accent Nominees Pty Ltd t/a Formstruct

No. AG 9 of 1995.

Formstruct Industrial Agreement.

COMMISSIONER P.E. SCOTT.

9 February 1995.

Order.

HAVING heard Mr W Swain on behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers, and there being no appearance by Accent

Nominees Pty Ltd t/a Formstruct, 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 1st pay period on or after the 23rd day of November 1994.

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

———

Schedule.

1.—TITLE

This Agreement will be known as the Formstruct Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

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

4.—APPLICATION

This Agreement shall be binding upon the Company, the officers and members of the Unions, and any persons eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. R 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 14.—Ratification of this Agreement and shall continue in effect until 31 July 1995. 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 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 Unions 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 a payment of a 7.5% increase in the Award hourly rate resulting in the wage rates at the date of ratification as expressed in Part 1 of Appendix A of this Agreement. Apprentices will receive a 7.5% increase on the rates of pay determined in accordance with the Award. A following wage increase shall be payable as a further instalment of 2.5% on the first pay period on or after 1 February 1995 resulting in the wage rates also contained in Appendix A at Part 2 of this Agreement.

11.—RELATIVITIES

The relativities in base rate and supplementary payments as currently contained in the Award will not be altered for the life of this Agreement.

12.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the following non-wage benefit schemes for the life of the Agreement: the Construction and Building Unions Superannuation Scheme, and the Western Australian Construction Industry Redundancy Fund.

13.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days, and will be replaced on a fair wear and tear basis:

(a) One (1) pair of safety boots;
(b) Two (2) t-shirts with collars;
(c) One (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.

14.—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 23rd day of November 1994.

K N Reynolds — STATE SECRETARY FOR AND ON BEHALF OF THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS AND PLASTERERS UNION OF WORKERS

Vic Pecotic — ON BEHALF OF THE COMPANY

Dated this 23rd day of November 1994.

APPENDIX A

	Part 1		Part 2	
	Date of Ratification		1 February 1995	
	Hourly Rate	Weekly Rate	Hourly Rate	Weekly Rate
Labourer Group 1	$12.77	$485.26	13.07	$496.66
Labourer Group 2	$12.31	$467.78	12.60	$478.80
Labourer Group 3	$11.98	$455.24	12.25	$465.50

FREMANTLE HOSPITAL (ENGINEERING WORKSHOPS) ENTERPRISE AGREEMENT No. AG 5 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fremantle Hospital

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Others

No. AG 5 of 1996.

COMMISSIONER C.B. PARKS.

23 February 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 5 OF 1996.

HAVING heard Mr C. McKinley on behalf of the first named party and Ms S. Jackson on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, Ms D. MacTiernan on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, the Automotive, Food, Metals Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch and the Western Australian Builders' Labourers, Plasterers Union of Workers and Mr M. Mitchell on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the document titled the Fremantle Hospital (Engineering Workshops) Enterprise Agreement, filed in the Commission on 5 January 1996, and subsequently amended by the parties following proceedings on 13 February 1996, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C. B. PARKS,
[L.S] Commissioner.

AGREEMENT

FREMANTLE HOSPITAL (ENGINEERING WORKSHOPS) ENTERPRISE AGREEMENT 1995

1.—TITLE

This Agreement shall be known as the 'Fremantle Hospital (Engineering Workshops) Enterprise Agreement'.

2.—ARRANGEMENT

3.—SCOPE AND PARTIES BOUND

(1) This Agreement shall be binding on the Board of Fremantle Hospital (the Hospital) and all employees engaged in the Engineering Workshops of Fremantle Hospital.

(2) This Agreement shall be binding on the following Unions:

- Australian Electrical, Electronic, Foundry and Engineering Union
- Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch
- Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch
- The Hospital Salaried Officers Association of Western Australia (Union of Workers)
- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch
- The Plumbers and Gas Fitters Employees Union of Australia, Western Australian Branch Union of Workers
- The Western Australian Builders Labourers, Plasterers and Painters Union of Workers

(3) The parties to this Agreement shall be the Board of Fremantle Hospital, the Union's detailed in subclause (2) of this clause and the Employees of the Fremantle Hospital Engineering Workshops.

(4) The parties will oppose any application to join other parties to the Agreement.

(5) At the time of registration of this Agreement the approximate number of employees covered by the Agreement is 43.

4.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read in conjunction with the following Awards;

(2) Building Trades (Government) Award 1968 No. 31A of 1966

Government Engineering and Building Trades Foremen and Sub Foremen Award No. 15 of 1973

Hospital Salaried Officers Award 1968 No. 39 of 1968

Engineering Trades (Government) Award 1967 Award No.'s 29, 30 and 31 of 1961 and 3 of 1962

Engine Drivers (Government) Award 1883 No. A 5 of 1983

Hospital Workers (Government Award No. 21 of 1966

Miscellaneous Government Conditions and Allowances Award No. 4 of 1992

(3) Where this Agreement is inconsistent with the provisions of these Awards the Agreement shall take precedent to the extent of any inconsistencies.

(4) This Agreement shall include the Shift Engineers Working Arrangement Agreement which shall be used and interpreted in conjunction with this Agreement. This Agreements shall take precedent to the extent of any inconsistencies with the Shift Engineers Working Arrangement Agreement.

5.—SINGLE BARGAINING UNIT

In accordance with the requirements of the State Wage Decision of January 1992 (72 WAIG 191) the employees and Fremantle Hospital have formed a single bargaining unit with respect to employees within the Engineering Workshops engaged by Fremantle Hospital.

6.—AIMS AND OBJECTIVES OF THIS AGREEMENT

To provide a framework on which the Hospital and the Workshops employees can build an ongoing relationship which:

(1) Facilitates the continuous improvements to its systems of work to the benefit of customers, employees and the Hospital.

(2) Promotes job satisfaction by enabling employees to gain and utilise a broader range of skills and access to relevant and applicable training programmes.

(3) Achieves improved communication and genuine consultation in the workplace.

(4) Promotes job security through improving the overall competitiveness of the Engineering Workshops.

7.—DISPUTE SETTLEMENT PROCEDURE

Any question, dispute or difficulty arising under this Agreement shall be dealt with in accordance with the procedures for dispute resolution set out in the relevant parent Awards or the Public Sector Management Act as appropriate.

8.—KEY PERFORMANCE INDICATORS

The parties have agreed to the following continuous quality improvement initiatives and productivity measurement monitoring programme:

(1) The parties have agreed that the measurement and monitoring of productivity improvements is important because it provides feedback to the parties on performance.

(2) The parties have agreed that the Workshops employees will develop a proactive, involved and whole of job approach to all tasks undertaken. This will require the ongoing development and use of the following initiatives;

(a) use of mobile work benches

(b) tradespeople maintaining the cleanliness of the worksite

(c) tradespeople being trained in and undertaking the erection of mobile scaffolding

(d) tradespeople removing insulation boxes as required

(e) the increased involvement of Shift Engineers in the planning of preventative maintenance

(f) the introduction of restructured reporting lines

(g) the implementation of the principle of annualised wages for workshops employees

(h) the introduction of quality improvement committees.

(3) The parties have agreed to the following performance indicators designed to reflect real and demonstrable improvements in efficiency and flexibility;

Key Performance Indicator 1—completion of work within category times

	Current	Goal for first 6 Months	Improvement	Goal for second 6 Months	Improvement	Total
1 day	74%	80%	8.11%	85%	6.25%	14.86%
1 week	68%	75%	10.29%	80%	6.67%	17.65%
1 month	76%	78%	2.63%	80%	2.56%	5.26%
Average Improvement			7.1%		8%	12.59%

The procedures for the allocation of priorities will be developed by the Workshop employees in conjunction with the Employer.

Key Performance Indicator 2—average repair cost per task

Current	Goal for first 6 Months	Improvement	Goal for second 6 Months	Improvement	Total
$69.16	$62.00	10.35%	$55	11.29%	20.47%

Key Performance Indicator 3—average maintenance cost per task

Current	Goal for first 6 Months	Improvement	Goal for second 6 Months	Improvement	Total
$79.76	$75.00	5.97%	$70	6.67%	12.24%
Average Improvement for 2 & 3		8%		8.98	16.35%

Key Performance Indicator 4—"Go Backs"

Current	Goal for first 6 Months	Improvement	Goal for second 6 Months	Improvement	Total
7%	5%	28.57%	2%	60%	71.43%

Key Performance Indicator 5—Time spent on supervision

Current	Goal for 6 Months	Improvement
11%	8%	27.27%

9.—WAGES

(1) An Employees covered by this Enterprise Agreement shall be paid wages in accordance with the award applicable to the Employee at the time this Agreement is ratified. Any wagE increases in the relevant awards from the date of ratification of the agreement will not apply to the employees covered by this agreement.

(2) The wage rate payable pursuant to the applicable award shall be increased by 2% effective the date of this Enterprise Agreement being registered with the Western Australian Industrial Relations Commission. Such increase shall be applicable for the term of the Agreement.

(3) The wage increases outlined in subclauses (4) and (5) shall be in addition to the 1st and 2nd arbitrated safety net adjustments available in accordance with the December 1994 State Wage Case Decision of the Western Australian Industrial Relations Commission.

(4) In addition to the increase detailed in subclause (2) the wage rate shall be increased 6 months after the date of this Agreement being registered in accordance with the formulae (A + B)/2 where;

$$A = \frac{\text{Actual Average Improvement for KPI 1 (for first 6 months)}}{7.1} \times 2\%$$

$$B = \frac{\text{Actual Average Improvement for KPI 2 and 3 (for first 6 months)}}{8} \times 2\%$$

(5) In addition to the increase detailed in subclause (3) the wage rate shall be increased 12 months after the date of this Agreement being registered in accordance with the formulae (C + D)/2 where;

$$C = \frac{\text{Actual Average Improvement for KPI 1(for second 6 months)}}{8} \times 2\%$$

$$D = \frac{\text{Actual Average Improvement for KPI 2 and 3 (for second 6 months)}}{8.98} \times 2\%$$

10.—COMMITMENTS

(1) The Hospital 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 best interest of increasing the productivity and efficiency for the collective benefit of the Hospital and the Workshops employees.

(2) The parties are committed to the continued negotiation and development of a comprehensive Enterprise Bargaining Agreement addressing issues such as work practices, conditions of employment, the working environment and training strategies with the objective of further improving efficiency and effectiveness and increasing job satisfaction.

(3) The parties are committed to the agreed continuous quality improvement initiatives and productivity measurement monitoring programme.

(4) The parties are committed to the establishment of a Consultative Committee to oversee the implementation of this Agreement and to address any workforce changes that may arise during the term of the Agreement.

(5) The Consultative Committee will ensure that the framework of this enterprise agreement is adhered to through the regular meeting of the consultative committee.

(6) The Consultative Committee will oversee the implementation of measures that have been designed to improve the efficiency and productivity of the Engineering Workshops.

(7) The Consultative Committee shall consist of representatives of employees and the employer. The employee representatives shall be elected by the employees of the Engineering Workshops.

11. ABSENTEEISM

(1) The parties agree that the Consultative Committee will develop a strategy aimed at reducing uncertified absenteeism.

(2) The Committee will work cooperatively to develop and implement agreed measures to reduce absenteeism by;

(a) examining reasons for absenteeism, including consideration of working environment, job design and impact of family responsibilities and other personal factors, and

(b) develop and implement agreed measures to reduce absenteeism.

(3) The Committee will;

(a) disseminate "best practice" approaches for reducing absenteeism.

(b) ensure all parties are informed of innovative approaches developed and implemented in other agencies.

(c) provide a forum for resolving any difficulties concerning absenteeism.

12.—TERMS OF AGREEMENT

(1) This Agreement shall take effect from the date of registration with the Western Australian Industrial Relations Commission and shall remain in force a period of 18 months.

(2) The parties will review the terms of this agreement no later than six months prior to its expiration.

13.—AGREEMENT 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 any other Enterprise Agreements whether they involve Fremantle Hospital or not.

14.—NO EXTRA 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.

15.—SIGNATORIES TO THE AGREEMENT

(Signed by P Howe)
P HOWE
ON BEHALF OF FREMANTLE HOSPITAL BOARD

(Signed by J. Murie for W. Games)
W.E. GAME
ON BEHALF OF THE AUSTRALIAN ELECTRICAL, ELECTRONIC, FOUNDRY AND ENGINEERING UNION

(Signed by H. Creed) (Seal affixed)
H CREED
ON BEHALF OF THE AUSTRALIAN LIQUOR, HOSPITALITY AND MISCELLANEOUS WORKERS UNION, MISCELLANEOUS WORKERS DIVISION, WESTERN AUSTRALIAN BRANCH

(Signed by D. McIntyre) (Seal affixed)
D MCINTYRE
ON BEHALF OF THE CONSTRUCTION, MINING, ENERGY, TIMBERYARDS, SAWMILLS AND WOODWORKERS UNION OF AUSTRALIA—WESTERN AUSTRALIAN BRANCH

(Signed D. Hill and M. Hartland) (Seal affixed)
D. HILL and M. HARTLAND
ON BEHALF OF THE HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)

(Signed by J. Sharp-Collett) (Seal affixed)
J. SHARP-COLLETT
ON BEHALF OF THE AUTOMOTIVE, FOOD, METALS, ENGINEERING, PRINTING AND KINDRED INDUSTRIES UNION OF WORKERS—WESTERN AUSTRALIAN BRANCH

(Signed by K. Reynolds) (Seal affixed)
K REYNOLDS
ON BEHALF THE WESTERN AUSTRALIAN BUILDERS LABOURERS, PLASTERERS AND PAINTERS UNION OF WORKERS

(Signed by S. Doherty for W. Deakin) (Seal affixed)
W DEAKIN
ON BEHALF OF THE PLUMBERS AND GAS FITTERS EMPLOYEES UNION OF AUSTRALIA, WESTERN AUSTRALIAN BRANCH UNION OF WORKERS

GUILDFORD GRAMMAR SCHOOL ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 60 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

Guildford Grammar School.

No. AG 60 of 1996.

Guildford Grammar School Enterprise Bargaining Agreement 1996.

COMMISSIONER A.R. BEECH.

12 March 1996.

Order.

HAVING heard Ms T. Howe on behalf of the Applicant and Mr J. McCausland 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 Guildford Grammar School Enterprise Bargaining Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule commencing the first pay period on and from the 11th day of March 1996

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Guildford Grammar School Enterprise Bargaining Agreement 1996 and shall replace the Guildford Grammar School Enterprise Bargaining Agreement 1994.

2.—ARRANGEMENT

3.—PARTIES TO THE AGREEMENT

This agreement is made between Guildford Grammar School (the School) and The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to teachers who are employed within the scope of the Independent Schools' Teachers' Award 1976 (the award).

(2) The number of employees covered by this agreement is 80.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall come into effect on the 1st January 1996 and shall apply until 31 December 1997.

6.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award.

Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the School and reached full agreement.

8.—OBJECTIVE

The nature and purposes of this agreement are to:

(1) Further develop initiatives arising out of the award restructuring process.

(2) Accept a mutual responsibility to maintain a working environment which will encourage the School and its staff to become genuine participants and contributors to the School's operations.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The School and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teachers' time.

9.—SALARY RATES

(1) The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the award and amended by Clause 9.—Salary Rates of the Guildford Grammar School Enterprise Bargaining Agreement 1994 shall be increased by the following amounts:

7.5% on and from 1 January 1996; and
7.5% on and from 1 January 1997.

(2) As a consequence, the annual salary rates payable to the teaching staff will be:

	Current Base Salary	+ 7.5% 1 January 1996	+ 7.5% on 1996 Base Salary 1 January 1997
Level 1	23,449	25,208	27,097
Level 2	24,873	26,738	28,743
Level 3	26,297	28,269	30,389
Level 4	27,942	30,038	32,290
Level 5	29,476	31,686	34,062
Level 6	30,790	33,099	35,582
Level 7	32,105	34,513	37,100
Level 8	33,748	36,279	39,000
Level 9	35,556	38,221	41,089
Level 10	37,036	39,814	42,800
Level 11	38,350	41,225	44,317
Level 12	39,994	42,994	46,218
Level 13	41,638	44,760	48,117

(3) All promotional allowances will be increased to reflect a benchmark gap in gross salary of 5.7% for heads of major departments relative to Education Department of Western Australia Heads of Department Level 3 as a 1 January 1996 ($49,086.65).

(4) In the event of a safety net adjustment being applied to the award, absorption of such an adjustment shall be made into the salary rates determined by this clause.

10.—AGREED EFFICIENCY IMPROVEMENTS

(1) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of clause 11.—Salaries of the award, relief teachers, employed for five days or less, may be engaged by the day or half day and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(2) First Teaching Appointment

A teacher appointed to his or her first teaching position who, at the end of the initial twelve months, is deemed by the School not to have developed adequate teaching skills, may be appointed as a temporary teacher subject to subclause (2) of Clause 2.—Induction of Appendix 1 of the award.

(3) Long Service Leave

Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, a teacher who has completed eight years' continuous service shall be entitled, subject to agreement between the School and the teacher, to take that portion of his/her long service leave accrued at the rate of 1.3 weeks per year of continuous service, such leave not to exceed the total accrued by the date on which the leave commences, to correspond with a complete school term.

(4) Promotion Positions

While maintaining the promotion structure described in the award the School shall have the discretion to adapt this structure to meet its educational needs. The normal processes of appointment to promotion positions will be followed.

(5) Responsibility Allowances

A member of staff will cease to be paid a responsibility allowance after relinquishing the appointment concerned. However, the relinquishing of such an appointment may lead to the approval of senior teacher classification provided that the appropriate criteria are met.

The Headmaster, upon application by a staff member, may approve exceptions to the cessation of the payment of a responsibility allowance at his discretion.

(6) Communication with Parents

Teaching staff in the senior school will participate in two parent-teacher interview nights each year in addition to the parent-tutor interview night. Furthermore, all teaching staff acknowledge their responsibility to contact parents as soon as significant academic or pastoral problems emerge with their students.

(7) Tutorial Programmes

The requirements of a house tutor in the senior school are detailed in the Staff Handbook.

This includes an expectation to follow a formal pastoral programme co-ordinated by the tutor's Housemaster and a commitment to undertake prescribed duties and to support the House through involvement in House sport, activities and functions. The operation of the tutorial programme will be reviewed during 1996.

(8) School Policies

All teaching staff agree to abide by the policies, rules and regulations of the school as determined by the Council and Headmaster, and as amended from time to time, in consultation with the parties concerned.

11.—DISPUTE RESOLUTION PROCEDURE

(1) A dispute is defined as any question, dispute or difficulty arising out of this agreement.

(2) The parties to the dispute shall attempt to resolve the grievance in a timely manner and with due regard to the rights of the parties, using the following procedure:

(a) Stage 1: The teacher (accompanied by an ISSOA or other representative if the teacher wishes) shall raise the issue with the appropriate senior staff member who will attempt to resolve the matter expeditiously.

(b) Stage 2: If the issue cannot be resolved satisfactorily at Stage 1 the appropriate senior staff member will convene a meeting of the parties (and their representatives if desired by the parties) to discuss and resolve the grievance.

(c) Stage 3: If the issue cannot be resolved at Stage 2, the senior staff member shall, within a reasonable time, prepare a written report for the Headmaster.

(d) Stage 4: The Headmaster will hear and consider the grievance and will determine the matter in consultation with the School Council, as appropriate.

(e) Stage 5: Should this determination not resolve the matter, either of the parties may refer the grievance to the Western Australian Industrial Relations Commission.

(3) For the duration of the grievance process normal work is to continue, except as provided for in the Occupational Health, Safety and Welfare Act 1984 (WA).

(4) The parties may refer any matter pertaining to this agreement to the School's Enterprise Agreement Negotiating Committee.

12.—OTHER MATTERS

The parties agree to consult from term 1 1996 on further efficiency and effectiveness issues, and will establish consultative processes and time frames to identify and recommend improvements in the following areas, including but not limited to:

(1) Working Conditions

The parties agree to discuss and develop strategies for improvements to the staff working environment with particular reference to, but not limited to, teaching loads, DOTT time, relief supervision, class sizes and staff professional support.

(2) Extra Curricular Involvement

The parties agree to discuss and determine the involvement of staff in additional work requirements beyond the classroom, commonly known as extra curricular involvement. The discussion is to address issues such as the School's expectations, the question of choice, time and/or monetary allowance and a fair and equitable balance between the enterprise requirements and staff family responsibilities.

(3) Professional Development

The parties agree to discuss and determine the needs of both the School and the teacher in the ongoing professional development and training requirements of staff.

(4) Salary Packaging

Notwithstanding the provisions of clause 11.—Salaries of the award and in particular paragraphs (1)(a) and (1)(c), the parties agree to negotiate on such options, commonly known as Salary Packaging, as they are of mutual advantage to the employer and employee in securing and maintaining efficiencies.

(5) Tenured Agreements

The parties agree to discuss the introduction of fixed term and other employment arrangements for promotional positions.

(6) Staff Appraisal

The parties agree to consult regarding staff appraisal.

Recommendations arising from the above consultative process will be expected to be put to Council and teaching staff for decision by 30 September 1997.

The parties have, as an objective, that such recommendations could form the basis of a subsequent Enterprise Bargaining Agreement.

13.—NO FURTHER CLAIMS

It is a condition of this agreement that the parties will not seek any further claims with respect to salaries or conditions unless they are consistent with the State Wage Case Principles, except for the maintenance of the relativities of those on promotional allowances as established by this agreement for possible implementation in 1998.

14.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

15.—SIGNATORIES

M.D. Padbury

Guildford Grammar School

I.J. Sands

Independent Schools' Salaried Officers Association of Western Australia, Industrial Union of Workers

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METROBUS SALARIED OFFICERS ENTERPRISE BARGAINING AGREEMENT 1995.
No. PSA AG 9 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metropolitan (Perth) Passenger Transport Trust (Metrobus)

and

The Metropolitan (Perth) Passenger Transport Trust Officers' Union of Workers, Perth

No. PSA AG 9 Of 1995.

PUBLIC SERVICE ARBITRATOR C.B. PARKS.

29 February 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSA AG 9 OF 1995

HAVING heard Mr J. Lange on behalf of the first named party and Mr D.A. Hey on behalf of the second named party and;

WHEREAS the parties presented an agreement to the Public Service Arbitrator for registration as an Industrial Agreement on 16 January 1996; and

WHEREAS the Public Service Arbitrator is now satisfied that the agreement complies with Section 41A and Section 49A of the Industrial Relations Act, 1979;

NOW THEREFORE the Public Service Arbitrator pursuant to the powers conferred on him under the Industrial Relations Act, 1979, hereby orders:

THAT the document titled the Metrobus Salaried Officers Enterprise Bargaining Agreement 1995, filed in the Commission on 20 December 1995, and subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C. B. PARKS,
[L.S] Public Service Arbitrator.

METROBUS ENTERPRISE BARGAINING AGREEMENT 1995

1—TITLE

This Agreement shall be known as the MetroBus Salaried Officers Enterprise Bargaining Agreement 1995.

2—ARRANGEMENT

3—PARTIES BOUND

(1) This Agreement shall apply to and be binding upon the Metropolitan (Perth) Passenger Transport Trust [the Employer], hereafter referred to as MetroBus, the Metropolitan (Perth) Passenger Transport Trust Salaried Officers' Union of Workers (the Union) and all persons employed by MetroBus who are members of or who are eligible to be members of the Union.

(2) The persons employed by MetroBus and referred to in sub-clause (1) hereof are covered by the terms and conditions of the Transport Trust Salaried Officers Award, No 3 of 1977.

(3) This Agreement will apply to an estimated 245 employees.

4—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate from the beginning of the first pay period commencing on or after 17 December 1995 and shall remain in force for 12 months, subject to clause 12—Renewal of Agreement.

(2) Further, notwithstanding sub-clause (1) above, the parties agree that nothing within this Enterprise Agreement will preclude employees of MetroBus from accessing benefits available from a National Wage Case or Western Australian State Wage Case.

5—RELATIONSHIP TO EXISTING AWARDS

This Agreement shall be read and interpreted wholly in conjunction with the Transport Trust Salaried Officers Award No 3 of 1977, provided that where there is any inconsistency, the terms of this Agreement shall prevail to the extent of any such inconsistency.

6—OBJECTIVES

(1) The parties are committed to identifying common objectives which will lead to improved employer-employee relations and improved productivity, flexibility, efficiency, quality of employment and delivery of quality accredited services.

(2) MetroBus wishes to enhance the competitiveness and efficiency of the business by being an excellent passenger transport organisation. MetroBus aims to achieve its goal by, as a skilled and motivated team, providing attractive and efficient passenger services.

MetroBus will organise and manage its operations to deliver world class standards of performance and promote a culture within the organisation which ensures ongoing improvements to its customer service.

(3) The parties are committed to the following principles in pursuing the above:

(a) To promote the development of trust and motivation within MetroBus and to continue to foster good employee relations;

(b) Honesty, mutual respect and a business-like attitude to prevail at all times;

(c) A free exchange of relevant information and ideas to prevail at all times subject to agreed commercial confidentiality;

(d) Equity;

(e) The opportunity for proper and effective participation, through the proper consultative processes.

(f) To enhance the quality and security of employment for MetroBus employees through the ongoing implementation of agreed structural efficiency processes together with the philosophies and initiatives detailed in this Agreement; and

(g) To develop employees' appreciation of the needs of all MetroBus stakeholders; ie. customers, employees, Government and MetroBus.

7—BARGAINING UNIT

(1) This Agreement has been negotiated through a single Enterprise Bargaining Unit (EBU).

(2) The EBU comprises representatives of the Union and members of management nominated by the Chief Executive of MetroBus.

(3) The EBU is committed to implementation of the measures and processes described in this Agreement, and to the consultative and educational actions required to facilitate their acceptance by the affected employees. The framework for implementation and consultation is defined at clause 13—Consultation of this Agreement.

(4) The EBU has the responsibility for the implementation of measures identified in this Agreement and agreed between the parties.

(5) The parties agree that any dispute occurring as a consequence of any matter in this Agreement shall be settled in accordance with the Dispute Settlement Procedure at clause 16 and Appendix A of this Agreement.

8—PRODUCTIVITY IMPROVEMENT—BROAD AGENDA ITEMS

(1) In accordance with the State Wage Fixing Principles the parties acknowledge that a broad agenda must be considered in the implementation of productivity improvements within MetroBus.

(2) Items considered under the broad agenda will include, but not be limited to:

(a) Working towards the elimination of demarcation of work that restricts efficient and effective work practices to achieve the most efficient means of carrying out the work, provided that the employees have the necessary skill, knowledge, training and competence;

(b) Introduction of new equipment/technology designed to improve the efficiency and continuity of operations and the quality of product and customer service;

(c) Assessing the need for flexible work arrangements to improve efficiency or assist employees with family responsibilities;

(d) Working towards the development of a Human Resources Plan, addressing issues including competencies development, career planning, job redesign, redeployment and retraining.

9—SPECIFIC MEASURES TO IMPROVE PRODUCTIVITY

(1) Specific measures to improve productivity will be implemented in accordance with the consultative provisions referred to in Clause 13—Consultation.

(2) This Agreement is divided into three stages, with specific measures to be achieved at each stage in accordance with the following sub-clauses. The parties are committed to pursue and complete all the specific measures detailed in each stage.

(3) Enterprise Bargaining payments will be dependent upon all structural efficiency and workplace reform changes which occur as a result of this Agreement being accepted at the relevant workplace.

STAGE ONE

This Enterprise Agreement will initially:

* Absorb access to the third $8 per week arbitrated safety net adjustment.
* Ensure that MetroBus Salaried Officers remain within the State Industrial Relations jurisdiction.
* Introduce the concept of performance based salaries with provision for a small variance in salary. (Ref Appendix C)
* Recognise a proportion of past productivity gains and provide the means to retain valuable staff by combating higher salaries being paid by private and public sector competitors.
* Provide for individual, fixed term contracts of employment.

STAGE TWO

* In the event of this Agreement providing further staffing reductions, a one third share of productivity improvements effected by exceeding the present target of 218 Full Time Equivalents (FTEs) and resulting in net savings to MetroBus will be distributed to employees as part of a further Agreement.
* This clause refers to the existing levels of service. In the event that reductions occur as a result of loss of tenders than the target of 218 FTE's will be reduced accordingly on a pro rata basis before allocating savings from further reductions to this Agreement.

STAGE THREE

The Agreement will also provide, during its term, an examination of:

* Salary aggregation, to be at no additional cost to MetroBus.
* Changes to working conditions, that will provide improved flexibility and productivity.

10—ENTERPRISE BARGAINING PAYMENT

(1) The additional payments are payable on the basis that the employees covered by this Agreement continue to fully

participate in and fully support the Agreement, and specifically the productivity improvement program as outlined in clause 8—Productivity Improvement—Broad Agenda Items and clause 9—Specific Measures to Achieve Productivity of this Agreement.

(2) Subject to subclause (1) the rates of pay shall be as prescribed in Appendix B—Salary Scale. These rates have been calculated to reflect the following increases:

(a) An additional payment equal to 5% of each employee's classified Award Rate of Pay inclusive of the first two $8 per week Safety Net Adjustments will be paid from the operative date of this Agreement. (Ref Appendix B)

(b) An additional 2.5% of each employee's classified Award Rate of Pay inclusive of the first two $8 per week Safety Net Adjustments shall be contributed to a pool and be available to all employees in the form of a lump sum bonus payment, payable:

(i) From the first pay period on or after 1 June 1996, on the condition that the parties have satisfactorily developed a performance appraisal system.

(ii) From the first pay period on or after 1 December 1996, which will be in accordance with the bonus related to performance assessment.

11—COMMITMENTS

(1) All parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(2) This Agreement shall not operate to cause any employee to suffer a reduction in ordinary time earnings; or to depart from standards of the Minimum Conditions of Employment Act 1993 in regard to hours of work and annual leave with pay; or long service leave with pay.

12—RENEWAL OF AGREEMENT

(1) The parties will review the contents of this Agreement in six months from the date of operation, including an assessment of the implementation of the initiatives outlined in clause 8—Productivity Improvement—Broad Agenda Items and clause 9—Specific Measures to Achieve Productivity of this Agreement, and the extent to which their implementation has contributed to the achievement of improved productivity.

This review is expected to result in the re-negotiation, renewal or replacement of this Agreement effective from the end date of this Agreement. In the event this does not occur, this Agreement will remain in force subject to ongoing agreement of the parties.

(2) It is acknowledged by the parties that the workplace reform process is ongoing and may form the basis of future agreements as provided in this clause. Likewise, it is open to the parties to seek the ongoing application of the final Enterprise Bargaining Rate of Pay of this Agreement.

(3) The parties will commence discussions after the completion of Stage Two of clause 9—Specific Measures to Improve Productivity to determine that MetroBus performance targets can be met by agreeing on the labour productivity and performance indicators that can be used in the future.

13—CONSULTATION

(1) A consultative and consensus approach to assist in the decision making process will be established immediately, in order to implement and identify specific initiatives aimed at improving productivity.

(2) A Consultative Committee will be established to examine and determine specific initiatives relating to the improvement of productivity for the duration of this Agreement as set out in clause 8—Productivity Improvement—Broad Agenda Items and clause 9—Specific Measures to Improve Productivity. The objective of Consultative Committees shall be to:

(a) Develop and coordinate proposals for improving the efficiency, effectiveness, career prospects, productivity, training opportunities, influence on decision making and quality of working life of employees;

(b) Ensure that wide consultation occurs so that employee knowledge, experience and aspirations are reflected in proposals being developed; and

(c) Ensure that all employees have been properly consulted before changes are implemented. This subclause is not intended to impinge upon the management, implementation and operation of change within MetroBus in accordance with pre-existing rights and obligations.

(d) Refer matters to the Enterprise Bargaining Unit (EBU) for implementation.

14—INDIVIDUAL FIXED TERM CONTRACTS

(1) MetroBus may negotiate a fixed term contract with an existing employee as at the date of implementation of this Agreement in accordance with this clause.

(2) The fixed term contract must be agreed voluntarily and without duress, coercion or intimidation. It shall not be a condition precedent to the appointment or transfer of any existing employee that the employee shall accept a fixed term contract.

(3) The fixed term contract shall provide benefits of no lesser overall standard than provided by this Agreement.

(4) The Union shall be given seven days notice in writing by MetroBus of the position in respect which MetroBus seeks to pursue a fixed term contract on each occasion that a fixed term contract is sought by MetroBus.

(5) The employee shall have the right to involve the Union in representing and advising the employee and negotiating the terms of the contract with MetroBus.

(6) Once the individual contract has been signed by both MetroBus and the employee, there shall be a seven day cooling off period during which the employee may withdraw from the individual contract by notice in writing to MetroBus.

(7) Once the fixed term contract has expired and no other contract has been negotiated and agreed in accordance with this clause, the salary and conditions of employment shall be as prescribed by this Agreement, or if no Agreement applies at that time, then the salaries and conditions applying to officers generally shall apply.

15—SITE SPECIFIC AGREEMENTS

Nothing in this Agreement prevents the making and implementing of site specific agreements which, by their implementation, improve the efficiency of the operation at the particular site and at the same time enhance the opportunity for all employees to share in the benefits and improve the quality of their working conditions.

16—DISPUTE SETTLEMENT PROCEDURE

(1) The parties agree that all matters relating to this Agreement will be addressed through the appropriate consultation process and that any disputes will be processed in accordance with the Dispute Settlement Procedure (DSP) Agreement as appended. (Ref Appendix A)

(2) Any disagreements will be addressed through discussions at the work area concerned prior to the dispute being notified pursuant to the DSP.

SIGNATORIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement on behalf of the respective organisations party to this Agreement.

SIGNED. (Signed by M J Wadsworth) DATE. 19 Dec 95
M J WADSWORTH
CHIEF EXECUTIVE
METROPOLITAN (PERTH) PASSENGER TRANSPORT TRUST [MetroBus]

SIGNED. (Signed by D A Hey) (Seal Affixed)
D A HEY DATE. 20.12.95
ACTING SECRETARY
METROPOLITAN (PERTH) PASSENGER TRANSPORT TRUST SALARIED OFFICERS' UNION OF WORKERS

Appendix A

DISPUTE SETTLING PROCEDURE

(a) Subject to the Public Sector Management Act 1994 any questions, disputes or difficulties which arise under this Industrial Agreement will be dealt with in accordance with the procedures contained herein.

(b) The parties shall give prior notice to one another of any matters which may reasonably be expected to give rise to any dispute or grievance.

(c) In the first instance endeavours will be made to resolve the dispute in a consultative manner in keeping with the spirit of this Agreement.

(d) The parties recognise that problems related to safety and other hazardous situations, if unable to be resolved under (b) and/or (c) above, should be dealt with in accordance with the Occupational Health, Safety and Welfare Act and its relevant provisions.

(e) Where in any case a dispute or grievance cannot be resolved by direct consultation between the parties, the dispute or grievance is to be processed according to the following stages.

Stage One

The matter is to be discussed at the local job level. In attendance are to be the officer concerned, union representation (if so desired by the officer concerned) and the immediate line supervisor.

Stage Two

The matter is to be discussed with the officer concerned, union representation (if so desired by the officer concerned) and the relevant line manager.

If the matter remains unresolved, either party must within two clear ordinary working days, notify the other in writing that the parties are in dispute.

Stage Three

The matter is to be discussed at a meeting between State Branch Officials of the Union, and senior management representatives of MetroBus. Unless otherwise agreed between the parties, the meeting is to be held within two clear ordinary working days of the notification referred to above.

(f) Should the issue be of such a nature as to remain unresolved after exhausting the consultative approach described above, the parties will refer the matter to the WA Industrial Relations Commission for assistance. The Commission will have available all of the normal conciliation and arbitration powers available under the Western Australian Industrial Relations Act 1979 in resolving the dispute.

(g) The parties commit themselves to maintain the status quo and not take any industrial action during the course of the dispute settlement procedure set out above. Either party may nominate that time limits be placed on the completion of discussions throughout the procedure. In such cases up to seven days will be available for each stage of discussions to be finalised, with a minimum of 14 clear days cooling off period before any proposed industrial action is initiated. A minimum of seven clear days prior notice of the details of any intended action will be provided.

(h) This procedure does not cover TLC, ACTU or National Union matters, except where they directly impact on MetroBus' provision of services.

Appendix B

SALARY SCALE

LEVEL	SALARY PER ANNUM AWARD RATE	First & Second Safety Net Adjustments	SUB-TOTAL	5%	TOTAL
Level 1					
Under 17 years	10,445	428	10,873	544	11,417
17 years	12,207	500	12,707	635	13,342
18 years	14,238	584	14,822	741	15,563
19 years	16,481	676	17,157	858	18,015
20 years	18,507	760	19,267	963	20,230
21 years or 1st year	20,331	834	21,165	1058	22,223
22 years or 2nd year	20,983	834	21,817	1091	22,908
23 years or 3rd year	21,634	834	22,468	1123	23,591
24 years or 4th year	22,281	834	23,115	1156	24,271
25 years or 5th year	22,932	834	23,766	1188	24,954
26 years or 6th year	23,583	834	24,417	1221	25,638
27 years or 7th year	24,332	834	25,166	1258	26,424
28 years or 8th year	24,850	834	25,684	1284	26,968
29 years or 9th year	25,616	834	26,450	1323	27,773
Level 2					
1st year	26,533	834	27,367	1368	28,735
2nd year	27,236	834	28,070	1404	29,474
3rd year	27,975	834	28,809	1440	30,249
4th year	28,756	834	29,590	1480	31,070
5th year	29,573	834	30,407	1520	31,927
Level 3					
1st year	30,696	834	31,530	1577	33,107
2nd year	31,571	834	32,405	1620	34,025
3rd year	32,473	834	33,307	1665	34,972
4th year	33,399	834	34,233	1712	35,945
Level 4					
1st year	34,669	834	35,503	1775	37,278
2nd year	35,664	834	36,498	1825	38,323
3rd year	36,688	834	37,522	1876	39,398
Level 5					
1st year	38,660	834	39,494	1975	41,469
2nd year	39,993	834	40,827	2041	42,868
3rd year	41,378	834	42,212	2111	44,323
4th year	42,815	834	43,649	2182	45,831
Level 6					
1st year	45,126	834	45,960	2298	48,258
2nd year	46,697	834	47,531	2377	49,908
3rd year	48,323	834	49,157	2458	51,615
4th year	50,059	834	50,893	2545	53,438
SPECIFIED CALLINGS					
Level 2/4					
1st year	26,533	834	27,367	1368	28,735
2nd year	27,975	834	28,809	1440	30,249
3rd year	29,573	834	30,407	1520	31,927
4th year	31,571	834	32,405	1620	34,025
5th year	34,669	834	35,503	1775	37,278
6th year	36,688	834	37,522	1876	39,398
Level 5					
1st year	38,660	834	39,494	1975	41,469
2nd year	39,993	834	40,827	2041	42,868
3rd year	41,378	834	42,212	2111	44,323
4th year	42,815	834	43,649	2182	45,831
Level 6					
1st year	45,126	834	45,960	2298	48,258
2nd year	46,697	834	47,531	2377	49,908
3rd year	48,323	834	49,157	2458	51,615
4th year	50,059	834	50,893	2545	53,438

Appendix C

PERFORMANCE MANAGEMENT SYSTEM

The Parties agree:

To introduce a performance based pay scheme applicable to all participating employees with the design and implementation of the scheme being completed within 6 months from the date of registration of this Agreement. The procedures for the operation of the scheme, including performance development and evaluation, will be subject to the agreement of both the parties but will reflect the characteristics outlined below:

- The scheme will operate for one performance development and evaluation cycle only (of approximately 6 months duration), at the conclusion of which, each participating employee will be eligible for one incentive payment, subject to achievement of agreed performance standards.
- The scheme will run as a pilot, with a joint review of its operation and impact occurring at the time of payment of incentives. The review of the scheme will be based on feedback from a representative sample of employees and line managers.
- It will be a combination of a target/objective based and behavioural competency based performance standards.
- The performance standards (ie targets/objectives and behaviours) for an employee will be set jointly between the line manager and the employee, in accordance with agreed procedures.
- The level of achievement of an employee against the agreed performance standards will be determined by the line manager, in accordance with the agreed procedures.
- Part of the performance evaluation of each line manager will include an assessment of the line manager's management of the scheme within their area of responsibility.
- The setting of performance standards and the evaluation of an employee's performance, for the purposes of determining eligibility for an incentive payment, will take into account the underlying assumption that the existing base salary of each employee is in recognition of competent performance of their assigned duties and responsibilities (ie incentive payments are for the achievement of performance above that normally expected).
- Performance evaluation will be made using a 5 category performance rating model and will include a limited degree of performance ranking of all employees. The top 10% and the bottom 10% of employees will automatically be placed in the top performance level and the bottom level for the purposes of determining their incentive payment. (The actual percentage of employees within these two levels of performance, following performance evaluation, can exceed this 10% minimum.)

- A grievance mechanism will exist to deal with any grievance raised, particularly when performance standards are being set (ie targets/objectives and behaviours) and when assessment of achievement against the agreed performance standards is occurring. This mechanism will provide for management and union involvement.
- The existing merit pay scheme (ie annual increment review within a classification level) will continue unaffected by this pilot performance based pay scheme.

PIONEER CONCRETE PTY LTD (WA) BUNBURY QUARRY (ENTERPRISE BARGAINING) AGREEMENT 1995
No. AG 106 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pioneer Concrete (WA) Pty Ltd

and

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

No. AG 106 of 1995.

Pioneer Concrete Pty Ltd (WA) Bunbury Quarry (Enterprise Bargaining) Agreement 1995.

COMMISSIONER P.E. SCOTT.

18 August 1995.

Order.

HAVING heard Mr A C Tomlinson on behalf of the Applicant and Mr R Blewitt 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—

1. THAT the Enterprise Bargaining Agreement in the terms of the following Schedule be registered with effect on and from the 10th day of July 1995.
2. THAT the Pioneer Concrete (WA) Pty Ltd Bunbury Quarry (Enterprise Bargaining) Agreement 1994 (No. AG 24 of 1994) be hereby cancelled.

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

Schedule.

1.—TITLE

This industrial agreement shall be referred to as the Pioneer Concrete Pty Ltd (WA) Bunbury Quarry (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

3.—SCOPE AND PARTIES TO THIS AGREEMENT

(1) This agreement shall apply to and be binding on Pioneer Concrete (WA) Pty Ltd ("the company") and all the employees engaged in or in connection with the company's Bunbury quarry operations.

(2) This agreement shall also be binding upon The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

(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 Quarry Workers' Award, 1969 (No. 13 of 1968).

(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 January 1992 (72 WAIG 191) the employees and the company have formed a single bargaining unit in respect to the Bunbury quarry operations.

(2) The single bargaining unit will ensure that the framework of this enterprise agreement is adhered to by regularly conferring with 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 Bunbury quarry to ensure the company remains competitive within the quarrying industry.

(2) The company remains committed to the continual training of all quarry 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) Furthermore, 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 quarry will become a safer working environment.

7.—WAGES

(1) The wage rates to apply pursuant to this agreement are as follows:

AWARD	LEVEL	CURRENT RATE $	5% INCREASE UPON RATIFICATION $	5% INCREASE ON CURRENT RATE 12 MONTHS AFTER FIRST INCREASE $
Quarry Workers' Award, 1969	5	397.53	417.41	437.28
	4	412.23	432.84	453.45
	3	428.19	449.60	471.01
	2	438.38	460.30	482.22
	1	443.10	465.26	487.41

(2) The rates prescribed in this clause are inclusive of all industry and leading hand allowances.

(3) The increase prescribed in this clause shall operate with effect on and from the 10th day of July 1995.

8.—AGREED PRODUCTIVITY IMPROVEMENTS

(1) Electronic Funds Transfer

It is agreed that all wages for all employees will be paid by electronic funds transfer into the employee's nominated financial institution account.

(2) Use of Staff Personnel

(a) Staff personnel will be allowed to operate any plant or machinery for the purpose of optimising produc-

tivity and efficiency. This will apply in situations of employee absenteeism or to relieve employees during rest periods and meal breaks.

(b) It is not the intention of the company to reduce ordinary or overtime earnings for employees, however the parties acknowledge the importance of keeping plant and machinery working within the scope of operating hours.

(3) Immediate Starts

(a) The employees will ensure that they are on their machines or at their place of work by their designated start times.

(b) The company may require one employee to start work half an hour earlier to ensure the preparation of machines and plant for a prompt start.

(4) Annual Leave

Annual leave will be reduced to ten (10) days or less within each anniversary date of this agreement taking effect. This shall mean that no employee may have an entitlement of accrued/pro rata leave of more than six (6) weeks.

(5) Absence Through Sickness

(a) The consultative committee has agreed that management/employees work together to achieve a significant reduction in absenteeism through sickness.

(b) A target of six (6) days (per single/double sickness days) has been agreed by the committee, and employees commit to achieving this target.

(c) Normal award provisions will apply in that any employee will be required to produce a doctor's certificate after having had two (2) days off in the twelve (12) month period with no certificate. Genuine sickness (e.g. broken arm) will not be included in the annual target of six (6) days.

(6) Occupational Health and Safety

The parties to this agreement recognise the need to improve the occupational health and safety of the workplace by reducing lost time injuries at zero per year through the implementation of health and safety improvement programmes.

9.—MEASURING PRODUCTIVITY IMPROVEMENTS

The parties to this agreement are committed to improving productivity over the life of this agreement from a current rate of 14 tonnes per man hour to 15.

This will be achieved through the successful implementation of Clause 8.—Agreed Productivity Improvements of this agreement.

10.—MEAL ALLOWANCE

All full time employees will receive a weekly meal allowance of $10.00 in lieu of all other meal allowances.

11.—COMMITMENTS

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.

Furthermore, the company maintains a commitment to multi-skilling and training so that employees can improve their skills base, develop a career within the mining industry and have greater job satisfaction.

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.

12.—TERM OF AGREEMENT

This agreement shall remain in force for twenty four (24) months from the date of 10 July 1995.

13.—DISPUTE RESOLUTION PROCEDURE

The following procedure for settling disputes and grievances will be followed by the parties at Bunbury quarry:

(1) The matter shall first be discussed by the employee or shop steward with his/her foreman or supervisor.

(2) If not settled, the matter shall be discussed between the accredited union representative and the other appropriate officer of the company.

(3) If not settled, the entire dispute shall be documented and then further discussions between the union secretary or other appropriate official of the union, and the appropriate representative of the company shall occur.

(4) If the matter is still not settled it shall be submitted to the Western Australian Industrial Relations Commission.

(5) Throughout the above procedures work shall continue normally, on the understanding that there is to be no other action, including strikes, work bans, nor variations to work practices.

(6) It is understood that reasonable time be given for each of stages (1) to (4) to be finalised.

14.—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.

15.—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 Pioneer Concrete (WA) Pty Ltd or not.

16.—SIGNATORIES TO THE AGREEMENT

Peter Hogan

On behalf of Pioneer Concrete (WA) Pty Ltd.

(signed)

On behalf of The Australian Workers' Union,
West Australian Branch, Industrial Union of Workers.

THE READYMIX GOSNELLS QUARRY AND CENTRAL WORKSHOPS (ENTERPRISE BARGAINING) CONSENT AGREEMENT 1995 No. AG 26 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch; The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

and

CSR Limited
T/A The Readymix Group.

No. AG 26 of 1996.

The Readymix Gosnells Quarry and Central Workshops (Enterprise Bargaining) Consent Agreement 1995.

COMMISSIONER A.R. BEECH.

23 February 1996.

Order.

HAVING heard Mr K. Dwyer on behalf of the Applicant and Mr M. Anderton on behalf of the 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; 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; Ms R. McGinty on behalf of the Transport Workers'

Union of Australia, Industrial Union of Workers, Western Australian Branch; and Mr J. Binks on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT The Readymix Gosnells Quarry and Central Workshops (Enterprise Bargaining) Consent Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule on and from the 20th day of February 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as The Readymix Gosnells Quarry and Central Workshops (Enterprise Bargaining) Consent Agreement 1995 and replaces the Readymix Gosnells Quarry and Central Workshops (Enterprise Bargaining) Consent Agreement 1994.

2.—ARRANGEMENT

3.—APPLICATION AND PARTIES TO THIS AGREEMENT

(1) This agreement shall apply to and be binding on CSR Limited T/A The Readymix Group (the company).

(2) This agreement shall apply to and be binding on the following organisations of employees:

(a) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch;

(b) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch;

(c) The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

(d) The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch;

(e) Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch;

(3) All employees by the company in or in connection with hardrock quarry operations at Gosnells, Western Australia, who are members of or eligible to be members of the organisations named in subclause (2) of this clause.

(4) It is estimated that the number of employees who will be bound by the agreement upon registration is 24.

4.—DATE AND DURATION OF AGREEMENT

This agreement shall operate from the beginning of the first pay period commencing on or after 1 November 1995 and shall remain in force for a period of two years to 31 October 1997.

5.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

(1) This agreement shall be read and interpreted wholly in conjunction with the:

(a) Quarry Workers' Award, 1969

(b) Transport Workers' (General) Award No. 10 of 1961

(c) Engine Drivers (Quarries, Sand Pits and Limestone Quarries) Agreement 1991

(d) Metal Trades (General) Award 1966

(e) Metal and Electrical Trades Quarrying Industry Order No. 1963 of 1990

(f) Transport Workers (Quarries) Order 1991.

(2) Where there is any inconsistency between this agreement and those specified in subclause (1) of this clause this agreement shall prevail to the extent of all the inconsistencies.

6.—SINGLE BARGAINING UNIT

(1) In accordance with the January 1992 State Wage Decision the employees and organisations of employees covered by this agreement have formed a single bargaining unit in respect to the company's Gosnells hardrock operations.

(2) The single bargaining unit has held negotiations and reached full agreement on the terms of this agreement.

(3) The continuing role of the single bargaining unit will be:

(a) To monitor and analyse the key drivers at the company's Gosnells hardrock operations. Identifying, evaluating and implementing improvement opportunities relative to this agreement.

(b) To act as an arbiter in assessing if conformance has been achieved relative to this entire agreement.

(c) To negotiate future enterprise agreements for Gosnells Quarry and Central Workshops.

(d) To agree new productivity targets in line with changing system capability due to the fact that the processing plant will be upgraded over the duration of this agreement. These system improvements may make some initial productivity targets meaningless.

(4) In the event of the single bargaining unit failing to reach agreement on any questions, disputes or difficulties arising under this agreement, such matters shall then be dealt with through the dispute resolution procedure as prescribed by the Metal Trades (General) Award 1966.

7.—THE FUTURE STATE

The parent company (CSR) has developed a broad framework to facilitate ongoing business improvement based on strategic planning and total quality management (TQM) principles. In line with this overall company strategy, this business unit has developed a vision to be a world class performer in the future. The following paragraphs define how the site will look and operate in the future:

THE WAY FORWARD

Why do we need to change?

- The market, relatively small, continues to be serviced by new entrants.
- The market no longer allows for real price increases, our competitiveness can only be secured through lower cost of supply and improved services.
- Our labour productivity is well below that of our competitors and approximately 65% below that of world class standard.
- Our plant productivity is below Industry Best Practice, minimum of 90%.
- Our cost of production is approximately 30% higher than Industry Best Practice.
- Our safety performance is well below that of Best Practice LTIFR<5.

We must achieve world class standards:

- In the products and services provided to our customers.
- In people competencies and work practices.
- In productivity and cost.

How?

We will achieve this through world class:

- People in their field.
- Technology.
- Productivity standards

What will we look like as world class?

QUARRY

Labour productivity greater than 25 tonnes per man hour worked.

Plant productivity greater than 90%

Safety: no LTIs and DTIs

Plant downtime is less than 15 hours per normal operating month.

PEOPLE

- People are competent to do their job.
- People will perform tasks across a wide range of jobs/areas, limited only by competency and safety. No demarcations based on union membership.
- Single job title "Quarry Technician".
- Perform own quality control, minor maintenance and work scheduling.
- Career paths available to all.
- Where people's personal behaviour and accountability towards safety will create an accident free work environment.

TRAINING

- All have access to training.
- Training is competency based.
- Training before promotion and/or re-classification.
- Most training is accredited.
- Training will cover "Communication, Safety, Company, Quarrying, Customers and Quality".

DEVELOPING PEOPLE

- No artificial barriers to progression.
- Career paths clearly spelt out for the business.
- In flatter structures more opportunity to broaden experience.
- Re-classification/Promotion based on:
  1) Vacancy at a particular level.
  2) Completion of training necessary.
  3) Ability to perform the level of competence required.

8.—COST ALLOCATION SYSTEMS

It has been agreed that a "time card" system will be introduced to facilitate an improved cost allocation system on the site. Where the current method of attendance control is "clock cards", these will be replaced by a time card to be manually completed daily by each employee.

This will identify the activities carried out daily and the time allocated to each activity in line with the current or future company activity costing system.

Should employees wish to retain the clock card they may do so for their own purposes. Payment shall be calculated from the time card and not the clock card. Appropriate instruction will be provided to facilitate effective use of the system.

9.—IMPROVEMENTS TO PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) The designated start and stop times will be on the employee's machines or at their place of work. "Work" is deemed to include the ancillary pre-start and post-stop check/inspections.

(2) All employees agree to carry out any task, without demarcation, which may or may not involve the use of tools, plant and equipment as requested by the company subject to the employee possessing the necessary standards of competency, safety and legality. It is not intended to have employees permanently employed in roles not currently their primary role, unless the employees involved and the company agree to the change and it is of benefit to those affected.

(3) The spread of normal hours is from 6.00am to 6.00pm and consists of 9.5 hours' duration. Flexibility to vary the start and finish times of ordinary hours between 6.00am to 6.00pm may be required on specific occasions to suit productivity requirements and by arrangement between the employer and employee, this flexibility may be extended. It is agreed that this flexibility will allow for necessary pre-start activities to be undertaken, thus allowing the normal operations of the crushing process to commence at 6.00am. Any overtime which may be worked on the fifth weekday shall be paid such that, up to a total of seven hours is paid at time and a half, calculated over the duration of the week (Monday to Friday), prior to the commencement of double time. Each of the first four days shall otherwise stand alone, i.e. two hours of overtime is worked at 1.5 times normal rates prior to payment of double time rates.

(4) Some points of clarification:

(a) Each employee has the opportunity to review his/her option to take rostered days off.

(b) For those who choose to have RDOs, they will work ten hours normal time per day and will accrue 0.5 hour per day worked. One RDO will then be available every five weeks to be taken within the normal time week.

(c) RDOs can be accumulated up to a maximum of four and can be taken in conjunction with annual leave.

(d) The provisions of the agreement in relation to the hours of work and overtime provision shall not apply to persons employed pursuant to the Metal Trades (General) Award 1966, unless it is mutually agreed on an individual basis to work under the provisions of this agreement. Otherwise the hours of work for those persons employed pursuant to the Metal Trades (General) Award 1966 shall be by mutually agreed roster and all provisions in relation to overtime shall be as prescribed by the Metal Trades (General) Award 1966.

(e) The four day week applies to day shift only. Any afternoon or night shifts will operate as per the standard five day week per award.

(f) All public holidays will be paid at the appropriate rate whether rostered or otherwise, e.g. Good Friday (not rostered or not worked) will be paid at normal rates. Award penalty rates would apply if worked.

(g) Annual leave is accrued on an hourly basis as per existing award and paid as such.

(h) If necessary, a roster system shall be agreed between the parties concerned, to provide a balanced, fair and equitable roster of available overtime to ensure the necessary coverage is provided.

(i) Definition of a day, in relation to leave or absences such as sick leave, jury duty, bereavement leave, etc. shall be a normal time day, i.e. 9.5 hours for those employees not accruing RDOs or ten hours for those employees accruing RDOs.

10.—CROSS-SKILLING

(1) The following matrix represents the agreed remuneration structure to take effect with this agreement.

		Required Skills	
Job Grade	Weekly Rate $	Quarry	Workshop
13	617.12		T+5
12	607.66		T+4
11	597.77		T+3
10	588.33		T+2
9	573.84		T+1
8	547.90	11	T
7	535.82	9	
6	523.75	7	
5	510.57	5	
4	498.93	4	
3	487.84	3	
2	482.02	2	
1	469.97	1	

Note: "T" represents a trade as defined by "Level 2" in the Metal and Electrical Trades Quarrying Industry Order No. 1963 of 1990.

A skill is defined as one of the skills identified in the following "Skills Pool" table and, in addition, for the tradespeople a "training module" as per the Metal Trades (General) Award 1966, which is deemed by the training committee (see paragraph (4)(g) of this clause) to be appropriate to the needs for the site.

(2) The new weekly pay rates includes any allowances which may have been paid in the past with the exception of:

(a) An annual allowance of $156.00 to be paid to holders of current Senior First Aid Certificates. This training shall be available to all employees. Timing shall be by agreement between the employer and employee.

(b) An increase of 2.5% to be paid in addition to the relevant weekly rate to the holders of any one or more of the following:

(i) Quarry Managers Certificate of Competency.

(ii) Quarry Managers Restricted Certificate of Competency.

(iii) Shotfirer's Certificate.

(iv) Electrical Supervisor as per Reg. 5.15 of The Mines Regulations Act Regulations 1976.

Note: Should the face loader be operated on a full time basis by one operator then, for the purpose of calculating the relevant job grade, this operator will be credited with an additional skill for that time. "Full time" is deemed to be the primary role of that operator, acknowledging there will be times allowed for usual breaks and absences.

(3) The following table represents the available pool of skills from which employees may draw. The second column identifies the maximum number of holders of each skill required by the company.

Skills Pool (= 1 skill unless stated)	Number Required
Face loader = 2 skills	4
Neomin Plant = 2 skills	3
Dump truck	8
Water truck	8
Fuel truck	6
Sales Loader	8
Drill	3
Primary crushing plant	5
R22 Euclid Stockpiling	8
Crane (ticket)	4
Forklift (ticket)	4
Leading hand	3
Shot loading	5
Grader	3
Tertiary crushing plant	5
Loadout	5
Rigger	2
"B" class elect licence	1
1st 500 hr trades exp. on site	N/A
SUPERVISOR = LEVEL 8	2

(4) In order to maximise the potential benefit to both the employer and employees, significant support procedures shall be developed over the duration of this agreement. The following paragraphs define these and other necessary clarifications.

(a) In order to achieve a more highly skilled workforce the company, in consultation with the employees, shall develop appropriate training programmes to cover all of the classifications and duties covered by this agreement.

(b) It is the objective of the consultative committee that each employee, as far as is practicable, is capable of performing all of the duties at their individual level of employment, and in order to achieve this objective the company shall provide such training as each employee may need to perform such duties.

Employees possessing specific skills will, where necessary, participate to the best of their ability in the training of others wishing to gain such skills.

(c) In order to ensure that employees become multi-skilled and are given an opportunity to progress through the levels, the company shall provide such training as each employee may require to undertake the duties of the next highest level within the needs identified by the company. The opportunity to increase the number of skills held by any individual will be determined on the basis of "number of skills currently held" with those holding the least number of skills having first opportunity. Initially, however, it is expected that those individuals possessing less skills than those identified by the job grade appropriate to their remuneration, will obtain such skills to satisfy the requirements of their job grade. Should such employees wish to not gain further skills, they will remain on their current job grade.

(d) All new employees who do not possess specific skills, as required in each of the levels, shall be employed as a trainee or level one employee, and if required to perform duties of a higher level shall, in the first three months of employment, receive appropriate training for those higher duties.

(e) In order to achieve the best results from the appropriate training programmes employees will be given the opportunity to participate in language and literacy skills training programmes as well as appropriate in-house development courses, e.g. Building in Quality.

(f) A training committee shall be formed to co-ordinate and oversee the formulation and progress of the training programme. They shall also review, as appropriate, the required number of holders of each skill and the contents of the skills pool.

(g) This committee will comprise of the Divisional Training Co-ordinator, the Quarry Manager, a representative of the supervisory level and three representatives of the workforce, as well as any other people the committee may deem appropriate.

(h) The training committee will design minimum standards for each skill required and arrange competency evaluation of existing skill levels to assist in the identification of training needs. This evaluation will be conducted, where appropriate, by independent assessors, e.g. TAFE or similar. If conducted in-house, suitable assessment training will be provided to those involved in conducting the assessment. No assessment of further skills shall be conducted until the relevant minimum competency standards are established. This is to minimise the level of subjectivity associated with future assessments.

(i) The necessary training to achieve the identified skill levels will be provided by the company through both formal sessions and on-the-job training. Formal off-site training programme attendance shall be paid at normal time rates, and any necessary assignments etc. shall be completed in the employee's own time. Any formal off-site training conducted within the "spread of normal hours", as defined in subclause (3) of Clause 9.—Improvements to Productivity, Efficiency and Flexibility, will be included in the normal hours required to be worked. Any time spent on formal off-site training conducted outside of this spread of hours is not included in the normal hours required to be worked.

(j) The additional skills gained will be assessed every three months (from the beginning of this agreement) or at the completion of a formal training programme. If the minimum levels have been achieved, the employee's job grade and remuneration will be altered to reflect the additional skills from the beginning of the following pay period.

11.—PRODUCTIVITY MEASURES

Key drivers at the company's Gosnells hardrock operations have been identified as measures designed to affect real and demonstrable gains in productivity, safety, efficiency and flexibility.

These key drivers have been assembled in the following matrix and weighted by factors reflecting their impact on overall company performance. Current situations are entered at the 300 level while achievable targets have been set at the 1000 level.

The system will work by reviewing results monthly to determine at what level each of the key areas are performing. For each of the areas being measured, an actual performance number is entered into each box on the "score" row.

The corresponding index number for each column is entered in the "Each Index" row.

The average index is then calculated by summing all individual indexes and dividing by four.

The intent is to raise the overall index from the current situation of 300 points to a maximum of 1000 points.

Data collection will focus on the above items but will not be confined to these areas. Other key drivers have been identified previously, which will continue to be monitored. As the process develops, further critical information may surface which can be linked to an expected follow-on agreement. Monitoring should begin as soon as practicable after identification. This may require the involvement of some or all persons covered by this agreement.

The specific activities or solutions necessary to achieve the targets for each area will be identified, designed and implemented through the structured team based problem solving process. These activities or solutions will involve:

- changes to work procedures incorporating current or improved levels of co-operation; and
- the understanding of Gosnells quarry and central workshop process capability and developing planned improvements in all facets of the process to improve productivity in line with quality products and services.

As indicated in paragraph (3)(d) of clause 6.—Single Bargaining Unit, the consultative committee has the responsibility to agree new productivity targets in line with changing system capability due to the fact that the processing plant will be upgraded over the duration of this agreement. These system improvements may make some initial productivity targets meaningless. The new targets should be agreed as soon as practicable after any major system change.

GOSNELLS PRODUCTIVITY MATRIX 1995

Plant Productivity (%)	Product Quality (%)	Labour Productivity (tonnes/man hour)	Hazard Inspections and Rectification (No/MTh)	Performance CRITERIA Index No.
87	85.0	10.1	30	1000
86	84.2	9.8	27	900
85	83.5	9.5	24	800
84	82.8	9.2	20	700
83	82.1	8.9	17	600
82	81.4	8.6	13	500
81	80.7	8.3	10	400
80	**80.0**	**8.0**	**6**	**300**
				Where we are now
79	79.3	7.7	3	200
78	78.6	7.4	0	100
77	77.9	7.1	0	0
25	25	25	25	Score *Weighting* Each Index

Total Average Index = (Sum of Indexes/4) =

12.—WAGES

(1) The wage increases as identified in this agreement are payable on the basis that all employees covered by this agreement continue to fully participate in and fully support the continuous improvement programme to work towards the future state as outlined in Clause 7.—The Future State. This includes commitment to the intent of this document.

(2) Subject to subclause (1) of this clause the following wage rate increases shall be payable:

(a) Employees will be reclassified in line with the skills matrix based on the skills they currently perform as defined in the Skills Pools. An average increase of 11% will be paid when adding the total weekly payments together for the site.

(b) The increase in paragraph (2)(a) of this clause is calculated after the inclusion of any allowances currently being paid and as such the relevant job grade wage rate will include any allowance paid in the past. The exceptions to this condition are:

(i) The Senior First Aid Allowance of $156.00 per annum.

(ii) The meal allowance of $6.50 as per Metal Trades (General) Award 1966, but paid after one hour of overtime.

(iii) The shift allowance as per the Quarry Workers' Award, 1969.

(c) (i) Further pay adjustments will be made after each six months' period of the agreement, when the average of the six preceding months shall be reviewed in line with the matrix in Clause 11.—Productivity Measures.

(ii) The basis for the adjustment shall be an additional 0.5% wage increase for every 100 point improvement from 300 points up to 800 points, 1.0% wage increase at 900 points and a further 1.5% wage increase upon attaining the targets.

(d) The wage increases specified in paragraph (2)(c) of this clause shall be calculated on the wage rate as calculated in paragraph (2)(a) of this clause.

13.—CONFIDENTIALITY OF INFORMATION

An employee will not, during the continuance of employment, or at any time after the termination thereof (except in the proper course of his or her duties) convey either directly or indirectly to any other person, firm, or corporation, without prior written consent of the company, any information relating to any invention, discovery, or intellectual property of which he or she becomes or became possessed in the course of his or her employment. The employee will use his or her best endeavours to prevent the disclosure of such invention, discovery, or intellectual property by third parties.

14.—COMMITMENTS

(1) It is a condition of this agreement that any variation to its terms on or from the 24th day of December 1993, including the Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Principles set down by the Western Australian Industrial Relations Commission in the Reasons for Decision in matter No. 1457 of 1993.

(2) All parties undertake that the terms of this agreement will not be used to progress or obtain similar arrangements or benefits in any other plant or enterprise.

(3) This agreement shall not operate as to cause an employee to suffer a reduction in ordinary time earnings, or departures from the standards of the Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

(4) No employee shall be retrenched as a direct result of the cross-skilling as provided for in this agreement. This in no way shall limit the ability of the company to apply the provisions of the current redundancy agreement when appropriate.

(5) Commitment is given to not use external contractors to minimise the potential hours worked by employees covered under this agreement. This commitment in no way shall limit the ability of the company to employ suitable contractors, in line with existing practices as at the beginning of this agreement.

15.—RENEWAL OF AGREEMENT

(1) The parties will review the contents of this agreement on an ongoing basis, including an assessment of the achievement towards targets and the continuous improvement programmes as outlined in this document.

(2) Such a review will be based on a minimum of six months' data collection and is expected to result in the re-negotiation, renewal or replacement of this agreement.

(3) If a follow-on agreement is not reached on that date and productivity gains have been achieved and sustained, wage increases obtained will continue until the follow-on agreement is ratified.

16.—SIGNATORIES—SINGLE BARGAINING UNIT

We the undersigned agree with the terms and conditions contained herein, and will comply with those terms and conditions.

RD Wilson Member—Single Bargaining Unit
P Jackson Member—Single Bargaining Unit

G Ovens	Member—Single Bargaining Unit
GC Boyce	Member—Single Bargaining Unit
AM Prosser	Member—Single Bargaining Unit

17.—SIGNATORIES—COMPANY AND UNIONS' REPRESENTATIVES

We the undersigned agree with the terms and conditions contained herein, and will comply with those terms and conditions.

OA Calleja	CSR Limited T/as The Readymix Group Divisional Manager—Metro Operations
JD Fiala	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch
J Ferguson	The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch
D McLane	The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch
J McGiveron	Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch
P Trebilco	The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

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ST MARY'S ANGLICAN GIRLS' SCHOOL (INC) ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 45 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

and

St Mary's Anglican Girls' School.

No. AG 45 of 1996.

St Mary's Anglican Girls' School (Inc) Enterprise Bargaining Agreement 1996.

COMMISSIONER A.R. BEECH.

12 March 1996.

Order.

HAVING heard Ms T. Howe on behalf of the Applicant and Dr I.E. Fraser 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 St Mary's Anglican Girls' School (Inc.) Enterprise Bargaining Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule commencing the first pay period on and from 11th day of March 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement will be known as the St Mary's Anglican Girls' School (Inc) Enterprise Bargaining Agreement 1996 and shall replace the St Mary's Anglican Girls' School (Inc) Enterprise Bargaining Agreement 1994.

2.—ARRANGEMENT

3.—PARTIES TO THE AGREEMENT

This Agreement is made between St Mary's Anglican Girls' School (Inc) (the school) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to teachers who are employed within the scope of the Award.

(2) The number of employees covered by this agreement is 99.

5.—DATE AND DURATION OF AGREEMENT

This Agreement shall come into effect commencing the first pay period on and from 11th March 1996 and shall expire on 31st December 1997. The parties have agreed to meet no later than 6 months prior to the expiration of this Agreement to review this Agreement.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Independent Schools' Teachers' Award 1976 (the Award).

Where there is any inconsistency between this Agreement and the Award, this Agreement will prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The bodies party to this Agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the school and reached full agreement with the school represented by this Agreement.

8.—OBJECTIVES

The nature and purposes of this Agreement are to:

(1) Consolidate and develop further, initiatives arising out of the Award restructuring process.

(2) Accept a mutual responsibility to maintain a working environment which will ensure that the school and its staff become genuine participants and contributors to the school's aims, objectives and philosophy.

(3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The school and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the school and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during school time and partly during the teachers' time.

9.—SALARY RATES

(1) The minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the Award shall be:

(a) For teachers employed at the school for less than one year:

Step	Salary $ 1 January 1996	Salary $ 1 July 1996	Salary $ 1 January 1997	Salary $ 1 July 1997
Step 1	24,040	24,521	25,766	26,281
Step 2	25,452	25,961	27,221	27,765
Step 3	26,863	27,400	28,674	29,248
Step 4	28,493	29,063	30,354	30,961
Step 5	30,013	30,614	31,920	32,558
Step 6	31,316	31,942	33,262	33,927
Step 7	32,820	33,476	34,811	35,507
Step 8	34,448	35,137	36,489	37,218
Step 9	36,240	36,965	38,334	39,101
Step 10	37,706	38,461	39,845	40,642
Step 11	39,009	39,790	41,187	42,011
Step 12	40,638	41,451	42,866	43,723
Step 13	42,268	43,113	44,544	45,435

(b) For teachers employed at the school for a duration of one year or more:

Step	Salary $ 1 January 1996	Salary $ 1 July 1996	Salary $ 1 January 1997	Salary $ 1 July 1997
Step 1	24,331	24,818	26,066	26,587
Step 2	25,760	26,275	27,538	28,089
Step 3	27,189	27,733	29,010	29,591
Step 4	28,840	29,416	30,711	31,325
Step 5	30,379	30,986	32,296	32,942
Step 6	31,698	32,332	33,655	34,328
Step 7	33,218	33,882	35,221	35,926
Step 8	34,866	35,564	36,919	37,658
Step 9	36,680	37,414	38,788	39,564
Step 10	38,165	38,928	40,318	41,124
Step 11	39,484	40,274	41,676	42,510
Step 12	41,134	41,957	43,377	44,244
Step 13	42,784	43,639	45,076	45,977

(2) The minimum rate allowance for positions of responsibility shall be:

Points		$ 1 January 1996	$ 1 January 1997
100	Level 1	6,000	7,000
90		5,400	6,300
85		5,100	5,950
80		4,800	5,600
70	Level 2	4,200	4,900
60		3,600	4,200
55	Level 3	3,300	3,850
50		3,000	3,500
45		2,700	3,150
40		2,400	2,800
30	Level 4	1,800	2,100
20		1,200	1,400
10		600	700

(3) The minimum annual rate allowance for Senior Teacher 1 and 2 shall be:

	$ 1 January 1996	$ 1 January 1997
Senior Teacher 1	1,300	1,400
Senior Teacher 2	3,100	3,500

10.—AGREED EFFICIENCY IMPROVEMENTS

(1) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers, employed for five days or less, may be engaged by the day or half-day and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(2) First Teaching Appointment

A teacher appointed to his/her teaching position, who, at the end of the initial twelve months is deemed by the school not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to subclause (2) of Item 2.—Induction of Appendix 1 of the Award.

(3) Long Service Leave

(a) Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave, of the Award, from 1 January 1995, a teacher who has completed eight years' continuous service with the school shall be entitled to take ten weeks' long service leave on full pay, corresponding with a completed term.

(b) As from 1 January 1995, a teacher's entitlement to paid long service leave for each year of service will accrue at the rate of 1.25 weeks.

(c) For any service prior to 1 January 1995, the accrued entitlement for long service leave shall be that which is prescribed under the terms of the Award.

(d) Long service leave may only be taken after a staff member has accrued ten weeks leave and may be taken as one block or a maximum of two parts.

(e) Upon resignation and after seven years of service the staff member will receive a pro-rata payment in lieu of long service leave.

(4) Carers' Leave

(a) A teacher may take in one year of service up to five days of paid leave from the accrued sick leave to care for a family* member in need of care provided that the teacher:

(i) informs the Principal (or a person designated by the Principal) of the need for Carers' Leave and the estimated period of absence at the first opportunity; and

(ii) except for the first day's absence in the sequence of consecutive days and if requested by the school, provide a medical certificate setting out particulars of the illness or injury or other adequate evidence of the need for leave.

(b) Such leave shall not accrue from year to year.

(c) A maximum of three days of such leave shall be debited to the teacher's accrued sick leave.

(d) Such leave shall not prejudice a teacher's right to special leave in accordance with the provisions of the Award.

* In this clause the word family shall include: parents, grandparents, siblings, parents in law, step parents, spouse, defacto spouse, children, step children, grandchildren and, at the discretion of the Principal, other persons for whom the teacher has responsibility.

(5) Lunchtime Supervision

Where a teacher is required to undertake lunchtime supervision such duty shall be rostered so as to allow for a fair and reasonable meal break.

11.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this Agreement:

The following procedure shall apply to the resolution of any dispute:

(1) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.

(2) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to the Agreement together with any additional representative as may be agreed by the parties.

(3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

12.—OTHER MATTERS

The parties agree to discuss:

(1) Dual allowances for senior teachers in positions of responsibility.

(2) Co-curricular activities.

(3) Flexibility in timetabling and the structure of the school day.

13.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims, with respect to salaries or conditions unless they are consistent with the State Wage Case Principles or there are changes in salary within comparable organisations which are significantly beyond those anticipated by the agreement.

14.—NO PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the school or not.

15.—SIGNATORIES

Signed for and on behalf of;

A. Jackson
St Mary's Anglican Girls' School (Inc)

T.I. Howe
Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

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WESTRAIL CUSTOMER SERVICE ASSISTANT AGREEMENT 1996
No. AG 8 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

Australian Railways Union of Workers,
West Australian Branch.

No. AG 8 of 1996.

Westrail Customer Service Assistant Agreement 1996.

COMMISSIONER P E SCOTT.

6 March 1996.

Order.

HAVING heard Mr D F Johnston on behalf of the Applicant and Ms J Kaur 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 on and from the 14th day of January 1996.

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

Schedule.

1.—TITLE

This agreement shall be known as the Westrail Customer Service Assistant Agreement 1996.

2.—ARRANGEMENT

3.—PARTIES BOUND

This agreement shall be binding on the Western Australian Government Railways Commission and the Australian Railways Union, West Australian Branch.

4.—APPLICATION

This agreement shall apply to employees of the Western Australian Government Railways Commission (the employer) employed in the classification of Customer Service Assistant, and, in respect of those employees the provisions of the Railway Employees' Award No. 18 of 1969 shall not apply.

5.—TERM OF AGREEMENT

This agreement shall operate for a period of twelve months from January 14, 1996.

6.—CONTRACT OF EMPLOYMENT

(1) The contract of employment may be terminated by:

(a) the employee, by the giving of four weeks' notice in writing, or the forfeiture of four weeks' pay in lieu of such notice; or

(b) the employer, by the giving of four week's notice in writing, or the payment of four week's pay in lieu of such notice, provided that where the employee is aged over 45 years and has more than two years continuous service the period of notice shall be five weeks;

provided that where mutually agreed a shorter period of notice may be given without payment or forfeiture of pay in lieu.

(2) In the case of misconduct which contravenes the employer's rules or regulations, or misconduct which at law would justify summary dismissal, the contract of employment may be terminated without notice and without payment or forfeiture of pay as provided in subclause (1) of this clause.

7.—HOURS OF DUTY

(1) The ordinary hours of duty shall be as shown on the Customer Service Assistant Roster and may be worked over any days of the week Sunday to Saturday inclusive.

(2) (a) Up to 12 hours may be rostered in any one shift.

(b) No rostered shift shall be less than four hours.

(c) Rosters shall provide for a minimum of eight days off duty in 28 days on average.

(3) An employee will be entitled to a minimum of a 10 hour break between any two shifts set out under the roster.

(4) (a) An employee will be permitted to take a meal at an appropriate time during any shift which exceeds five hours.

(b) The timing of meals will be such as to cause the minimum of disruption to the service provided.

(c) Meal breaks will have a nominal length of 30 minutes.

(5) While the number of hours in each shift and group of shifts may vary, an employee will be expected to work an average of 40 ordinary hours per week over the roster cycle.

(6) Where, at the end of a roster cycle an employee has worked more ordinary hours during the cycle than the total number of rostered ordinary hours in the cycle, the employee shall be paid at the ordinary rate of pay for all extra hours in excess of 1.25% of the total rostered hours in the cycle.

(7) Where, at the end of a roster cycle an employee has been required to work fewer ordinary hours during the cycle than the total number of rostered ordinary hours in the cycle, then to the extent that the shortfall in hours is not caused by absence from duty (either with or without leave) the employee will be deemed to have worked the rostered ordinary hours.

8.—ADDITIONAL HOURS

(1) An employee may be required to work additional hours immediately before or immediately after the employee's rostered ordinary hours. An employee shall not be required to work more than 12 hours continuously.

(2) An employee may be required to work additional shifts to meet exceptionally busy periods. These periods include, without limitation:

- Australia Day
- Show Week
- Christmas Pageant
- Major football matches
- New Year's Eve

(3) An employee required to work additional hours in circumstances specified in subclauses (1) and (2) of this clause will be paid $23.00 per hour for all such hours worked. Where an employee is unable to work additional hours due to sickness, no sick leave will be payable for such hours.

(4) In the event that an employee is required to work an additional shift as specified in subclause (2) of this clause and the shift is cancelled within two hours of its starting time the employee will be compensated by payment of two ordinary hours' pay.

(5) Except where the requirement for specific skills or knowledge makes it desirable to require a particular employee to work an additional shift, the employer shall endeavour to allocate additional shifts to employees covered by this Agreement on an equitable basis.

9.—OPTIONAL SHIFTS

(1) In addition to rostered shifts (referred to in clause 7.—Hours of Duty) and additional shifts (referred to in clause 8.—Additional Hours), the employer may from time to time offer an employee the opportunity to work optional shifts, provided that should the employee elect to accept these optional shifts, then the maximum number of shifts, including ordinary shifts, the employee can work consecutively without a day off is nine.

(2) An employee will be paid $19.17 per hour for all hours worked in shifts elected to be worked by the employee pursuant to subclause (1) of this clause.

10.—LOCATION

(1) (a) Employees will be appointed to a position of Customer Service Assistant on a line or at Perth.

(b) for the purpose of paragraph (a) of this subclause a line shall be:

(i) Armadale to Belmont Park;
(ii) Currambine to Leederville;
(iii) Fremantle to City West;
(iv) Midland to East Perth.

(c) An employee may be required to work at any location on the suburban rail system.

(2) (a) An employee appointed to a line who is required to commence work on another line or at Perth shall receive an additional payment of one hour's pay at ordinary rates for each day that the employee is required to, and does, commence work on the other line or at Perth.

(b) An employee appointed to Perth who is required to commence work on any line shall receive an additional payment of one hour's pay at ordinary rates for each day that the employee is required to, and does, commence work on a line.

(c) For the purposes of this subclause "work on a line" and "work at Perth" means work in accordance with the roster for the line or for Perth as appropriate.

(3) Nothing in this clause places any restriction on the locations, whether on the railway line or elsewhere, at which an employee may be required to carry out the duties of the position.

(4) Except where otherwise agreed between the employer and the employee an employee shall commence and finish duty at the same location.

11.—STAND DOWN

(1) Where the employer, for any cause outside of the employer's control, or, through industrial action, whether or not on the part of the employee, is unable to provide useful work for an employee on the suburban rail system in a normal rostered work period, the employer shall be entitled not to pay the employee in respect of any such period; provided that the employee may elect to have such period paid as annual leave where there is an adequate outstanding entitlement to such leave.

(2) Any period for which the employee is not paid under the provisions of subclause (1) of this clause will count as service for the accrual of leave to which the employee would otherwise be entitled under this Agreement, provided that the employee resumes work as required at the end of such period.

12.—WAGES

(1) Each employee will be paid wages of $1226.80 per fortnight which, other than as expressly set out in this agreement, includes all allowances, penalties and special rates whatsoever.

(2) Except as provided in subclause (6) of clause 7.—Hours of Duty of this Agreement, ordinary time payment each fortnight shall be for eighty (80) hours irrespective of the rostered hours.

13.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly.

(2) All wages shall be paid into accounts (nominated by the employee) with a bank, building society or credit union.

14.—SICK LEAVE

(1) In the event of an employee being genuinely sick the employee may be paid up to 80 hours sick leave each completed year of service for time lost from duty as a result of such sickness.

(2) The employer may request a medical certificate for:

(a) all future sicknesses after the employee has taken two (2) separate absences without a certificate due to sickness in any one year.
(b) for absences for sickness for two (2) or more days.

15.—PUBLIC HOLIDAYS

(1) "Public holiday" means any of the following days which are proclaimed to be public holidays in the State of Western Australia:

- New Year's Day
- Australia Day
- Labour Day
- Good Friday
- Easter Monday
- Anzac Day
- Foundation Day
- Sovereign's Birthday
- Christmas Day
- Boxing Day

(2) Where an employee is not required to work on a day solely because it is a public holiday, the employee will be paid as if the employee were required to work on that day.

(3) Where an employee is required to work ordinary hours on December 25 or Good Friday the employee will be paid an allowance of 50% of the ordinary hourly rate of pay for each ordinary hour worked on the day.

(4) Except as provided in subclause (3) of this clause, where an employee is required to work on a day that is a public holiday, the employee will not be entitled to receive any additional payment or to receive a day off in lieu because the day is a public holiday.

16.—ANNUAL LEAVE

(1) Each employee is entitled to 160 hours paid leave per year for each completed year of service.

(2) (a) A minimum of eighty (80) hours leave must be taken each year at a time or times acceptable to the employer and the employee, provided that where agreement cannot be reached the employer shall determine when the leave is to be taken.

(b) An employee may request, and subject to mutual agreement may be permitted, to accrue leave up to a maximum of 320 hours.

(3) Annual leave shall be paid at the rate of pay provided in clause 12.—Wages of this Agreement.

(4) For the purpose of debiting annual leave a day's leave shall be deemed to be eight hours and a week's leave shall be deemed to be 40 hours.

17.—LONG SERVICE LEAVE

(1) After each ten years' continuous service with the employer the employee shall be entitled to 13 weeks' long service leave. The rate of pay for the employee on long service leave shall be the rate of pay provided in clause 12.—Wages of this Agreement.

(2) No pro rata provisions will apply.

(3) (a) For the purpose of this clause service shall include any period of leave approved by the employer except any form of leave without pay which exceeds three months, in which case only the first three months of such leave shall count as service.

(b) Continuity of service shall not be broken by the absence of the employee on any form of approved leave or by the standing down of an employee under the terms of this Agreement.

18.—BEREAVEMENT LEAVE

(1) On the death within Australia of:

(a) the spouse, father, mother, brother, sister, child or stepchild of an employee;

(b) father, mother, brother or sister of the spouse of an employee; or

(c) any other person who, immediately before that person's death lived with an employee as a member of the employee's family;

that employee shall be entitled on notice, to leave of absence without deduction of pay.

(2) Such leave of absence up to and including the day of the funeral shall be for a period of up to but not exceeding the number of hours worked by the employee in three ordinary working days having regard for the circumstances of the case.

(3) Proof of death shall be provided by the employee to the satisfaction of the employer.

(4) Payment in respect of bereavement leave shall 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 the roster, or on annual leave, long service leave, sick leave, workers' compensation or leave without pay.

19.—TRAINING

(1) A joint employer/employee committee shall be established to assess training requirements to enable employees to carry out their role in a professional manner.

(2) Each employee must be prepared to undertake whatever training is necessary and qualify to carry out the employee's role in a professional manner.

20.—UNIFORMS

(1) Each employee will wear and maintain the uniform provided for the employee by the employer and present in a clean pressed uniform at all times.

(2) Each employee will carry and use as required all protective clothing and equipment provided by the employer.

21.—INFORMATION ACQUIRED DURING EMPLOYMENT

(1) Except as expressly authorised by the employer and required by the employee's duties, an employee shall not directly or indirectly reveal to any third party any confidential dealings, finances, transactions or affairs of the employer or any of its clients which may come to the employee's knowledge during the course of employment.

(2) The obligation imposed under subclause (1) of this clause shall continue to apply after the termination of employment without limits in time.

(3) All records, documents and other papers, together with any copies or extracts thereof, made or acquired by an employee in the course of employment shall remain the property of the employer and must be returned to the employer on demand or otherwise no later than upon termination of employment.

(4) Any changes, innovations and ideas initiated by an employee during the course of employment with the employer shall belong to the employer and the employee shall do all such things as are necessary to completely vest ownership of such matters in the employer.

22.—HEALTH AND FITNESS

The employer reserves the right to request an employee to undergo a medical examination if there is concern that the employee may be unable to carry out the work required to be performed in the course of employment as specified in the employee's job description.

23.—RESOLUTION OF DISPUTES

In the event of any questions arising between the employer and its employees about the meaning or effect of the agreement, including any provisions implied in the agreement by the Minimum Conditions of Employment Act, or any dispute arising during the term of this Agreement, the following procedure will apply.

(1) The employer and the employee will make every attempt to resolve the issue amicably and internally.

(2) Reasonable time limits will be allowed to resolve any issue but it must be within 14 days of the dispute arising.

(3) If the mater cannot be successfully resolved the employee may refer the matter to the union and the union and the employer will attempt to resolve the issue.

(4) If the matter is still not resolved, either party may refer the question or dispute to the Western Australian Industrial Relations Commission.

(5) The employer and employees covered by this Agreement will maintain and will not disrupt the provision of services to the public whilst disputes are being dealt with under this procedure.

24.—SIGNATORIES TO THE AGREEMENT

The Common Seal of the Western Australian Government Railways Commission was hereunto affixed in the presence of

(signed)	Acting Commissioner
(signed)	Secretary

Date *8/1/96*

Signed for and on behalf of the Australian Railways Union, West Australian Branch by

(signed)	State Secretary

Date *14/12/95*

25.—NUMBER OF EMPLOYEES BOUND

It is estimated that 35 employees will be bound by this agreement on registration.

APPENDIX A—TRANSITIONAL PROVISIONS

The following provisions apply to an employee who, immediately prior to appointment to the position of Customer Service Assistant was employed by the employer.

1.—APPOINTMENT

An appointment to the position of Customer Service Assistant shall not take effect until the appointee has successfully completed all the required training.

2.—ACCRUED LEAVE ENTITLEMENTS

(1) Accrued sick leave entitlements up to the date of appointment shall be transferred to the new position. The date of appointment shall be the date for commencement of sick leave entitlements under this Agreement.

(2) (a) Annual leave entitlements transferred to the position of Customer Service Assistant shall be treated according to the following formula:

$$\frac{\text{Annual Leave Entitlement (Hours)} \times \text{Rate of Pay A}}{\text{Rate of Pay B}}$$

where

(i) Rate of Pay A is the hourly rate of pay for the designated position occupied by the appointee immediately prior to appointment as a Customer Service

Assistant; provided that where an employee immediately prior to appointment as a Customer Service Assistant is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of three months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the three month period; and

(ii) Rate of Pay B is one eightieth of the rate of pay expressed in clause 12.—Wages of this Agreement.

(b) (i) An employee may transfer annual leave entitlements accrued to the date of appointment as a Customer Service Assistant up to an equivalent of 320 hours after the application of the formula in paragraph (a).

(ii) The date of appointment shall be the date for the commencement of annual leave benefits under this Agreement.

(c) Any annual leave entitlement accrued to the date of appointment and which is not transferred under the provisions of paragraph (b) shall be commuted to cash payment at the rate of pay defined in subparagraph (a)(i).

(3) Any days in lieu of public holidays and accrued credit days shall be commuted to cash payment at the rate of pay defined in subparagraph (a)(i).

(4) (a) Long service leave entitlements transferred to the position of Customer Service Assistant shall be treated according to the following formula:

$$\frac{\text{Long Service Leave Entitlement (Weeks)} \times \text{Rate of Pay C}}{\text{Rate of Pay D}}$$

where

(i) Rate of Pay C is the weekly rate of pay for the designated position occupied by the appointee immediately prior to appointment as a Customer Service Assistant; provided that where an employee immediately prior to appointment as a Customer Service Assistant is in receipt of a rate of pay in excess of the employee's designated rate and has been so for a period of 12 months continuous with that time, the rate of pay for the designated position shall be deemed to be the rate which was paid for the majority of the twelve month period; and

(ii) Rate of Pay D is one half of the rate of pay expressed in clause 12.—Wages of this Agreement.

(b) (i) An employee may transfer long service leave entitlements accrued to the date of appointment as a Customer Service Assistant up to an equivalent of 13 weeks after the application of the formula in paragraph (a).

(ii) Any long service leave entitlement transferred in accordance with subparagraph (b)(i) shall be taken within three years of the date of appointment.

(c) Any long service leave entitlement accrued to the date of appointment and which is not transferred under the provisions of paragraph (b) shall be commuted to cash payment at the rate of pay defined in subparagraph (a)(i).

(d) Where at the date of appointment to the position of Customer Service Assistant an employee has commenced a seven year qualifying period for accrual of long service leave such qualifying period shall be adjusted on the following basis:

$$\frac{\text{Number of Months completed in 7 year qualifying period} \times 120}{84}$$

ZOOLOGICAL GARDENS BOARD—GARDENERS WEEKEND WORK INDUSTRIAL AGREEMENT 1995 No. AG 299 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Zoological Gardens Board and Others.

No. AG 299 of 1995.

Zoological Gardens Board—Gardeners Weekend Work Industrial Agreement 1995

COMMISSIONER A.R. BEECH.

21 February 1996.

Order.

HAVING heard Mr N. Ellery on behalf of the Applicant and Mr R. DeBlank and with him Mr M. Yakovina 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 Zoological Gardens Board—Gardeners Weekend Work Industrial Agreement 1995 be registered as an industrial agreement in accordance with the following Schedule with effect from the 8th day of February 1996.

(Sgd.) A. R. BEECH,
[L.S] Commissioner.

Schedule.

1.—TITLE

This agreement shall be referred to as the Zoological Gardens Board—Gardeners Weekend Work Industrial Agreement 1995.

2.—ARRANGEMENT

3.—APPLICATION

This agreement is made because the Zoological Gardens Board has recognised the need for employees employed pursuant to the Gardeners (Government) 1986 Award to be rostered to work ordinary hours of work on Saturdays and Sundays. That award does not provide for such weekend work. Discussions were held between the two parties and agreement was reached which enabled employees to undertake weekend work as part of ordinary rostered hours for a trial period commencing from 13 October 1995.

4.—PARTIES BOUND

(1) This agreement is made between the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and the Zoological Gardens Board.

(2) In accordance with Clause 21.—Award Modernisation of the Miscellaneous Government Conditions and Allowances Award No A4 of 1992, the parties have sought to have this agreement registered in the Western Australian Industrial Relations Commission.

(3) This agreement will apply to fourteen employees as at 8th February 1996.

5.—TERM

The agreement shall have effect from 13 October 1995 and shall continue in force until 12 October 1996.

6.—PARENT AWARD

This agreement shall be read in conjunction with the Gardeners (Government) 1986 Award which applies to the parties bound to this agreement. Where the terms of this agreement are in conflict with the provisions of this award, then this agreement applies. Otherwise the terms and conditions of the award, which are not subject to this agreement, shall apply in all other respects.

7.—HOURS

The parties agree that:

(1) the ordinary hours of work shall be 38 per week and shall be worked on any five days of the week between the hours of 6.00am and 6.00pm Monday to Sunday. Employees shall not receive payment for the two days off they are entitled to per week irrespective of which days are taken as time off;

(2) all ordinary time worked on Saturday shall be paid at the rate of time and one half;

(3) all ordinary time worked on Sunday shall be paid at the rate of double time;

(4) either the employer or the employee may elect to withdraw from this arrangement with the provision of one month's notice in writing;

(5) employees undertaking weekend work shall not be required to remove offenders but shall report such disturbances to a designated officer who will take action to remove such offending persons.

8.—DISPUTE SETTLEMENT PROCEDURES

(1) Subject to the Public Sector Management Act, 1994, the following procedures are to be followed in connection with questions, disputes or difficulties arising under this agreement.

(a) Stage One

The matter is to be discussed between the employees and/or union representative and their immediate supervisor.

The first meeting pursuant to this stage shall be convened within one working day of a request by any party.

(b) Stage Two

The matter is to be discussed between the employees and/or union representative, the immediate supervisor and the Curator Horticulture.

The first meeting pursuant to this stage shall be convened within one working day of a request by any party.

(c) Stage Three

The matter is to be discussed between the employees and/or union representative, the Curator Horticulture and the Chief Executive Officer or his/her nominee.

Meetings pursuant to this stage shall be convened within four working days of a request by any party.

(d) Stage Four

Where agreement cannot be reached under stage three the matter may be referred to the Western Australian Industrial Relations Commission by either party to this agreement or their nominees.

(2) When a matter being dealt with at a particular stage is not resolved then it is to be dealt with at the next stage.

(3) The times involved in moving between the stages may be varied by agreement between the relevant parties.

9.—SIGNATORIES

Helen M Creed	30/10/95
Secretary	Date

Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

Ricky Burges	16/11/95
Chief Executive Officer Zoological Gardens Board	Date

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

CLERKS (PUBLIC AUTHORITIES) AWARD 1987
No. PSA A 7A of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

WA Coastal Shipping Commission and Others

and

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch.

No. 42 of 1995.

Clerks (Public Authorities) Award 1987
No. PSA A 7A of 1987.

COMMISSIONER P E SCOTT.

6 March 1996.

Order.

HAVING heard Mr P Connell on behalf of the Applicant and Mr R Dhue 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 the Clerks (Public Authorities) Award 1987 as amended be further varied in the terms of the following Schedule with effect on and from the 1st day of February 1996.

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

Schedule.

1. Clause 9.—Salaries and Salary Ranges: Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) An adult officer employed pursuant to Level 1 shall commence employment at Level 1.1. However, at the discretion of the Chief Executive Officer, the officer may be appointed to a maximum of Level 1.4 upon commencement of employment to a Level 1 position subject to relevant knowledge and experience.

2. Clause 14.—Long Service Leave: Delete paragraph (c) of subclause (5) of this clause and insert the following in lieu thereof:

(c) Any service by an officer under the age of eighteen (18) years where such service was prior to 8 January 1993.

3. Clause 31.—Contract of Service: Delete paragraphs (a) to (f) inclusive, of subclause (1) of this clause, and insert the following in lieu thereof:

(a) No officer shall leave the employ of the employer until the expiration of one month's written notice of the officer's intention to do so without the approval of the employer. An officer who fails to give the required notice shall forfeit the sum of $500.00. Such monies may be withheld from monies due at the date of resignation.

(b) One month's written notice shall be given by the employer to an officer whose services are no longer required. Provided that the employer may pay the officer one month's salary in lieu of said notice.

(c) The employer may summarily dismiss an officer deemed guilty of gross misconduct or neglect of duty and the officer shall not be entitled to any notice or payment in lieu of notice.

(d) An officer, having attained the age of 55 years shall be entitled to retire from the employ of the employer.

(e) Notwithstanding any of the other provisions contained in this clause a lesser period of notice may be negotiated between the employer and the officer.

4. Schedule A.—Salaries and Salary Ranges: Delete this Schedule and insert the following in lieu thereof:

SCHEDULE A—SALARIES AND SALARY RANGES

(1) Annual salaries applicable to officers covered by this Award shall be.

Level	Salary Per Annum $	1st Arbitrated Safety Net $	Total Salary Per Annum $	2nd Arbitrated Safety Net $	Total Salary Per Annum $
Level 1					
Under 17 years	10,445	214	10,659	214	10,873
17 years	12,207	250	12,457	250	12,707
18 years	14,238	292	14,530	292	14,822
19 years	16,481	338	16,819	338	17,157
20 years	18,507	380	18,887	380	19,267
1.1	20,331	417	20,748	417	21,165
1.2	20,983	417	21,400	417	21,817
1.3	21,634	417	22,051	417	22,468
1.4	22,281	417	22,698	417	23,115
1.5	22,932	417	23,349	417	23,766
1.6	23,583	417	24,000	417	24,417
1.7	24,332	417	24,749	417	25,166
1.8	24,850	417	25,267	417	25,684
1.9	25,616	417	26,033	417	26,450
Level 2					
2.1	26,533	417	26,950	417	27,367
2.2	27,236	417	27,653	417	28,070
2.3	27,975	417	28,392	417	28,809
2.4	28,756	417	29,173	417	29,590
2.5	29,573	417	29,990	417	30,407
Level 3					
3.1	30,696	417	31,113	417	31,530
3.2	31,571	417	31,988	417	32,405
3.3	32,473	417	32,890	417	33,307
3.4	33,399	417	33,816	417	34,233
Level 4					
4.1	34,669	417	35,086	417	35,503
4.2	35,664	417	36,081	417	36,498
4.3	36,688	417	37,105	417	37,522
Level 5					
5.1	38,660	417	39,077	417	39,494
5.2	39,993	417	40,410	417	40,827
5.3	41,378	417	41,795	417	42,212
5.4	42,815	417	43,232	417	43,649

(2) 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, except those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(3) 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, insofar as that wage increase has not previously been used to offset 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.

DEPARTMENT FOR COMMUNITY DEVELOPMENT (FAMILY RESOURCE WORKERS, WELFARE ASSISTANTS AND PARENT HELPERS) AWARD 1990 No. PSA A 1 of 1989.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Public Service Commission

and

The Civil Service Association of Western Australia Incorporated.

No. P 68 of 1995.

PUBLIC SERVICE ARBITRATOR C.B. PARKS.

1 March 1996.

Order.

HAVING heard Mr P Connell and with him Ms T Allen on behalf of the Applicant and Mr J Dasey on behalf of the Respondent, now therefore the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Department for Community Development (Family Resource Workers, Welfare Assistants and Parent Helpers) Award 1990 as amended be further varied in the terms of the following Schedule with effect on and from 31 January 1996.

(Sgd.) C.B. PARKS,
[L.S] Public Service Arbitrator.

Schedule.

Schedule C—Travelling Allowance: Delete this schedule and insert in lieu thereof:

SCHEDULE C—TRAVELLING ALLOWANCE

Item	Particulars	Column A Daily Rate	Column B Daily Rate Officers With Dependants: •Relieving allowance for period in excess of 42 days (subclause 6(b)(bb)) •Transfer allowance for period in excess of prescribed period (subclause 3(b))	Column C Daily Rate Officers Without Dependants: •Relieving allowance for period in excess of 42 days (subclause 6(b)(bb))
	ALLOWANCE TO MEET INCIDENTIAL EXPENSES	$		
(1)	W.A.—South of 26° South Latitude	7.20		
(2)	W.A.—North of 26° South Latitude	9.20		
(3)	Interstate	9.20		
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL	$	$	$
(4)	W.A.—Metropolitan Hotel or Motel	144.85	72.45	48.25
(5)	Locality South of 26° South Latitude	103.05	51.50	34.30
(6)	Locality North of 26° South Latitude:			
	Broome	182.00	91.00	60.60
	Carnarvon	119.90	59.95	39.95
	Dampier	130.90	65.45	43.60
	Derby	128.00	64.00	42.60
	Exmouth	130.65	65.30	43.50
	Fitzroy Crossing	151.40	75.70	50.40
	Gascoyne Junction	88.15	44.05	29.35
	Halls Creek	150.15	75.05	50.00
	Karratha	186.10	93.05	62.00
	Kununurra	153.60	76.80	51.15
	Marble Bar	116.15	58.05	38.70
	Newman	185.15	92.55	61.65
	Nullagine	86.65	43.30	28.85
	Onslow	147.15	73.55	49.00
	Pannawonica	105.65	52.80	35.20
	Paraburdoo	159.70	79.85	53.20
	Port Hedland	149.50	74.75	49.80

Item	Particulars	Column A Daily Rate	Column B Daily Rate Officers With Dependants: •Relieving allowance for period in excess of 42 days (subclause 6(b)(bb)) •Transfer allowance for period in excess of prescribed period (subclause 3(b))	Column C Daily Rate Officers Without Dependants: •Relieving allowance for period in excess of 42 days (subclause 6(b)(bb))
	Roebourne	103.20	51.60	34.40
	Sandfire	75.15	37.55	25.00
	Shark Bay	158.65	79.30	52.80
	Tom Price	150.40	75.20	50.15
	Turkey Creek	81.65	40.80	27.20
	Wickham	129.15	64.55	43.00
	Wyndham	118.15	59.05	39.35
(7)	Interstate—Capital City			
	Sydney	167.05	83.55	55.65
	Melbourne	155.40	77.70	51.75
	Other Capitals	147.80	73.90	49.20
(8)	Interstate—Other than Capital City	103.05	51.50	34.30
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL	$		
(9)	W.A.—South of 26° South Latitude	50.70		
(10)	W.A.—North of 26° South Latitude	58.50		
(11)	Interstate	58.50		
	TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED			
(12)	W.A.—South of 26° South Latitude			
	Breakfast	9.80		
	Lunch	9.80		
	Dinner	24.00		
(13)	W.A.—North of 26° South Latitude			
	Breakfast	10.40		
	Lunch	15.00		
	Dinner	23.90		
(14)	Interstate			
	Breakfast	10.40		
	Lunch	15.00		
	Dinner	23.90		
	DEDUCTION FOR NORMAL LIVING EXPENSES			
(15)	Each Adult	17.60		
(16)	Each Child	3.00		
	MIDDAY MEAL (CLAUSE 42(11)			
(17)	Rate per meal	4.25		
(18)	Maximum reimbursement per pay period	23.10		

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989. No. PSA A3 of 1989.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Public Service Commission

and

The Civil Service Association of Western Australia Incorporated

No. P 66 of 1995.

PUBLIC SERVICE ARBITRATOR C.B. PARKS.

1 March 1996.

Order.

HAVING heard Mr P Connell and with him Ms T Allen on behalf of the Applicant and Mr J Dasey on behalf of the Respondent, now therefore the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Government Officers Salaries, Allowances and Conditions Award 1989 as amended be further varied in the terms of the following Schedule with effect on and from 31 January 1996.

(Sgd.) C. B. PARKS,
[L.S] Public Service Arbitrator.

Schedule.

Schedule J—Travelling, Transfer and Relieving Allowance: Delete this schedule and insert in lieu thereof:

SCHEDULE J—TRAVELLING, TRANSFER AND RELIEVING ALLOWANCE

Item	Particulars	Column A Daily Rate	Column B Daily Rate Officers With Dependants: •Relieving allowance for period in excess of 42 days (clause 38(1)(b)(ii)) •Transfer allowance for period in excess of prescribed period (clause 41(3))	Column C Daily Rate Officers Without Dependants: •Relieving allowance for period in excess of 42 days (clause 38(1)(b)(ii))
	ALLOWANCE TO MEET INCIDENTIAL EXPENSES	$		
(1)	W.A.—South of 26° South Latitude	7.20		
(2)	W.A.—North of 26° South Latitude	9.20		
(3)	Interstate	9.20		
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL	$	$	$
(4)	W.A.—Metropolitan Hotel or Motel	144.85	72.45	48.25
(5)	Locality South of 26° South Latitude	103.05	51.50	34.30
(6)	Locality North of 26° South Latitude:			
	Broome	182.00	91.00	60.60
	Carnarvon	119.90	59.95	39.95
	Dampier	130.90	65.45	43.60
	Derby	128.00	64.00	42.60
	Exmouth	130.65	65.30	43.50
	Fitzroy Crossing	151.40	75.70	50.40
	Gascoyne Junction	88.15	44.05	29.35
	Halls Creek	150.15	75.05	50.00
	Karratha	186.10	93.05	62.00
	Kununurra	153.60	76.80	51.15
	Marble Bar	116.15	58.05	38.70
	Newman	185.15	92.55	61.65
	Nullagine	86.65	43.30	28.85
	Onslow	147.15	73.55	49.00
	Pannawonica	105.65	52.80	35.20
	Paraburdoo	159.70	79.85	53.20
	Port Hedland	149.50	74.75	49.80
	Roebourne	103.20	51.60	34.40
	Sandfire	75.15	37.55	25.00
	Shark Bay	158.65	79.30	52.80
	Tom Price	150.40	75.20	50.15
	Turkey Creek	81.65	40.80	27.20
	Wickham	129.15	64.55	43.00
	Wyndham	118.15	59.05	39.35
(7)	Interstate—Capital City			
	Sydney	167.05	83.55	55.65
	Melbourne	155.40	77.70	51.75
	Other Capitals	147.80	73.90	49.20
(8)	Interstate—Other than Capital City	103.05	51.50	34.30
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL	$		
(9)	W.A.—South of 26° South Latitude	50.70		
(10)	W.A.—North of 26° South Latitude	58.50		
(11)	Interstate	58.50		
	TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED			
(12)	W.A.—South of 26° South Latitude			
	Breakfast	9.80		
	Lunch	9.80		
	Dinner	24.00		
(13)	W.A.—North of 26° South Latitude			
	Breakfast	10.40		
	Lunch	15.00		
	Dinner	23.90		

Item	Particulars	Column A Daily Rate	Column B Daily Rate Officers With Dependants: •Relieving allowance for period in excess of 42 days (clause 38(1)(b)(ii)) •Transfer allowance for period in excess of prescribed period (clause 41(3))	Column C Daily Rate Officers Without Dependants: •Relieving allowance for period in excess of 42 days (clause 38(1)(b)(ii))
(14)	Interstate			
	Breakfast	10.40		
	Lunch	15.00		
	Dinner	23.90		
	DEDUCTION FOR NORMAL LIVING EXPENSES			
(15)	Each Adult	17.60		
(16)	Each Child	3.00		
	MIDDAY MEAL (CLAUSE 42(11)			
(17)	Rate per meal	4.25		
(18)	Maximum reimbursement per pay period	23.10		

GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988 No. PSA A20 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Commissioner,

Public Service Commission

and

The Civil Service Association of Western Australia Incorporated.

No. P 65 of 1995.

PUBLIC SERVICE ARBITRATOR
C.B. PARKS.

1 March 1996.

Order.

HAVING heard Mr P Connell and with him Ms T Allen on behalf of the Applicant and Mr J Dasey on behalf of the Respondent, now therefore the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Government Officers (Social Trainers) Award 1988 be varied in accordance with the following Schedule and that such variation shall have effect on and from 31 January 1996.

(Sgd.) C.B. PARKS,
[L.S] Public Service Arbitrator.

Schedule.

Schedule D—Miscellaneous Allowances: Delete this schedule and insert in lieu thereof—

SCHEDULE D—MISCELLANEOUS ALLOWANCES

Item	Particulars	Column A Daily Rate	Column B Daily Rate Officers With Dependants: •Relieving allowance for period in excess of 42 days (clause 25(6)(b)(ii)) •Transfer allowance for period in excess of prescribed period (clause 25(3)(c))	Column C Daily Rate Officers Without Dependants: •Relieving allowance for period in excess of 42 days (clause 25(6)(b)(ii))
	ALLOWANCE TO MEET INCIDENTIAL EXPENSES	$		
(1)	W.A.—South of 26° South Latitude	7.20		
(2)	W.A.—North of 26° South Latitude	9.20		
(3)	Interstate	9.20		
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL	$	$	$
(4)	W.A.—Metropolitan Hotel or Motel	144.85	72.45	48.25
(5)	Locality South of 26° South Latitude	103.05	51.50	34.30
(6)	Locality North of 26° South Latitude:			
	Broome	182.00	91.00	60.60
	Carnarvon	119.90	59.95	39.95
	Dampier	130.90	65.45	43.60
	Derby	128.00	64.00	42.60
	Exmouth	130.65	65.30	43.50
	Fitzroy Crossing	151.40	75.70	50.40
	Gascoyne Junction	88.15	44.05	29.35
	Halls Creek	150.15	75.05	50.00
	Karratha	186.10	93.05	62.00
	Kununurra	153.60	76.80	51.15
	Marble Bar	116.15	58.05	38.70
	Newman	185.15	92.55	61.65
	Nullagine	86.65	43.30	28.85
	Onslow	147.15	73.55	49.00
	Pannawonica	105.65	52.80	35.20
	Paraburdoo	159.70	79.85	53.20
	Port Hedland	149.50	74.75	49.80
	Roebourne	103.20	51.60	34.40
	Sandfire	75.15	37.55	25.00
	Shark Bay	158.65	79.30	52.80
	Tom Price	150.40	75.20	50.15
	Turkey Creek	81.65	40.80	27.20
	Wickham	129.15	64.55	43.00
	Wyndham	118.15	59.05	39.35
(7)	Interstate—Capital City			
	Sydney	167.05	83.55	55.65
	Melbourne	155.40	77.70	51.75
	Other Capitals	147.80	73.90	49.20
(8)	Interstate—Other than Capital City	103.05	51.50	34.30
	ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL	$		
(9)	W.A.—South of 26° South Latitude	50.70		
(10)	W.A.—North of 26° South Latitude	58.50		
(11)	Interstate	58.50		
	TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED			
(12)	W.A.—South of 26° South Latitude			
	Breakfast	9.80		
	Lunch	9.80		
	Dinner	24.00		
(13)	W.A.—North of 26° South Latitude			
	Breakfast	10.40		
	Lunch	15.00		
	Dinner	23.90		
(14)	Interstate			
	Breakfast	10.40		
	Lunch	15.00		
	Dinner	23.90		
	DEDUCTION FOR NORMAL LIVING EXPENSES			
(15)	Each Adult	17.60		
(16)	Each Child	3.00		
	MIDDAY MEAL (CLAUSE 42(11)			
(17)	Rate per meal	4.25		
(18)	Maximum reimbursement per pay period	23.10		

AWARDS/AGREEMENTS—Variation of—

BUILDING TRADES 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

Coca Cola Bottlers (Perth) Pty Ltd and Others.

No. 25 of 1996.

Building Trades Award 1968
No. 31 of 1966.

COMMISSIONER A.R.BEECH.

13 March 1996.

Order.

HAVING heard Mr G. Giffard on behalf of the Applicant and Ms S. Laferla 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 Building Trades Award 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 11th day of March 1996.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

Schedule.

1. Clause 10A.—Minimum Wage—Adult Males and Females: Delete the amount of $275.50 where it appears in the first paragraph of this clause and insert in lieu the amount of $317.10.

BUILDING TRADES (CONSTRUCTION) AWARD 1987.
No. R14 of 1978.
EARTHMOVING AND CONSTRUCTION AWARD.
No. 10 of 1963.
ENGINE DRIVERS (BUILDING AND STEEL CONSTRUCTION) AWARD.
No. 20 of 1973.

Editor's Note: Relative orders published (75 WAIG 2154, 2170, 2173)

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Adsigns and Others

No. 362 of 1995

Building Trades (Construction) Award 1987,
No. R 14 of 1978

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

and

Bell Basic Industries Ltd and Others

No. 363 of 1995

Earth Moving and Construction Award

No. 10 of 1963

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

and

Transfield WA Pty Ltd and Others

No. 364 of 1995

Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

COMMISSIONER P.E. SCOTT.

24 May 1995.

Reasons for Decision.

THE COMMISSIONER: These are applications by The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Others to amend the Building Trades (Construction) Award No. 14 of 1978, the Earthmoving and Construction Award No. 10 of 1963 and the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 to insert the second arbitrated safety net adjustment, in accordance with the decision of the Commission in Court Session in the State Wage Decision of 30 December 1994 (No. 985 of 1994) [75 WAIG 23], and to increase allowances. The Respondents do not oppose the adjustment but express some reservations regarding the meeting of tests to be applied, and oppose retrospectivity.

The Statement of Principles arising from the December 1994 State Wage Decision contains certain tests for the amendments of awards to include the second arbitrated safety net adjustment as follows:

(i) that the award has been varied for the first $8.00 per week safety net adjustment;

(ii) that at least 6 months has elapsed between the first and second award level $8.00 per week safety net adjustments;

(iii) that the award has been varied to include enterprise flexibility provisions.

(iv) that a programme of discussion between the award parties has been established to deal with the review of the award with particular attention to:

(aa) the effective use of facilitative provisions;

(bb) the effective use of majority clauses; and

(cc) the implementation of a process for testing the relevance of the award at the enterprise level.

(v) that in addition to the clause referred to in subclause (1)(c), the award contains the following clause:

"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."

These awards have already been amended for the first arbitrated safety net adjustment and in the following circumstances:

Building Trades (Construction) Award

In accordance with the December 1993 State Wage Case Decision ("SWD") by application No. 1696 of 1993 with effect from 24 December 1993 (74 WAIG 907).

In accordance with the December 1994 SWD by application No. 1242 of 1994 with effect from 28 March 1995 (not yet published).

Earthmoving and Construction Award

In respect of Appendix 1 in accordance with the December 1993 SWD by application No. 1700A of 1993 with effect from 17 February 1994 (74 WAIG 908).

In respect of both Appendix I and Clause 27.—Wages, in accordance with the December 1994 SWD by application No. 1240 of 1994 with effect from 22 March 1995 (75 WAIG 931).

Engine Drivers' (Building and Steel Construction) Award

In accordance with the December 1993 SWD by application No. 1701 of 1993—for the Building and Construction Industry—with effect from 24 December 1993.

For all others with effect from 1 January 1994 (74 WAIG 908).

In accordance with the December 1994 SWD by application No. 1241 of 1994 with effect from 22 March 1995 (75 WAIG 932).

It is clear that the first test has been met.

In respect of the second test being that at least six months has elapsed between the first and second adjustments, the decision of the Full Bench of the Australian Industrial Relations Commission of 24 March 1995 dealing with a number of retail industry awards, (Print M 0381) is relevant.

The December 1993 SWD provided for absorption of the arbitrated safety net adjustment "to the extent of any equivalent amounts in rates of pay ... in excess of the minimum rate" (74 WAIG 201). It did not provide other limitations regarding absorption.

The December 1994 SWD provided for offsetting of the first arbitrated safety net adjustment only in respect of "any wage increase as a result of agreements reached at enterprise level since 1 November 1991" (P42).

Further, in the introductory paragraphs of the Arbitrated Safety Net Adjustment Principle, it is noted that "the intent of the Statement of Principles ... is to ensure that all employees covered by awards will receive a minimum wage increase of $24.00 per week" between 1 November 1991 and 1 July 1996.

It should be noted that the Statement of Principles focuses not only on the amendment of awards but on the receipt by employees of those increases, and the issue of absorption or offsetting is of increased relevance, compared with previous wage fixing regimes.

When these awards were amended in March 1995, the clause referred to in the December 1994, SWD set out on P42 under 8.—Arbitrated Safety Net Adjustment (1)(c) was inserted. This has the effect of providing for those employees whose arbitrated safety net adjustment pursuant to the December 1993 SWD was absorbed into overaward payments which pre-dated 1 November 1991, a second opportunity for the first eight dollars as the December 1994 SWD provides only for absorption of "any wage increase as a result of agreements reached at enterprise level since 1 November 1991".

This, of course, will not apply to employees covered by Clause 27.—Wages of the Earthmoving and Construction Award because Appendix I only of that award was amended for the December 1993 SWD.

This will mean two operative dates for the second arbitrated safety net adjustment being:

(1) For those employees for whom the first arbitrated safety net adjustment applied in accordance with the December 1993 SWD, being the date to be determined having regard to the appropriate arguments as to retrospectivity.

(2) For those employees for whom the first arbitrated safety net applied according to the December 1994 SWD six months from the date the awards were amended.

Enterprise Flexibility Provision

Each of the awards contains a provision which relates to the Structural Efficiency Principle. This clause refers to a State Working Party and certain matters with which it shall deal. It also contains guidelines for dealing with "any other measure designed to increase flexibility on a site or in an enterprise".

The Commission was referred to the Decision of the Full Bench of the Australian Industrial Relations Commission where a model enterprise flexibility clause was established (Print M 0782) and to the comments of the Commission in Court Session of this Commission in the December 1994 SWD, that it would not endorse any standard provision.

The parties have advised the Commission that the Australian Commission will be examining the situation of an Enterprise Flexibility Provision for the National Building and Construction Industry Award and associated awards and that this should provide some guidance for the parties to these matters.

On this basis, I am satisfied that each award contains a provision which, subject to the parties' comments as to aspects which require attention and in particular in light of the federal situation, will be satisfactory in the interim.

Programme of Discussion For Review of Awards

I am satisfied that the parties intend to establish such a programme and have set up a meeting for this purpose. Further, the parties will be examining the awards in light of developments at the federal level, where SDP McBean is to oversee such a review for associated federal awards.

Operative Date

The State Wage Principles allow for the second arbitrated safety net adjustment to be available no earlier than the first pay period commencing on or after 22 March 1995.

The Unions refer to the decision of the Full Bench in the HSOA *v.* Association for the Blind [(1982) 62 WAIG 208] and previous decisions of this Commission establishing a nexus with other awards which creates a special circumstance justifying retrospectivity.

Building Trades (Construction) Award

The Commission was also referred to a number of decisions of the Commission in recent years which recognises the nexus between the Building Trades (Construction) Award and the National Building and Construction Industry Award creating the special circumstances which make it fair and right to grant retrospectivity to bring those amendments into line with amendments to the National award, in this case being the first pay period commencing on or after 23 March 1995. This is also said to be justified on the grounds that there are employees working on building sites who are covered by the nexus award and that industrial harmony requires that operative dates be about the same time.

It was also argued that there had been an expectation created amongst workers who had not received an increase for over twelve months that such an increase was due and available shortly, and that the Unions had not in any way delayed the processing of the applications.

Earthmoving and Construction Award

The Unions say that this award has a recognised nexus with the AWU (Construction and Maintenance) Award 1987 (Federal). This award however has not been kept up to date. The AWU (Construction and Maintenance) Award 1989 has been amended, and I am told that this occurred in tandem with the amendments to the National Building and Construction Industry Award, and with an operative date also of 23 March 1995.

The Union referred to a decision of this Commission which recognised that the award with which the nexus existed had not been kept up to date, whereas the 1989 award had and provided for amendment to the award not withstanding that situation. The Union seeks an operative date of 23 March 1995.

Engine Drivers' (Building and Steel Construction) Award

It is said that this award has a recognised nexus with the Metal Trades (General) Award for those employed in civil works, and a nexus with the Building Trades (Construction) Award for those on building sites. Decisions of the Commission dealing with that nexus were referred to the Commission. The Union seeks an operative date, of 23 March 1995 for those employees who received their first eight dollars under the December 1993 SWD, on building sites, being the same date for which they have sought the amendment to the Building Trades (Construction) Award, and for the others, 4 April 1995 being the date the Metal Trades (General) Award was amended.

In response Mr Dwyer says that the HSOA decision (op cit) is dated. It was made in 1982 at a point where there were no wage fixation principles applying and that as a consequence section 26 considerations were paramount. Wage fixation principles were re-instituted in 1983 and those new principles made no provision for special recognition being given to the question of nexus. Where nexus has been a consideration in earlier wage fixation principles it no longer has that weight. Mr Dwyer says that as these claims are justified, not on the basis of nexus, but on the basis of the Statement of Principles arising out of the State Wage Case Decision, that is the issue which ought be considered. He says the Unions are required to prosecute applications expeditiously and have chosen to await the outcome of the Federal proceedings and that no responsibility can be allocated to the Respondents for the matter not proceeding as quickly as it might otherwise have done.

In respect of the Earthmoving and Construction Award, Mr Dwyer adopts his argument in respect of the other two awards, but says that, alternatively, no nexus argument is available. The decision of Beech C in respect of expense related allowances in September 1993, regarding a nexus with the AWU (Construction and Maintenance) Award 1989, found that the nexus was with the 1987 award yet the Union was not able to utilise either the 1987 or the 1989 award for the purposes of operative date because neither award had been amended at that time. Commissioner Beech acknowledged that the 1989 award had not moved either and utilised the current date which is the only option Mr Dwyer says is now available. Mr Dwyer says that the decision does not support a nexus existing with the 1989 award. There may be an argument that the nexi exist for the other two awards but that there is no ground for argument in respect of the Earthmoving and Construction Award nexus arrangement. He also notes differences between the classifications contained within the Earthmoving and Construction Award and the 1989 award to demonstrate that there is no nexus.

He says that the Unions are using the best of both worlds situation to argue for retrospectivity, and that the operative date should be the first pay period commencing on or after the date of hearing being 10 May 1995.

Mr Richardson for the Master Builders Association says that there are countervailing circumstances which make it fair and right to not provide retrospectivity. He refers to the comment within the HSOA decision (op cit) of retrospectivity "to about the date of the variation of the parent awards" (my underlining). The use of the term "about" is of significance and there is therefore a degree of discretion available to the Commission and particularly in terms of taking account of the administrative cost which may be faced by employers making retrospective payments. That burden would fall in two areas, one being the administrative burden and one being the actual cost of retrospectivity.

In respect of the argument that retrospectivity ought apply to promote industrial harmony, Mr Richardson refers to the many enterprise agreements registered with the Commission which provide for increased rates at the enterprise level to demonstrate that this principle has been overidden. People within the industry doing the same work may be receiving different rates of pay and, in the upper end of the industrial and commercial sector of the building industry, employers enter into unregistered agreements with overaward payments involved. The focus on maintaining a close relationship between the wage rates in the State and Federal awards has therefore diminished to some extent in recent years, and on that basis the Commission should not consider that there is sufficient reason to warrant backdating to 23 March.

Alternatively, Mr Richardson says that the earliest possible date which the Commission should apply is 19 April which is the date upon which the Union sought to have the matter called on, or alternatively no earlier than 12 April when the matter was determined at the Federal level.

Mr Richardson also asked that the Commission make comment regarding absorption, to clarify that overaward payments may be absorbed, whether they are through registered arrangements or not, and further that such absorption apply only to the eight dollars and not to the 1.9% increase in allowances.

In the past, importance has been placed on the existence of nexus and yet nexus is not the only reason why retrospectivity has been granted, including that in an industry such as this, the industrial relations harmony of employees covered by different awards and jurisdictions working side by side is important.

I accept that the Unions have acted as quickly as possible to seek the amendment of these awards for the purpose of ensuring a consistent approach between the awards relating to employees working on the same site, whether they be related through nexus or otherwise, and for this reason special circumstances exist which warrant some retrospective effects for employees under the Building Trades (Construction) Award and the Engine Drivers' (Building and Steel Construction) Award, and the employees under Appendix 1 of the Earthmoving and Construction Award. This must be balanced with the issues for the employers, being the administrative burden and costs and the cost of the retrospectivity itself, combined with the fact that there is a greater emphasis on enterprise level arrangements and that such enterprise focus has resulted in enterprise agreements which do not rely on nexus or same-site arrangements although the latter, I can see from matters which have come before me, is still of some significance.

On this basis, for employees for whom the first arbitrated safety net adjustment was applied under the December 1993 SWD, their second arbitrated safety net adjustment will apply from the beginning of the first pay period commencing after 19 April 1995, being the date upon which the Unions requested a hearing.

In respect of employees who have received their first arbitrated safety net adjustment as a result of the December 1994 State Wage Case, those employees shall have a prospective operative date being, for the sake of consistency amongst the three awards, the first pay period commencing on or after 28 September 1995.

In respect of all allowances, also to avoid confusion and for consistency, increases shall apply to all employees from the same dates as their second arbitrated safety net adjustment applies.

Minutes of Proposed Orders will issue.

BUILDING TRADES (GOVERNMENT) AWARD 1968.

No. 31A 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

Hon Minister for Works and Others

No. 11 of 1996

Building Trades (Government) Award 1968

No. 31A of 1966.

COMMISSIONER P E SCOTT.

6 February 1996.

Order.

HAVING heard Ms D MacTiernan on behalf of the The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and Mr D Lee on behalf of the Hon Minister for Works, now therefore the Commission,

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

THAT the Building Trades (Government) Award 1968 as amended be further varied in the terms of the following Schedule with effect on and from the 21st day of January 1996.

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

Schedule.

Clause 9.—Wages: Delete subclause (1) and the preamble to subclause (1) of this clause and insert the following in lieu thereof:

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 Engagement $	2nd Arbitrated Safety Net Adjustment $	Total Rate $	After 1 year of service (Per Week) $	2nd Arbitrated Safety Net Adjustment $	Total Rate $	After 2 years of service $	2nd Arbitrated Safety Net Adjustment $	Total Rate $
(1) (a) Tradespersons: Bricklayers Stoneworkers,Carpenters, Joiners, Painters, Signwriters, Glaziers, Plasterers and Stone-masons as defined in Clause 6 of this Award	429.60	16	445.60	434.50	16	450.50	439.00	16	455.00
(b) Special Class Tradesperson (as defined)	447.80	16	463.80	452.95	16	468.95	457.65	16	473.65
(c) Plumbers holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	444.85	16	460.85	449.80	16	465.80	454.30	16	470.30
(d) Builders Labourers:									
(i) Rigger, Drainer, Dogman	407.25	16	423.25	414.10	16	430.10	418.80	16	434.80
(ii) Scaffolder, Powder Monkey, Hoist or Winch Driver, Concrete Finisher, Steelfixer, including Tack Welder, Concrete Pump Operator	395.25	16	411.25	398.40	16	414.40	403.05	16	419.05
(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	16	402.85	391.15	16	407.15	396.25	16	412.25
(iv) Builder's Labourer employed on work other than specified in classifications (i)-(iii)	356.80	16	372.80	357.80	16	373.80	362.05	16	378.05

(e) (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.

(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.

(iii) 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.

CATERING EMPLOYEES AND TEA ATTENDANTS (GOVERNMENT) AWARD 1982.

No. A 34 of 1981.

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

Minister for Primary Industry and Others.

No. 359 of 1995.

Catering Employees and Tea Attendants (Government) Award 1982.

No. A 34 of 1981.

COMMISSIONER R.H. GIFFORD.

26 February 1996.

Order

HAVING heard Mr E. Fry on behalf of the Applicant and Mr S. Majeks 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 Catering Employees and Tea Attendants (Government) Award 1982 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 day of February 1996.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

Clause 22.—Wages. Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following:

(1) (a) Classifications:

	Base Rate (per week)	Arbitrated Safety Net Adjustment (per week)	Total Award Rate (per week)
	$	$	$
(a) Chef	351.20	8.00	359.20
(b) Qualified Cook	325.40	8.00	333.40
(c) Cooks Employed Alone	307.90	8.00	315.90
(d) Other Cooks	304.60	8.00	312.60
(e) Bar Attendant	307.40	8.00	315.40
(f) Waiter/Waitress	300.20	8.00	308.20
(g) Steward/ Stewardess	300.20	8.00	308.20
(h) Cashier	307.40	8.00	315.40
(i) Counterhand	300.20	8.00	308.20
(j) Tea Attendant	297.20	8.00	305.20
(k) Kitchenhand	297.20	8.00	305.20
(l) General Hand	297.20	8.00	305.20

(b) Arbitrated Safety Net Adjustment

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 1st 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) In addition to the above wage rates service pay will be paid for each year of service at the following rates per week:

	$
Year 1	49.70
Year 2	54.30
Year 3 and thereafter	58.30

CHILD CARE (SUBSIDISED CENTRES) AWARD No. A 26 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality And Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch

and

Bassendean Town Council and Others.

No. 69 of 1996.

Child Care (Subsidised Centres) Award No. A 26 of 1985.

COMMISSIONER R. H. GIFFORD.

11 March 1996.

Order.

HAVING heard Ms R. Ho 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 Child Care (Subsidised Centres) Award be varied in accordance with the following Schedule and that such variation shall have effect on and from the 6th day of March 1996.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

1. Clause 11.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) The total minimum weekly rate of wage payable to persons employed pursuant to this award, operative from the beginning of the first pay period on or after 25 May 1995 shall be:

	$ (Per Week)
(a) Child Care Support Employee—Grade One—Cleaner	380.60
Child Care Support Employee—Grade One—Kitchen Hand	387.30
Child Care Support Employee—Grade Two	
Step I	391.50
Step II	399.80
Child Care Giver	
Step I	380.60
Step II	390.00
Step III	399.50
Step IV	409.00
Qualified Child Care Giver	
Step 1A	456.00
Step 1B	474.00
Step II	488.40
Step III	502.60
Step IV	517.10
(b) Assistant Director—Grade One	
Step I	524.90
Step II	532.40
Step III	540.00
Assistant Director—Grade Two	
Step I	532.40
Step II	540.00
Step III	547.50
Assistant Director—Grade Three	
Step I	540.00
Step II	547.50
Step III	561.50

(c) Childrens Programe Co-ordinator (Family Centre)

Step I	474.00
Step II	487.60
Step III	517.10
Step IV	542.60
Step V	568.10
Step VI	591.70
Step VII	621.20
Step VIII	653.60

(d) (i) An employee who commences employment as a Children's Programme Co-ordinator (Family Centre) and has previous experience as a qualified Child Care Giver or Assistant Director moves onto the next highest rate of pay on the Children's Programme Co-Ordinator (Family Centre) structure than the rate of pay he/she has been receiving as a Qualified Child Care Giver or Assistant Director.

(ii) A Children's Programme Co-ordinator (Family Centre) with two years training enters the wage structure at Step I and exits at Step VI.

(iii) A Children's Programme Co-ordinator (Family Centre) with three years training enters the wage structure at Step II and exits at Step VIII.

(iv) Where a 2 year trained Children's Programme Co-ordinator (Family Centre) completes the Diploma in Children's Services (Management) Course then completion of such training will be considered to be equivalent to a 3 year trained employee.

(v) Where a 2 year trained Children's Programme Co-ordinator (Family Centre) undertakes additional training considered relevant to the Children's Services industry on application the employer may consider such training to be equivalent to a 3 year trained Children's Programme Co-ordinator (Family Centre).

(vi) Where the parties to this award are unable to reach agreement on the question of "training relevant to the children's services industry" then that matter may be referred to the Western Australian Industrial Relations Commission for conciliation and, where necessary, arbitration.

(vii) Where a 2 year trained Children's Programme Co-ordinator (Family Centre) undertakes additional training considered equivalent to the level of a 3 year trained employee pursuant to placetum (iv) or (v) or (vi) of this paragraph then the employee shall immediately progress by one additional increment and from that point, subject to subclause (2) (a) herein, progress by annual increment through to Step VIII.

(viii) A Children's Programme Co-ordinator (Family Centres) is as defined in Clause 27.—Classification and Skill Descriptors of this Award.

(e) Qualified Occasional Care/Limited Time (State Government)

	$
Step 1A	14.50
Step 1B	15.07
Step II	15.52
Step III	15.99
Step IV	16.45

CHILDREN'S SERVICES (PRIVATE) AWARD No. A 10 of 1990.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality And Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch

and

Bassendean Day Care Centre and Others.

No. 45 of 1996.

Children's Services (Private) Award No. A 10 of 1990.

COMMISSIONER R. H. GIFFORD.

11 March 1996.

Order.

HAVING heard Ms R. Ho 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 Children's Services (Private) Award be varied in accordance with the following Schedule and that such variation shall have effect on and from the 6th day of March 1996.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

1. Clause 22.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) The total minimum weekly rate of wage payable to persons employed pursuant to this award, operative from the beginning of the first pay period on or after 25 May 1995 shall be:

	$ (Per Week)
(a) Child Care Support Employee—Grade One—Cleaner	380.60
Child Care Support Employee—Grade One—Kitchen Hand	387.30
Child Care Support Employee—Grade Two	
Step I	391.50
Step II	399.80
Child Care Giver	
Step I	380.60
Step II	390.00
Step III	399.50
Step IV	409.00
Qualified Child Care Giver	
Step IA	456.00
Step IB	474.00
Step II	488.40
Step III	502.60
Step IV	517.10
(b) Assistant Director—Grade One	
Step I	524.90
Step II	532.40
Step III	540.00
Assistant Director—Grade Two	
Step I	532.40
Step II	540.00
Step III	547.50
Assistant Director—Grade Three	
Step I	540.00
Step II	547.50
Step III	561.50

EARTHMOVING AND CONSTRUCTION AWARD.
No. 10 of 1963.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Bell Basic Industries Ltd and Others

No. 1330 of 1995

Earthmoving and Construction Award

No. 10 of 1963.

COMMISSIONER P E SCOTT.

6 February 1996.

Order.

HAVING heard Mr W Tracey on behalf of the Applicant and Ms J Dowling on behalf of the Respondents, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Earthmoving and Construction Award 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 17th day of January 1996.

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

Schedule.

1. Clause 17.—Living Away From Home Allowance:
   A. Subclause (1): Delete the amounts of "$264.40" and "$37.80" appearing in paragraph (b) of this subclause and insert "$265.70" and "$38.00" in lieu thereof.
   B. Subclause (4): Delete the amount of "$22.40" appearing in paragraph (a) of this subclause and insert "$23.10" in lieu thereof.
   C. Subclause (7): Delete the amount of "$11.00" appearing in this subclause and insert "$11.30" in lieu thereof.
2. Clause 23.—Travelling Allowance:
   A. Subclause (1): Delete the amount of "$11.00" appearing in paragraph (a) of this subclause and insert "$11.30" in lieu thereof.
   B. Subclause (2): Delete this subclause and insert the following in lieu thereof.

(2) On country work where camping facilities are not provided and travel cannot be made by public conveyance, an employee required to travel to or from the place of work shall, unless a conveyance be provided by the employer (free of charge) to transport him/her to and from the place of work and a central pick-up place, be paid allowances in accordance with the following scale.

	Per Day $
3 kilometres each way and up to and including 8 kilometres each way	4.90
over 8 kilometres each way and up to including 16 kilometres each way	9.10
over 16 kilometres each way and up to and including 32 kilometres each way	11.30
over 32 kilometres each way	13.60

ENGINE DRIVERS' (BUILDING AND STEEL CONSTRUCTION) AWARD.
No. 20 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Transfield WA Pty Ltd and Others

No. 1331 of 1995

Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973.

COMMISSIONER P E SCOTT.

6 February 1996.

Order.

HAVING heard Mr W Tracey on behalf of the Applicant, Mr M McLean on behalf of the Master Builders' Association of Western Australia (Union of Employers) and Ms J Dowling on behalf of Transfield WA Pty Ltd and Others, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and by consent, hereby orders—

THAT the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 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 17th day of January 1996.

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

Schedule.

1. Clause 22.—Allowance for Travelling and Employment in Construction Work:
   A. Subclause (1):
      I. Delete the amount of "$11.00" appearing in paragraph (a) of this subclause and insert "$11.30" in lieu thereof.
      II. Delete the amounts of "60 cents" appearing in paragraphs (b) and (c) of this subclause and insert "62 cents" in lieu thereof.
   B. Subclause (2): Delete the amount of "60 cents" appearing in this subclause and insert "62 cents" in lieu thereof.
2. Clause 23.—Distant Work:
   A. Subclause (1): Delete the amounts of "$264.40" and "$37.80" appearing in paragraph (b) of this subclause and insert "$265.70" and "$38.00" in lieu thereof.
   B. Subclause (4): Delete the amount of "$22.40" appearing in paragraph (a) of this subclause and insert "$23.10" in lieu thereof.
   C. Subclause (7): Delete the amount of "$13.30" appearing in this subclause and insert "$13.70" in lieu thereof.

ENGINE DRIVERS (GOVERNMENT) AWARD 1983.
No. A 5 of 1983.

WESTERN AUSTRALIAN

INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fremantle Port Authority

and

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

No. 914 of 1995.

COMMISSIONER C.B. PARKS.

22 February 1996.

Order.

HAVING heard Mr B. Patterson and with him Mr J. Douglas on behalf of the Applicant and Ms D. MacTiernan 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 Engine Drivers (Government) Award 1983 be varied in accordance with the following Schedule and that such variation shall have effect on and from 6 February 1996.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

———

Schedule.

1. Clause 19.—Special Provisions: Delete this clause and insert in lieu thereof—

19.—SPECIAL PROVISIONS

Notwithstanding the provisions of this Award, employees employed on construction work as defined in the following Awards and employed in association with employees covered by the following Awards, that is

(1) AWU Government Construction and Maintenance Award No. 24 of 1965, or,

(2) AWU Government Harbours Construction and Maintenance Award No. 24A of 1965, or

(3) Government Water Supply, Sewerage and Drainage Award No. 2 of 1980,

shall be paid such amounts and receive such conditions as are prescribed from time to time in those Awards for the employees they are associated with, in respect to fares, walking and travelling time, camping, meals, wet work, overtime and industry or construction allowances.

2. Schedule B—Respondents: Delete from this schedule the following name—

Fremantle Port Authority

FURNITURE TRADES INDUSTRY AWARD.
No. A6 of 1984.

SOFT FURNISHING AWARD.
No. A23 of 1982.

TIMBER WORKERS AWARD.
No. 36 of 1950.

PARTICLE BOARD INDUSTRY AWARD.
No. 10 of 1978.

Editor's Note: Relative orders published (75 WAIG 2175, 2236, 2237, 2229)

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.

and

Joyce Australia Ltd and Others

No. 1313 of 1994

Furniture Trades (Industry) Award

No. 6 of 1984

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.

and

Dubrov Pty Ltd T/as Innovations and Co

No. 1314 of 1994

Soft Furnishing Award

No. A 23 of 1982

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.

and

Bunnings Ltd and Others

No. 1317 of 1994

Timber Workers Award No. 36 of 1950

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.

and

Wesfi Pty Ltd

No. 112 of 1995.

Particle Board Industry Award No. 10 of 1978.

COMMISSIONER P.E. SCOTT.

24 May 1995.

Reasons for Decision.

THE COMMISSIONER: The Applicant Union seeks to amend the Furniture Trades (Industry) Award No. 6 of 1984, Soft Furnishing Award No. A 23 of 1982, Timber Workers Award No. 36 of 1950 and the Particle Board Industry Award No. 10 of 1978 for the second arbitrated safety net adjustment arising from the December 1994 State Wage Decision ("SWD") [(1995) 75 WAIG 23].

The awards were amended for the first arbitrated safety net adjustment on 3 March 1994 effective 10 January 1994, in accordance with the December 1993 SWD (74 WAIG 198).

By the terms of its revised schedules and the submissions made during the hearing of this matter, the Applicant also seeks the first safety net adjustment pursuant to the December 1994 SWD for employees who, due to the different absorption arrangements of the December 1993 SWD, would have had that increase absorbed into overaward payments arising prior to 1 November 1991. This second matter also has implications for the operative date of the order.

For awards to be amended to include the second arbitrated safety net adjustment, the Statement of Principles arising from the December 1994 State Wage Case sets out a number of tests being:

(i) that the award has been varied for the first $8.00 per week safety net adjustment;

(ii) that at least 6 months has elapsed between the first and second award level $8.00 per week safety net adjustments;

(iii) that the award has been varied to include enterprise flexibility provisions.

(iv) that a programme of discussion between the award parties has been established to deal with the review of the award with particular attention to:

(aa) the effective use of facilitative provisions;

(bb) the effective use of majority clauses; and

(cc) the implementation of a process for testing the relevance of the award at the enterprise level.

(v) that in addition to the clause referred to in subclause (1)(c), the award contains the following clause:

"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."

It is clear that the first test has been met.

In respect of the second test, this has been met insofar as the awards have been amended in accordance with the December 1993 SWD. However, the matter does not end there.

The December 1993 SWD allowed for absorption of that adjustment, in the following terms—

"acceptance of absorption of that adjustment to the extent of any equivalent amounts in rates of pay ... in excess of the minimum rate ... prescribed in accordance with the September, 1989 State Wage Decision, is a prerequisite to it being applied to any award."

(page 201)

However, the December 1994 SWD, in providing for the first arbitrated safety net applies a different absorption regime. Insofar as these applications seek to apply the first arbitrated safety net adjustment pursuant to the December 1994 SWD for those employees for whom absorption occurred pursuant to the December 1993 SWD this is of significance.

It should be noted, too, that the Statement of Principles does not focus simply on the amendment of the awards for the arbitrated safety net adjustments but also considers as an important issue the receipt by employees of those increases and the circumstances under which absorption or offsetting should take place.

At page 42 of the December 1994 SWD the terms for the arbitrated safety net adjustments are set out.

"• Under the first arbitrated safety net adjustment set out hereunder where an employee is in receipt of an overaward payment in excess of eight dollars the order does not, in its terms increase actual wage rates.

• It is intended that the second and third arbitrated safety net adjustments set out hereunder may only be offset to the extent of any wage increases payable since 1 November 1991 pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements.

Second and third level award adjustments are known well in advance and the parties should conduct their negotiations within the context of the scope of offsetting."

It also notes that:

"• The intent of the Statement of Principles with respect to "arbitrated safety net adjustments" is to ensure that all employees covered by 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."

Those employees who had their eight dollars absorbed under conditions which would not apply to the December 1994 Decision, (but which applied to the December 1993 Decision) in receiving only the second and third safety net adjustments, will not receive such a $24 per week minimum wage increase during the period specified.

The Statement of Principles then goes on to set out the terms and tests which shall apply to particular arbitrated safety net adjustments. In respect of the first arbitrated safety net adjustment, it says that awards may "be varied to provide a first eight dollar per week arbitrated safety net adjustment for employees who have not received a wage increase as a result of enterprise bargaining since 1 November 1991".

It is clear then that this is a different arrangement than that which applied to the first arbitrated safety net adjustment pursuant to the December 1993 State Wage Decision.

Also, the fifth test applying to the second arbitrated safety net adjustment requires that "in addition to the clause referred to in subclause (1)(c)" (my underlining) the award is to be amended to include a clause recognising that the award has been amended for the second arbitrated safety net adjustment and setting out the offsetting arrangements. Subclause (1)(c), which is also to be included in the award, relates to the first arbitrated safety net adjustment and its offsetting arrangements, and was not required to be contained in awards by the December 1993 SWC.

In respect of the second test, then, it is true in respect of employees for whom there was no absorption under the December 1993 State Wage Decision that six months has elapsed between the first and second award level eight dollar per week safety net adjustment. This is not so in respect of those for whom there was absorption of an overaward payment which pre-dated 1 November 1991, and for whom this decision would result in their receiving both their first and second eight dollar increases from the same date, unless a prospective operative date is applied to the second arbitrated safety net adjustment.

Therefore it is appropriate that two operative dates apply.

This arrangement is consistent with a Decision of the Full Bench of the Australian Industrial Relations Commission of 24 March 1995, relating to applications to amend a number of retail awards (Print M 0381).

Enterprise Flexibility Provision

With the exception of the Particle Board Industry Award, the awards contain provisions, variously titled, which the Applicant says are, in effect, enterprise flexibility provisions.

The Furniture Trades Industry Award contains Clause 51.— Structural Efficiency which reads:

ENTERPRISE FLEXIBILITY

(1) The parties to this award are committed to co-operate positively to increase the efficiency, productivity and international competitiveness of the industry and 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. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of subclause (1) hereof shall be processed through that consultative mechanism and procedures.

(3) Measures raised for consideration consistent with subclause (2) hereof shall be related to implementation of any new classification structure, and facilitative provisions contained in this award and, matters concerning training and, subject to paragraph (4) hereof, any other measures consistent with the objectives of paragraph (1) of this subclause.

(4) 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:

(a) The changes sought shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission.

(b) The majority of employees affected by the changes at the plant or enterprise must genuinely agree to the change.

(c) No employee shall lose income as a result of the change.

(d) The relevant union or unions must be a party to the agreement.

(e) The relevant union or unions shall not unreasonably oppose any agreement.

(f) 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.

(5) Any disputes arising in relation to the implementation of subclauses (2) and (3) hereof shall be subject to the provisions of Clause 48.- Grievance and Dispute Procedure.

Clause 50.—Consultative Mechanism of the Timber Workers Award is in identical terms. Clause 44.—Structural Efficiency of the Soft Furnishing Award is in very similar but not identical terms.

In respect of the Particle Board Award, the Applicant says that a provision in the same terms as that contained in the other awards would be appropriate as the Award does not currently contain any relevant provision.

Mr Tomlinson, for the Respondents, put forward a counter-proposal for an enterprise flexibility provision, saying that the provisions contained within the awards are not enterprise flexibility provisions but relate to structural efficiency and other wage fixing processes, not to the enterprise flexibility requirements established by the December 1994 SWD. He says that the counter proposal clause would make amendment to work practices as simple as possible.

In determining what constitutes an enterprise flexibility provision the Commission was referred to the decision of the Full Bench of the Australian Industrial Relations Commission of 11 April 1995 in which the Commission considered a model enterprise flexibility provision for federal awards. (Print M 0782).

In the December 1994 SWD, the Commission in Court Session clearly rejected the concept of a model clause but set out its intention to encourage the reaching of enterprise agreements. While the Decision of the Australian Commission regarding its model clause is of interest and may be useful in some respects, it is the guidance given in the December 1994 SWD which is compelling.

The Enterprise Flexibility clauses already contained within the awards (except the Particle Board Award) do set out a process by which parties can reach plant or enterprise agreements, however some of the terms require modification to remedy areas of deficiency.

1. Subclause (1) is focussed on the industry and its international competitiveness whereas the remainder of the clause is related to enterprise agreements. The State Wage Case Decision requires focus to be on enterprise agreements and as the general tenor of the clause is enterprise focussed then subclause (1) should be amended to reflect that focus.

2. It is appropriate to note that where parties seek measures designed to meet the objectives of the clause which are not contrary to the award and do not require award amendment for their legal application, then there should be no impediment to those matters being resolved at the enterprise level without the matter proceeding to the Commission.

Where parties believe that it is desirable and in their interests to bring such matters to the Commission for approval, that is already provided for, however there should be no compulsion, except, of course, in cases where the terms of the agreement are contrary to the Award. It appears that parties to these awards (other than the Furniture Trades (Industry) Award) have been able to reach agreements at the enterprise level and bring those agreements to the Commission for registration.

Amendments to the effect described above will ensure that the awards recognise and encourage to a still greater extent, the reaching of agreements.

3. The enterprise focus of the current wage fixation system should not require union participation at every stage of the process for employees and employers who wish to stay within the award system. Unions are parties to awards and therefore have certain rights in that respect but this should not translate to a requirement that they participate at enterprise level, neither does it mean that they should be excluded where they have a legitimate interest in representing their members at the enterprise.

Therefore, a provision which recognises the Union's role at the enterprise level, but which does not compel such a role is appropriate. So too, is a provision which recognises that the Union has a role in the amendment of the award to which it is a party. The provision already notes that this role should not constitute a right of veto, but a right to be consulted.

For these reasons the existing award provisions will be the basis for the enterprise flexibility provision but will be modified to reflect this decision, and will be acceptable to meet the test specified within the Statement of Principles. A like provision will be inserted into the Particle Board Industry Award.

On the other hand the provision submitted by the Respondents could be said to be less appropriate including that subclause (6) in particular may be open to misinterpretation as to contracting out.

In respect of the fourth test, the parties advise that there is a programme of discussion being established to review the awards, as required.

As the tests have been and will be met by amendments to the awards arising from this Decision, the awards will be varied for the second arbitrated safety net adjustment.

OPERATIVE DATE

Due to the circumstances outlined above relating to employees for whom the first arbitrated safety net adjustment was absorbed, there will need to be provision for those employees to receive the first arbitrated safety net adjustment pursuant to the December 1994 State Wage Decision, and to receive their second arbitrated safety net adjustment no earlier than six months after that first adjustment.

The issue of retrospectivity has been considered in light of the decisions of the Commission in previous matters as to whether there are special circumstances which make it fair and right to give retrospective effect to these amendments in accordance with section 39 of the Industrial Relations Act, 1979.

There is no special circumstance in respect of the Awards having a recognised nexus within any other award.

Applications numbered 1313, 1314 and 1317 of 1994 were filed with the Commission on 30 December 1994 and application No. 112 of 1995 was filed on 10 February 1995. Answers were filed in due course and by letter dated 14 March 1995 the Applicant sought to have the matters heard. There was continuing discussion between the parties in particular related to the appropriateness of enterprise flexibility provisions. The parties did not respectively reach their concluded positions until 26 April 1995 at which time it was agreed that the matter would need to be arbitrated, and was listed for hearing on 1 May 1995.

This was not an unusual process in a matter being brought to the Commission for hearing and determination where the parties have genuinely, but unsuccessfully, sought to resolve the claim by negotiation. In this case, the parties have reached a large measure of agreement, but the terms of that agreement are subject to certain tests being met. It is the precise terms of a provision which constitutes a major test for the parties to meet which has not been resolved by negotiation, and arbitration on that essential element was necessary. Without

that issue being resolved, the remainder of the agreement could not be processed. So, until the matter was heard on 1 May 1995, there was no prospect of the remainder of the agreement proceeding. This sequence of events and the circumstances involved could not be seen to constitute special circumstances making it fair and right to give retrospective effect to the amendments so these orders will apply from the first pay period commencing on or after the date of hearing being 1 May 1995.

For employees who have received their first arbitrated safety net adjustment as a result of this decision, they will have a prospective operative date for their second arbitrated safety net adjustment, being 1 November 1995.

The awards will also be amended to reflect the increases in allowances in accordance with the Wage Fixation Principles to deal with those matters which constitute a reimbursement of expenses, and the leading hand allowance.

Minutes of Proposed Orders will issue.

GAOL OFFICERS' AWARD.
No. 12 of 1968.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Prison Officers' Union Of Workers

and

Honourable Attorney General.

No. 1013 of 1995.

Goal Officers' Award No. 12 of 1968.

COMMISSIONER R.H. GIFFORD.

26 February 1996.

Order.

HAVING heard Mr P. Stingemore on behalf of the Applicant and Mr M. Celenza 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 Goal Officers' Award No. 12 of 1968 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 1st day of September 1995.

(Sgd.) R.H. GIFFORD,
[L.S] Commissioner.

Schedule.

Clause 6.—Special Provisions. Amend subclause (5) of this clause by adding the following sentence after the word "worked".

This subclause shall also apply to Officers in Charge of a shift at the Special Operations Unit.

NURSES (DENTISTS SURGERIES) AWARD.
No. 44A of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation Industrial Union of Workers Perth

and

Dr E.A. Adler and Others.

No. 1212 of 1995.

COMMISSIONER C.B. PARKS.

15 February 1996.

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 (Dentists Surgeries) 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 30 January, 1996.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

Schedule.

1. Clause 2.—Arrangement: Immediately following the number and words "25.—Calculation of Penalties", insert the following—

26.—Enterprise Agreements.

2. Clause 21.—Wages: Delete this clause and insert in lieu thereof:

21.—WAGES

(1) The minimum rate of wage payable per week shall be as follows:

	Base Rate Per Week	First and Second Arbitrated Safety Net Adjustment	Total Rate Per Week
	$	$	$
(a) Registered Dental Nurse 1st Year of experience after registration	346.20	16.00	362.20
2nd Year of experience after registration and thereafter	353.20	16.00	369.20
(b) Registered General Nurse 1st Year of experience after registration	391.90	16.00	407.90
2nd Year of experience after registration and thereafter	400.90	16.00	416.90

(c) 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.

(d) 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 1st 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) The employer may require an employee to receive wages by electronic funds transfer into an account held at any major bank, Building Society or Nurses' Credit as nominated by the employee. Any costs associated with the establishment of such an account and of the operation of it shall be borne by the employee.

3. Clause 25.—Calculation of Penalties: Immediately following this clause insert a new clause, Clause 26.—Enterprise Agreements, as follows:

26.—ENTERPRISE AGREEMENTS

(1) (a) Employers and employees covered by this award, may reach agreement to move to vary provisions 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 proposed variation shall be committed to writing, and shall be the subject of negotiation between the persons directly concerned with their effect.

(b) Where enterprise level discussions are considering matters requiring award variation, the union shall be notified.

(c) Nothing in this clause shall prevent the employees from seeking advice from, or representation by, the union during such negotiations.

(d) 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.

(e) 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.

(f) No employees shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of the enterprise 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 this award and take precedence over any inconsistency.

NURSES (DOCTORS SURGERIES) AWARD 1977

No. 44 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation Industrial Union of Workers Perth

and

Drs T. Blade, W. Chapman, D. Dallas, T. Tapsall, R. Doersken and Others.

No. 1213 of 1995.

COMMISSIONER C.B. PARKS.

15 February 1996.

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 (Doctors Surgeries) 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 30 January, 1996.

(Sgd.) C.B. PARKS,
Commissioner.

[L.S]

Schedule.

Clause 21.—Wages: Delete this clause and insert in lieu thereof:

21.—WAGES

(1) The minimum rate of wage payable per week shall be as follows:

	Base Rate Per Week $	First and Second Arbitrated Safety Net Adjustment $	Total Rate Per Week $
(a) Registered Nurse			
1st Year of experience after registration	471.60	16.00	487.60
2nd Year experience after registration	495.20	16.00	511.20
3rd Year experience after registration	518.80	16.00	534.80
(b) Nurse in Charge	565.90	16.00	581.90

(2) Provided that progression through the increments for a registered general nurse shall be subject to satisfactory performance.

(3) The employer may require an employee to receive wages by electronic funds transfer into an account held at any major bank, Building Society or Nurses' Credit as nominated by the employee. Any costs associated with the establishment of such an account and of the operation of it shall be borne by the employee.

(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 1st 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

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NURSES' (PRIVATE HOSPITALS) AWARD
No. 1 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation Industrial Union of Workers Perth

and

Alfred Carson Nursing Home and Others.

No. 1061 of 1995.

COMMISSIONER C.B. PARKS.

20 February 1996.

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' (Private Hospitals) 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 2 January 1996.

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

Schedule.

1. Part I, Clause 29.—Wages:

A. Delete paragraphs (b) and (c) of subclause (1) of this clause and insert in lieu thereof—

	Base Rate Per Week $	First and Second Arbitrated Safety Net Adjustment $	Total Rate $
(b) Registered Mothercraft Nurse—Years of Experience:			
1st Year	396.20	16.00	412.20
2nd Year	403.70	16.00	419.70
3rd Year	414.80	16.00	430.80
4th Year	426.30	16.00	442.30
5th Year and thereafter	437.40	16.00	453.40
(c) Registered General Nurse:			
Level 1.1	471.60	16.00	487.60
1:2	495.10	16.00	511.10
1:3	518.70	16.00	534.70
1:4	542.30	16.00	558.30
1:5	565.90	16.00	581.90
1:6	589.50	16.00	605.50
1:7	613.00	16.00	629.00
1:8	636.60	16.00	652.60
Level 2:1	660.20	16.00	676.20
2:2	675.90	16.00	691.90
2:3	691.60	16.00	707.60
2:4	707.30	16.00	723.30
Level 3:1	736.80	16.00	752.80
3:2	754.50	16.00	770.50
3:3	772.20	16.00	788.20
3:4	789.90	16.00	805.90
Level 4:1	834.60	16.00	850.60
4:2	859.30	16.00	875.30
4:3	908.30	16.00	924.30
4:4	933.10	16.00	949.10
4:5	957.60	16.00	973.60
4:6	994.40	16.00	1010.40
Level 5:1	994.40	16.00	1010.40
5:2	1059.70	16.00	1075.70

B. Delete subclause (3) of this clause and insert in lieu thereof—

(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. 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.

(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.

2. Part II, Schedule A: Delete this schedule and insert in lieu thereof—

SCHEDULE A

Notwithstanding the general provisions of Clause 29.—Wages of this award, but subject to subclauses (3) and (4) thereof regarding the offset of an arbitrated safety net adjustment, the following annual salaries shall apply in lieu thereof to the positions described herein:

	Base Rate Per Annum $	First and Second Arbitrated Safety Net Adjustment $	Total Rate Per Annum $
Directors of Nursing—Level 5			
Grade 1	46,125	834.00	46,959
Esperance Community Nursing Home			
Grade 2	49,200	834.00	50,034
Dean Lodge			
McDougall Park Nursing Home			
Rockingham Nursing Home			

AWARDS/AGREEMENTS—
Application for variation of—
No variation resulting—

BUILDING TRADES 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

Coca Cola Bottlers and Others.
No. 1079 of 1995.

Building Trades Award 1968.
No. 31 of 1966.

COMMISSIONER P E SCOTT.

29 January 1996.

Order.

WHEREAS a conference was convened on Wednesday, the 24th day of January, 1996; and

WHEREAS the Applicant requested the file be closed;

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 discontinued.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coca Cola Bottlers and Others.
No. 1079 of 1991.

Building Trades Award 1968.
No. 31 of 1966.

COMMISSIONER P E SCOTT.

9 February 1996.

Order.

WHEREAS an error occurred in the Order in application number 1079 of 1991 which issued on the 29th day of January 1996, whereby the application number in the heading was incorrectly cited as "No. 1079 of 1995";

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application number "1079 of 1995" in the heading of the Order which issued on the 29th day of January 1996, be replaced with "1079 of 1991".

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

CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

BRICK MANUFACTURING AWARD 1979
No. R 19 of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 110.

Brick Manufacturing Award 1979
No. R 19 of 1979.

COMMISSIONER A.R. BEECH.

12 March 1996.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare:

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Brick Manufacturing Award 1979:

Clackline Refractories Ltd, 239 Planet Street, Welshpool WA

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

CLERKS' (COMMERCIAL, SOCIAL AND PROFESSIONAL SERVICES) AWARD
No. 14 of 1972.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 18.

Clerks' (Commercial, Social and Professional Services) Award No. 14 of 1972.

CHIEF COMMISSIONER W.S. COLEMAN.

29 February 1996.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer(s) be struck out of the Schedule of Respondents to the Clerks' (Commercial, Social and Professional Services) Award No. 14 of 1972 namely—

Ansett Transport Industries (Operations) Pty Ltd trading as Ansett Pioneer

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

CLERKS' (FREMANTLE PORT AUTHORITY) WHARF AND SPECIAL CONDITIONS AWARD 1987.

No. PSA A7B of 1987.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fremantle Port Authority

and

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch

No. 910 of 1995.

COMMISSIONER C.B. PARKS.

26 February 1996.

Order.

HAVING heard Mr B. Patterson and with him Mr J. Douglas on behalf of the Applicant and Mr R. Dhue 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 Clerks' (Fremantle Port Authoirty)—Wharf and Special Conditions Award 1987 be and is hereby cancelled on and from 6 February 1996.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

HEALTH ATTENDANTS' AWARD 1979
No. 49 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 156.

Health Attendants' Award 1979
No. 49 of 1978.

COMMISSIONER C.B. PARKS.

5 March 1996.

Order.

The Commission, acting upon its own motion pursuant to the powers contained in s.47 of the Industrial Relations Act, 1979, being satisfied that the requirements of the said Act have been complied with and there being no person desiring to be heard in opposition to the motion, hereby orders—

THAT from the date of this order the following named parties be, and are hereby, struck from the Schedule of Respondents to the Health Attendants' Award 1979, namely—

Executive Health Club
and
Garden City Health and Beauty Club

(Sgd.) C.B. PARKS,
[L.S] Commissioner.

HOSPITAL WORKERS (GOVERNMENT) AWARD
No. 21 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 157.

Hospital Workers (Government) Award No. 21 of 1966.

CHIEF COMMISSIONER W.S. COLEMAN.

29 February, 1996.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer(s) be struck out of the Schedule of Respondents to the Hospital Workers (Government) Award No. 21 of 1966 namely—

Aston Recovery Hospital
and
Ord Street Hospital

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

SOFT FURNISHINGS AWARD
No. A 23 of 1982.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 135.

Soft Furnishings Award
No. A 23 of 1982.

COMMISSIONER A.R. BEECH.

12 March 1996.

Order.

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare:

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Soft Furnishings Award:

Jam's Curtains & Manchester, 200 Balcatta Road, BALCATTA WA 6021

Commercial Curtain Services, Arkwright Street, ROCKINGHAM WA 6168

Capital Curtains, 513 Leach Highway, BATEMAN WA 6153

Curtain Centre, 231 Balcatta Road, BALCATTA WA 6021

Ronald Webb Soft Furnishings, Unit 2A/129 Russell Street, MORLEY WA 6062

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Wasyl George Antoniak
and
Ministry of Education.
No. 764 of 1995.

COMMISSIONER A.R. BEECH.

11 March 1996.

Reasons for Decision.

THE COMMISSIONER: Mr Antoniak is a teacher employed by the Ministry of Education. In approximately November 1992 Mr Antoniak was informed that he would be transferred from Denmark District High School. He objected to the transfer and wrote to the Ministry. His protest resulted in the grievance procedure under the award being activated.

Towards the end of January 1993 a discussion occurred involving Mr Antoniak and representatives of the Ministry. He was informed that he was to report to the Albany District Education Office and not to attend the Denmark District High School (exhibit 2, folio 55). Mr Antoniak apparently contravened these instructions and did report at the Denmark District High School. He then received a written order on the 2nd February 1993 not to attend Denmark District High School and report forthwith to the Albany District Education Office and carry out duties there as instructed by the Albany District Superintendent until further notice. Mr Antoniak was warned that if he disobeyed or disregarded the order the Ministry would invoke the provisions of s.7C of the *Education Act 1928*. Mr Antoniak was provided with a copy of that section for his information.

The result of the grievance procedure was not in Mr Antoniak's favour: on the 19th February 1993 the level six grievance procedure recommended that the transfer of Mr Antoniak from Denmark District High School to Woodvale Senior High School be upheld. On the 22nd February 1993 the Ministry wrote to Mr Antoniak stating that, because of the outcome of the level six Committee of Review, his transfer from Denmark District High School was confirmed. He was given until the 2nd March 1993 before being required to take up his new position at Woodvale Senior High School. He was informed that if he did not wish to accept the transfer, favourable consideration would be given to an immediate application for leave without pay for 1993 in order to allow Mr Antoniak to continue to reside in the Denmark area. He was once again warned that disobeyance or disregarding the order that he be transferred to Woodvale Senior High School would warrant the use of s.7C of the *Education Act 1928*.

On the 2nd March 1993 the Ministry wrote to Mr Antoniak stating that it had been reported that Mr Antoniak had disregarded the instruction to take up his new position at Woodvale Senior High School by the 2nd March 1993. Further, the Ministry understood that Mr Antoniak did indeed attend Denmark District High School on the 2nd and 3rd February 1993. He was informed that, as a result of this information, it appeared to the Chief Executive Officer that Mr Antoniak may be guilty of misconduct and he was suspended without pay whilst an enquiry was held into the matter. Mr Antoniak was given an opportunity to comment upon the allegations contained in the Ministry's letter.

Mr Antoniak did so. He replied, in writing, to the Chief Executive Officer on the 6th March 1993. In that correspondence, Mr Antoniak admitted the circumstances outlined in the Ministry's earlier letter. He stated that he refused to attend the new position at Woodvale Senior High School by the 2nd March 1993 because he believed he had been the victim of unfair treatment and injustice. He stated:

> "Subsequently I chose to disregard your instruction to transfer so that I could use the mechanism of s.7C of the Education Act as an alternate channel of appeal. I did not choose to disregard your instruction to be obstinate."

In relation to his attending Denmark District High School on the 2nd and 3rd February 1993 he admitted that he did so in order to show that his presence at Denmark District High School would not hinder a smooth start to the school year. Because of his strong feelings of "the great injustice caused to me" he wanted to prove that his presence would not be disruptive and "at the same time protest actively by performing a "Ghandi style" passive demonstration with my presence at the school".

On the 19th March 1993 the Ministry wrote to Mr Antoniak stating that the Chief Executive Officer found that Mr Antoniak had wilfully disobeyed or disregarded lawful orders on at least three occasions in that he attended Denmark District High School on the 2nd, and on the 3rd February 1993 and did not report for duty at the Albany District Office as required. Further, he did not report for duty at the Woodvale Senior High School on the 2nd March 1993, contrary to the written order dated the 22nd February 1993. The Chief Executive Officer found him guilty of misconduct under s.7C(2)(a) of the *Education Act 1928*. The Chief Executive Officer then suspended Mr Antoniak until the 31st January 1994.

Mr Antoniak appeals against the decision of the Chief Executive Officer.

In an appeal of this nature I am satisfied that the Commission has the jurisdiction to deal not only with the penalty imposed but also with the finding of misconduct itself (*Milentis v. Minister for Education* (1993) 52 IR 85). The *Education Act 1928* prescribes that for the purposes of s.7C a teacher shall be guilty of misconduct if, amongst other things, he disobeys or disregards a lawful order applicable to him as a person on the teaching staff of the Department. It is clear from the facts as I have found them that Mr Antoniak did indeed disobey or disregard a lawful order applicable to him as a person on the teaching staff of the Department. I also find that Mr Antoniak did so wilfully. To his credit, Mr Antoniak does not dispute this. In my view therefore, the finding of the Chief Executive Officer that Mr Antoniak was guilty of misconduct was clearly correct and no appeal can succeed against that finding.

The period of suspension imposed by the Chief Executive Officer is authorised by s.7C(12)(a). In this regard it is significant that the punishment imposed by the Chief Executive Officer was subject to review in the event that Mr Antoniak indicated that he was prepared to comply with the Ministry's instructions. Thus, the length of the period of suspension was subject to Mr Antoniak's preparedness to carry out the lawful orders applicable to him as a person on the teaching staff of the Department. The Commission was not informed by Mr Antoniak that he had indicated that he was, at any stage, prepared to comply with the lawful orders applicable to him as a person on the teaching staff of the Department. Whilst it is not clear what the result of a review would have been if Mr Antoniak had indeed indicated a preparedness to comply with the Ministry's instructions, the length of the period that Mr Antoniak was suspended was linked to the length of time he chose to continue with the course of conduct he had chosen. Mr Antoniak himself must bear some responsibility for the length of the period of suspension about which he now complains. It is in this regard that Mr Antoniak's admission that he intended a "Ghandi like" passive resistance achieves significance. Mr Antoniak chose to do so in the knowledge that he would be likely to incur an inquiry. Indeed, this is what happened.

Mr Antoniak appeals on three grounds. He believes the punishment is too severe because he states that the reason why he was told not to attend Denmark District High School was because his presence would not ensure a smooth start to the school year. He submits that by disobeying or disregarding that instruction and attending the Denmark District High School he showed that this was wrong. He submits that his presence did not disrupt the smooth start to the school year. The Commission is, in fact, unaware of the consequence to the start of the school year at Denmark District High School of Mr Antoniak's presence on the days in question. The Ministry has not alleged that his presence did cause disruption. However that is not the point. Mr Antoniak was clearly told that he should not attend Denmark District High School on those days. In my view it is not open to him to wilfully disre-

gard that instruction merely because he believes that a reason given to him is spurious. The Ministry has the authority and responsibility over the Denmark District High School and, subject to the due exercise of its powers, the authority to decide which teachers shall and shall not attend that school. There has been nothing put forward by Mr Antoniak which could persuade the Commission that his wilful disregard of the order in order to prove a point means that the punishment imposed is too severe.

I note Mr Antoniak's point that his attendance at that school on two consecutive occasions has been treated by the Department as two separate breaches of the instruction not to attend. Mr Antoniak believes it should have been viewed as only one breach. It may be that, in the context of these circumstances, the point is arguable. However I do not think that the penalty imposed by the Department can be seen as a penalty appropriate to three breaches, and that therefore two breaches would warrant a lesser period of suspension. Mr Antoniak had indicated a deliberate decision to disobey the instructions not to attend Denmark District High School and to transfer to Woodvale. The penalty imposed by the Department is to be seen in the light of Mr Antoniak's deliberate decision, and not whether he disobeyed the instruction on two occasions, or for one period of time. I find it unnecessary to decide Mr Antoniak's point because, even if he is right, the point is unlikely to be determinative of this appeal.

The second ground of Mr Antoniak's appeal is that "the seriousness of the order to report to Woodvale was confusing due to leave without pay being offered as an alternative". Mr Antoniak seems to suggest that the opportunity to apply for leave without pay meant that the Ministry's order to transfer to Woodvale was not validly given. But this cannot be so. The Ministry's order, which is contained in the letter of the 22nd February 1993, is quite clear. The decision to transfer to Woodvale was confirmed. It is also clear that the Ministry advised Mr Antoniak, in that same letter, that if he did not wish to accept the transfer "favourable consideration will be given to an immediate application for leave without pay for 1993 in order to allow you to continue to reside in the Denmark area". A fair reading of that letter can admit only one conclusion: either transfer to Woodvale or make immediate application for leave without pay for 1993. Mr Antoniak did neither. Indeed, his letter to the Ministry of the 6th March 1993 previously referred to shows that he chose to disregard the order to transfer. His action in doing so really left the Ministry with little, if any, choice. To ignore Mr Antoniak's actions is hardly satisfactory and could, of itself, lead to criticism of the Ministry. The Ministry therefore took the appropriate action as it is permitted to do under the *Education Act 1928*. Given that Mr Antoniak had wilfully disobeyed the orders given to him, the imposition of a penalty of a suspension until such time as he indicated an intention to act in accordance with those instructions does not seem inappropriate.

It is the case that Mr Antoniak, through his union, also challenged the fairness of the decision to transfer him from Denmark District High School. Indeed, the union was successful on his behalf, the Government School Teachers Tribunal finding that the decision to transfer was unfair ((1994) 74 WAIG 2027). However Mr Antoniak did not need to wilfully disobey the orders of the Department in order to achieve that finding. It is as well to observe that if Mr Antoniak had indeed taken the simple step of applying for leave without pay for 1993 it would have had no bearing upon the outcome of the action taken by his union and he would not have precipitated the s.7C enquiry. As it is, he now has a finding of misconduct against him which, as I now find, must stand.

Mr Antoniak's final ground of appeal is that "the Education Department of WA contributed to the circumstances that culminated in my punishment, by not following procedure, and therefore failing to locate me in one of two possible teaching positions within reasonable distance of my home". It is not entirely clear from the evidence the extent to which there were two possible teaching positions within reasonable distance of Mr Antoniak's home. Mr Troy's evidence is that there were two vacancies at Mt Barker Senior High School. But he also said that upper school experience was the overriding factor in filling those positions. Mr Troy's evidence that upper school experience is important is quite consistent with the view of Ms Thompson on this subject. Mr Antoniak does not have upper school experience. In that case there were not two "possible teaching positions" for Mr Antoniak.

Mr Antoniak tendered documentary material and called evidence from three witnesses. As I understand it, Mr Antoniak sought to demonstrate that the stated reason for transferring him was not valid and that the apparent intention of the Ministry to transfer to Denmark District High School a particular teacher at the request of the Headmaster of that school was not carried out. He sought to demonstrate that the factual basis upon which the request for a teacher with both mathematics and biology experience changed. However I have not found the evidence he presented to be helpful to him in the issue that is now before the Commission. Even if the evidence does establish the matters he seeks to prove, that would merely give added weight to the conclusion that the decision to transfer Mr Antoniak to Woodvale was unfair. That has already been established. The further establishment of that point in these proceedings does not assist Mr Antoniak.

In the event that a teacher is transferred and objects to that transfer there are procedures available to challenge that decision. It is simply not open to a teacher in those circumstances to wilfully disobey or disregard instructions lawfully given to him or her by the Ministry. I find that Mr Antoniak has not made out any of his grounds of appeal and accordingly the appeal will be dismissed.

Order accordingly.

Appearances: Mr Antoniak on his own behalf.

Mr R McLeod and with him Ms J Stone on behalf of the Ministry of Education.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wasyl George Antoniak

and

Ministry of Education.

No. 764 of 1995.

COMMISSIONER A.R. BEECH.

11 March 1996.

Order.

HAVING HEARD Mr W.G. Antoniak on his own behalf as the applicant and Mr R. McLeod and with him Ms J. Stone on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the appeal be dismissed.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leith Laureen Barton

and

Western Telecom Pty Ltd T/A The Business Phone Centre

No. 729 of 1995.

COMMISSIONER A.R. BEECH.

23 February 1996.

Reasons for Decision.

THE COMMISSIONER: The claim before the Commission by Mrs Barton alleges that she was unfairly dismissed and also that she is owed commission payments and car allowance.

Mrs Barton commenced employment with Western Telecom Pty Ltd (the respondent) in May 1994. She was employed to sell telephone systems. For this she was paid a wage plus a commission. Her employment was terminated on the 13th June 1995.

The Commission turns first to the question of whether her dismissal was unfair. I find the relevant facts to be as follows. Mrs Barton is a partner, together with her husband, in a company called Chalgrove Pty Ltd (Chalgrove). Chalgrove operates a business called Interconnect Communications (Interconnect). Approximately one month after Mrs Barton commenced employment with the respondent, the respondent entered into a contract arrangement with Interconnect for the installation of the respondent's telephone systems. At that time Mr Mitchell, who is a director of the respondent, was unaware of Mrs Barton's connection with Interconnect. He became progressively aware over time. This knowledge did not cause any concern to Mr Mitchell and the evidence is that, until June 1995, there was no difficulty resulting from Mrs Barton's position as both a sales person for the respondent and a director of Chalgrove. Mrs Barton's evidence, which I accept, is that she was not involved in any of the day to day activities "of what my other director was doing" (transcript p.28).

On the 19th May 1995 an acrimonious dispute occurred between Mr Mitchell and Mr Barton over the installation of a telephone system on behalf of the respondent's client. The subcontract agreement between the respondent and Interconnect was broken. Mr Mitchell wrote to Interconnect on the 19th May 1995 requiring certain issues to be addressed. These included a requirement that copies of software in the possession of Interconnect that were the property of the respondent or of Ericsson Australia were to be deleted immediately and a certificate substantiating the deletion was to be given; that technical manuals and property and parts be returned; and indicating that commercial arrangements will be completed when outstanding matters are finalised, work orders returned and final invoicing is checked against work performed. On behalf of the respondent, Mr Mitchell also stated that "any intellectual property or knowledge of data bases cannot be used for your commercial purposes".

On approximately the 23rd May 1995 Mrs Barton and Mr Mitchell discussed the situation at her initiative. I accept that the situation put some pressure on Mrs Barton. She raised the circumstances with Mr Mitchell and asked whether the relationship between herself and Mr Mitchell would change. Mrs Barton states that Mr Mitchell stated that the dispute would not affect their working relationship. Although Mr Mitchell, in his evidence, did not refer to those words, I am satisfied on balance that Mrs Barton's statement is accurate. That is because, during that conversation, Mrs Barton indicated that perhaps she should resign. Mr Mitchell, however, dissuaded her from doing so and indicated she should take time to consider what she truly wanted to do. I think that if, at that stage, Mr Mitchell had believed that the relationship between him and Mrs Barton was affected then he would have accepted her resignation. Mrs Barton, shortly thereafter, approached Mr Mitchell and stated that she had decided not to resign but wished to take a period of leave. This was agreed to and she commenced her leave on Friday the 26th May 1995. When she returned to work on the 13th June 1995 Mr Mitchell called her into the office and informed her that, from his point of view, "we couldn't continue to go on the way it currently was going and that there was a conflict of interest in existence between ourselves and Chalgrove and that I couldn't tolerate that situation" (transcript p.79). Mrs Barton asked whether she was being sacked and Mr Mitchell responded that "if that's the way you want to put it, the answer is yes". Mrs Barton thereupon left the office.

It was suggested that this was not a dismissal. It was submitted on behalf of the respondent that Mrs Barton herself had appreciated the "delicacy of the situation" when she considered resigning. It was said that given the conflict which had occurred between Mr Mitchell and Mr Barton during her annual leave, it was Mrs Barton who brought the issue to a head during the conversation. However I am quite satisfied from the evidence that Mr Mitchell dismissed Mrs Barton. His evidence is that he had made up his mind to do so towards the end of the period of Mrs Barton's leave. Mr Mitchell even considered whether Mrs Barton could have been employed elsewhere within the respondent, but he concluded that she could not. Mrs Barton may indeed have brought the issue to a head by the words that she used but in my opinion that merely resulted in the dismissal occurring then rather than somewhat later in the conversation.

Mr Mitchell defends the decision to dismiss. He states that he dismissed Mrs Barton because, in his view, there was a conflict of interest between her position as a director of Chalgrove, in the circumstances then existing between the respondent and Interconnect. He believes that her position had become untenable because during Mrs Barton's period of annual leave he received, from Interconnect, a reply to his letter of 19th May. This reply, dated the 29th May 1995 (exhibit 4), answered the several points raised by Mr Mitchell. It was signed by Mr Barton. At the conclusion of the letter, Mr Barton stated "should a customer of yours elect to invite me to do work on their behalf and I elect to do said work then I shall do so without any fear of retribution". Mr Mitchell gave evidence that as a result of this correspondence:

> "I saw a very real risk that Interconnect would go out and do that. The closing paragraph of that said to me very clearly that should anybody contact Interconnect that they would freely roam through our data base and I had a further concern. In fact, in this letter and the one I wrote in relation to software, that both Mr Barton and Mrs Barton are very computer literate and I had a very ... my fear was that a copy of our data base existed elsewhere. In other words, I feared that it existed on the Interconnect or Chalgrove computer." (transcript p.75)

Further, on the 31st May 1995 the respondent received a letter from Interconnect asking for the settlement of the accounts between the parties. It accused Mr Mitchell of having a "casual approach" to settling these accounts and indicating that legal action would be instigated for the recovery of payment due if it was not received by the 2nd June 1995 (exhibit 5). It concerned Mr Mitchell that Chalgrove was threatening legal action against the respondent. He was "uncomfortable with it" (transcript p.77). This was one of a continual stream of letters from Interconnect which came in during Mrs Barton's leave and which led to Mr Mitchell believing that he "had a problem" (transcript p. 108). Mr Mitchell gave evidence that he also had had some approaches "from people" that work was being done by Chalgrove direct with the respondent's customers. Mr Mitchell was concerned in case Mrs Barton had a copy of the respondent's data base on her home computer and he was concerned that some customers of the respondent were contacting Mr Barton direct (transcript p.78).

These then are his reasons for dismissing Mrs Barton. However, as the Commission understands the evidence and the submissions made by Mr Mitchell, he does not allege any particular wrongdoing by Mrs Barton personally. There is, in fact, no evidence that Mrs Barton did any act which was contrary to her duty of fidelity to the respondent. In this regard:

> "Conduct which in respect of important matters is incompatible with the fulfilment of an employee's duty, or involves an opposition, or conflict between his interest and his duty to his employer, or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between employer and employee is a ground of dismissal; but the conduct of the employee must itself involve the incompatibility, conflict, or impediment, or be destructive of confidence. An actual repugnance between his acts and his relationship must be found. It is not enough that ground for uneasiness as to future conduct arises". (*Blyth Chemicals Ltd v. Bushnell* ((1933) 49 CLR 66 per Dixon and McTiernan JJ at page 81/82; and see too *Daily Cleaning Service Pty Ltd v. Pavlovic* (1992) 34 AILR ¶ 359; *Independent Management Resources Pty Ltd v. Brown* (1987) 29 AILR ¶ 147).

If Mr Mitchell does not suggest that Mrs Barton actually did anything wrong then his ability to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified is much reduced. He relies on his perception of a conflict of interest from Mrs Barton's directorship of Chalgrove and her status as an employee of the respondent. Her position as a director of Chalgrove became known to Mr Mitchell during the course of Mrs Barton's em-

ployment. It did not cause him any concern which warranted any action on his part, at least until the time that she departed on her two weeks' leave. At that time Mr Mitchell became concerned about two issues. The first issue was his concern that Mrs Barton had had unlimited access to the respondent's computer data base and possibly had a copy of that data base on her computer at home because she had, on a number of occasions, worked from home. However, there is no evidence that Mrs Barton had anything more than an Excel programme to calculate her commission: client invoice number, total cost of job, hardware cost, installation cost, gross profit and resulting commission (transcript p.63). Furthermore, Mrs Barton denied possessing anything further regarding the respondent's data base at home or ever using information from the respondent to advantage a competitor (transcript p.59). Mr Mitchell may have had fears in that regard but there is no evidence that his fears were well grounded.

The second thing that concerned Mr Mitchell is that Chalgrove threatened legal action against the respondent for the non-payment of outstanding accounts. In that regard, Mr Mitchell saw Mrs Barton as a party to an action being threatened against him. However, it is the fact that no legal action was commenced against the respondent whilst Mrs Barton was employed. Although a writ was issued, it was issued subsequent to her termination and thus did not form a part in Mr Mitchell's decision to dismiss Mrs Barton. I therefore do not think that Mr Mitchell can rely upon the issuing of a writ on his decision to dismiss Mrs Barton. I find that a threat of legal action was made by Interconnect but I do not attach great significance to that threat in assessing the fairness of Mrs Barton's dismissal. The threat arose from the financial affairs between Interconnect and the respondent prior to the dispute between the respondent and Interconnect occurring. At that time, Mrs Barton's position as a director of Chalgrove was not a concern to the respondent. Although relations between Chalgrove and the respondent deteriorated, there is no evidence that this involved Mrs Barton. Her evidence is that she was not an active director. She was not involved in any of the day to day activities of the company (transcript p.28). Indeed, she admits to playing a role only after she was terminated (transcript p.41).

However Mr Mitchell would be justified in dismissing Mrs Barton if Interconnect in fact was in competition with the respondent (per *Blyth Chemicals, supra*). In this regard Mrs Barton's evidence is that Mr Barton was not "going out into the industry to become a competitor" and while she was working for the respondent there was no conflict. She states that, at most, following her dismissal her husband did a couple of "computer jobs" but otherwise built a games room for their house (transcript p.43). Her evidence is that, in approximately November 1995, her husband became a consultant in the industry, but was not doing installation work. Mrs Barton was cross-examined on this evidence and it was not broken down. I accept her evidence. The respondent's business does not appear to include "computer jobs". The respondent's business appears to be confined to "telephony systems" (transcript p.65). There is nothing in that evidence to suggest that Interconnect was in fact in competition with the respondent.

Mr Mitchell gave evidence that he was told that an employee of Chalgrove did work for the James Hardie company in Sydney (transcript pp. 109—113). The Commission infers from this that the James Hardie company was one of the respondent's customers and that the work would otherwise have been done by the respondent. While I have no reason to disbelieve that Mr Mitchell believes what he was told to be true, Mr Mitchell's belief is not proof that this work was in fact done. This part of Mr Mitchell's evidence was elicited under cross-examination and was not pursued. The allegation about the James Hardie company was not put to Mrs Barton when she was cross-examined (see for example transcript p.47). Mrs Barton's own evidence about work done by Interconnect does not go to this issue and her evidence was not broken down. In the result, the Commission does not have any evidence before it, other than the belief of Mr Mitchell, that Interconnect did indeed do any work in direct competition with the respondent during Mrs Barton's period of employment, and Mr Mitchell's belief is not proof that it did. It is hearsay and while the Commission is not bound by the rules of evidence, it would be unsafe to rely on hearsay on such a central issue. I therefore am unable to conclude on the evidence that Interconnect did any work in direct competition with the respondent during Mrs Barton's period of employment.

I find that the respondent has not shown the conflict of interest upon which it relies to justify the dismissal of Mrs Barton. I find that there is not a ground or grounds on which the Commission could find that the dismissal was justified. It was therefore unfair (s.23AA of the Act).

If I am wrong in that finding and there is a ground or grounds on which the Commission could find that the dismissal was justified, I am satisfied that the dismissal would be unfair because Mr Mitchell acted on the basis of his fears and concerns but did not discuss these with Mrs Barton prior to her dismissal. It would have been a straightforward matter to have discussed all of these matters with Mrs Barton prior to reaching the decision to dismiss. This was simply not done. It is not to the point that Mrs Barton was on leave. There is nothing in the evidence to suggest that a discussion could not have occurred between Mrs Barton and Mr Mitchell upon her return. But Mr Mitchell made up his mind before she returned from leave to dismiss her. As a result, Mrs Barton was denied an opportunity to explain her position or attempt to change Mr Mitchell's mind. The manner of dismissal is one factor to be taken into account in deciding whether a dismissal was unfair but in some cases it can be a most important circumstance (*Shire of Esperance v. Mouritz* (1991) 71 WAIG 891 at 895). In this case the manner of the dismissal is important because Mrs Barton was dismissed for an alleged conflict of interest when she had been told two weeks earlier, after she raised the issue herself, that the dispute between her husband and the respondent would not affect her employment. To then dismiss her for that reason is unfair. In reaching this conclusion I do take into account that Mr Mitchell certainly did not intend to act unfairly. He had previously refused to accept Mrs Barton's resignation out of concern for her and instead gave her time to reflect and re-consider her position. I think Mr Mitchell acted most properly on that occasion.

The Commission turns to the question of relief. Mrs Barton does not claim re-instatement. Re-instatement is the primary remedy under the Act. Indeed, the Commission is only to award compensation if re-instatement is "impracticable". In this case the respondent has given evidence that re-instatement or re-employment is practicable. The respondent has given evidence that its business is expanding, that it has vacancies in the area in which Mrs Barton previously worked and that it would re-instate Mrs Barton provided that she signed a confidentiality agreement, or would re-employ Mrs Barton in another area on the same wages and conditions.

I accept that it is for the Commission to decide whether re-instatement or re-employment is "impracticable". That decision cannot be delegated to the former employee on the sole basis of whether that person claims re-instatement or re-employment or not (*Leeds and Northrup Australia Pty Ltd v. Hull* (1992) 46 IR 11). But neither is it delegated to the employer on the sole basis of whether the employer believes re-instatement or re-employment is practicable. The Commission is to reach the conclusion based upon the evidence and material before it according to equity, good conscience and substantial merit. In this case Mrs Barton has found alternative employment. She cannot be criticised for this. Indeed if a dismissed employee is expected to take steps to mitigate his or her loss she may have been able to be criticised if she had not sought and found alternative employment. In my view being employed elsewhere is a cogent reason why the Commission could find that re-instatement or re-employment is impracticable. I conclude in these circumstances that re-instatement is impracticable.

I turn to the question of compensation. The Act does not provide guidance as to the issues to be considered in relation to assessing compensation. During the course of the proceedings I prevented the respondent from adducing into evidence the offers which were discussed between the parties during the conciliation of this matter. I adhere to the view I expressed during the course of the hearing that the discussions between parties in an attempt to resolve a matter amicably between them may involve matters which they are prepared to concede or admit for that purpose. Such admissions or concessions are properly for the purpose of conciliation only and ought not be raised or used during the subsequent arbitration which occurs

if agreement is not reached between the parties. To hold otherwise would be to effectively restrict the freedom with which the parties to an unfair dismissal claim, or indeed any other claim in the Commission, might freely discuss each with the other any and all issues between them without prejudice to their fundamental position.

In this case I find the following factors to be relevant. Mrs Barton had been employed for just over 12 months. She was unfairly dismissed. However I find it relevant that Mrs Barton had considered leaving the respondent herself because of the deterioration of the relationship between Interconnect and the respondent. Given that the issuance of a writ was seen as necessary to bring the outstanding financial matters between Interconnect and the respondent to an end I am prepared to find that Mrs Barton's position would have become more untenable, particularly to her. I think that it is more likely than not that Mrs Barton's employment would not have been a long term employment. She appears to have been employed pursuant to a weekly contract of employment and was paid one week's wages in lieu of notice (Notice of Answer and Counter-proposal). I am aware that Mrs Barton did not commence her alternative employment until a date in December 1995 but there is no evidence before the Commission of the reason why that is so or upon which I can confidently decide that the compensation for the dismissal should equal that entire period. In my view the Commission should require the payment of one month's wages as compensation for the unfairness of the dismissal.

Contractual Benefits

The principal claim under this heading is the commission due and payable to Mrs Barton. The issue in fact is able to be resolved quite simply. It was a term of Mrs Barton's employment that she was to receive a commission payment at the rate of "2% on sale of systems" (exhibit A). Although Mrs Barton states that this was changed to a figure of "10% of the gross profit of the sale" there is no evidence before the Commission that an agreement was concluded on this basis. Mrs Barton maintains that she accepted the offer to change the basis of the calculation. Mr Mitchell maintains that she did not, but that she wanted time to consider the matter. I prefer the evidence of Mr Mitchell in this regard. There is no documentary evidence to support Mrs Barton's version and no evidence of payments either claimed by her during her employment or made to her on that changed basis. The discussion between the parties about the change occurred in January 1995, and yet no commission at all was claimed by Mrs Barton from that time until after her dismissal. Whilst she gives as a reason for this that there was a new accountant in the company and she held off making the claim, I do not see why claims could not have been made and Mrs Barton merely wait for them to be processed. In the event, there is nothing before the Commission to show that the parties agreed to change the previously agreed method of payment of commission. It is also the case that, following her dismissal, the initial claim for unpaid commissions submitted by Mrs Barton was based upon the 2% rate (exhibit 1).

I therefore find that Mrs Barton's entitlement to commission is based upon 2% on sale of systems. There is debate between the parties as to the precise meaning of "sale of systems". Mr Mitchell's evidence is that sale of systems is precisely that: the sale of a system. Mrs Barton's evidence is that the term "sale of systems" includes alterations and additions to existing systems. Furthermore, she was paid commission upon such "moves and changes" until December 1994. Mr Mitchell maintains that he was unaware that the commissions being claimed and paid included "moves and changes" and had he been aware he would not have authorised the payment.

The role of the Industrial Relations Commission in matters such as these is to require the payment to an employee a benefit to which he is entitled under his or her contract of service. It is not for the Commission to rewrite that contract of service to either advantage or disadvantage one or other of the parties. The evidence before the Commission allows it to conclude only that the Commission was payable on sale of systems. I find that "moves and changes" are seen by both parties as separately identifiable. Mrs Barton would include them in "sale of systems". I have concluded that because "moves and changes" are a discrete item that they are not encompassed within the words "sale of systems". In my view, given that the parties have taken the precaution of reducing this part of their contract of service to writing then the Commission should be slow to depart from that writing. I am aware that prior to January 1995 Mrs Barton claimed and received commission including "moves and changes" but I am also satisfied that this was not known to or authorised by Mr Mitchell. I therefore do not regard the previous payments as establishing the parties' interpretation of "sale of systems" as including "moves and changes". Mrs Barton is therefore entitled to an order that she be paid unpaid commission due and payable to her on the basis of 2% on sale of systems only.

In this regard I accept the calculations of Mr Mitchell in Exhibit 7. His evidence is that they are more accurate than Mrs Barton's calculations because they relate only to Mrs Barton's sales and exclude moves and changes, subcontracted work and claims relating to systems sold from the eastern states (transcript p. 88). There is nothing in the cross-examination of Mr Mitchell which discredits those calculations and an order will issue in those terms.

Annual Leave and Car Allowance

My understanding of the evidence in this matter is that Mrs Barton believed that she was owed one week's annual leave untaken and the payment of the car allowance applicable to her for that period. However my understanding is that the force of this claim was much diminished by the presentation to Mrs Barton of a cheque stub (exhibit 2) which showed that Mrs Barton had indeed been paid for the period of annual leave upon which she based this claim. In my view this claim has lapsed. Further there is nothing in the evidence about the car allowance which would require it to be paid if the motor vehicle is not in use on the respondent's business, which is the case when payment is made in lieu of notice at the time of termination. If I correctly understand that Mrs Barton claims that the vehicle allowance ought to have been included in the one week's wages paid in lieu of notice then the evidence about the allowance does not support the claim and it is refused.

The Minutes of a proposed Order now issue.

Appearances: Mr G.I. Chitty (of counsel) appeared for the applicant.

Mr C.D. Raymond (of counsel) appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leith Laureen Barton

and

Western Telecom Pty Ltd T/A The Business Phone Centre

No. 729 of 1995.

COMMISSIONER A.R. BEECH.

29 February 1996

Order.

HAVING heard Mr G.I. Chitty (of counsel) on behalf of the applicant and Mr C.D. Raymond (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—

(1) THAT Western Telecom Pty Ltd forthwith pay Mrs Leith Laureen Barton one month's wages as compensation for her dismissal on the 13th day of June 1995.

(2) THAT Western Telecom Pty Ltd forthwith pay Mrs Leith Laureen Barton the sum of $1,781.98 as commission due to her under her contract of employment.

(3) THAT the application otherwise be dismissed.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Steven Hubert Boden

and

Dalco Earthmoving.

No. 1082 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner and had been denied contractual benefits, by the Respondent company. The claims were denied by the company.

A Conference, involving the parties, was conducted before the Commission on 7 November 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 on 20 November 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.

John Bombak

and

Denville Holdings Pty Ltd trading as Andrew King Realty.

No. 944 of 1995.

COMMISSIONER A.R. BEECH.

27 February 1996.

Order.

WHEREAS the Commission was advised that the parties had reached agreement in this matter;

AND WHEREAS the Commission adjourned the application until it had been advised that the parties had implemented the terms of their agreement and if the Commission had not heard from the parties within one month it would discontinue the application;

AND HAVING heard Mr R. Clohessy on behalf of the Applicant and Mr D. Sash (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.

Patricia Joy Bradley

and

Graeme A'Hearn.

No. 1119 of 1995.

COMMISSIONER P E SCOTT.

7 March 1996.

Consent Order.

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the Industrial Relations Act, 1979; and,

WHEREAS the Respondent put forward a proposal to the Applicant, by way of facsimilie transmission and addressed to the Commission on the 23rd day of February 1996; and,

WHEREAS the Applicant consented to the terms of that proposal in a telephone conversation with the Commission on Friday, the 23rd day of February, 1996;

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

THAT Graeme A'Hearn pay to Patricia Joy Bradley the sum of $300 on or before the 22nd day of March, 1996.

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

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pauline Crispe

and

Freshpict Strawberry Farm.

No. 1333 of 1995.

COMMISSIONER P E SCOTT.

27 February 1996.

Order.

WHEREAS this is an application pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979; and,

WHEREAS the matter was not settled at conference; and,

WHEREAS a hearing was convened in Albany on Wednesday, the 7th day of February 1996, at which the Applicant sought leave for an adjournment to obtain legal representation; and,

WHEREAS the Commission sent correspondence to the Applicant on Wednesday the 14th and Thursday the 22nd days of February, 1996, requesting written confirmation that the claim would not be pursued; and

WHEREAS by letter dated the 21st day of February 1996 the Applicant advised that she wished to withdraw the claim;

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.

Jennifer Elizabeth Cupin
and
Australian Sports Publications.
No. 156 of 1995.

COMMISSIONER R.H. GIFFORD.
12 March 1996.

Order.

BY this application, the Applicant claimed that she was dismissed in a harsh, oppressive or unfair manner and had been denied contractual benefits, by the Respondent company. The claims were denied by the company.

A Conference involving the parties, was conducted before the Commission on 12 April 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 further Conference was conducted before the Commission on 28 April 1995, to enable a report back to occur.

No resolution was reached at the further Conference, and the matter was then listed for hearing on 22 May 1995, in order to determine preliminary points.

On 26 May 1995, Reasons for Decision and a Declaration issued, declaring that the Applicant's employment was on a probationary basis only, and that the position previously held by the Applicant no longer existed within the company.

On 13 June 1995, the Applicant's agent advised the Commission that the Applicant wished to proceed with her application, and that she intended to seek leave to amend her application, indicating that compensation was now sought, in lieu of reinstatement.

A further Conference was conducted before the Commission on 30 June 1995, to discuss the amended application sought.

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.

A letter from the Commission, dated 27 September 1995, was sent to the Applicant, requesting her to advise of her intentions. No response was forthcoming.

A further letter, dated 8 November 1995, was sent in which the Applicant was again requested to advise of her intentions.

A Notice of Discontinuance was filed by the Applicant with the Commission on 17 November 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.

Sean Thomas Curran
and
Martin Darby Interiors.
No. 834 of 1995.

COMMISSIONER R.H. GIFFORD.
12 March 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 by the company.

A Conference, involving the parties, was conducted before the Commission on 26 September 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 further Conference was conducted on 19 October 1995, to enable a report back to occur.

A settlement of the claims was reached at the Conference.

By letter from the Applicant's solicitor, dated 21 November 1995, the Commission was informed that the settlement had been finalised, and in turn, requested that this application be withdrawn.

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,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

John Arthur Doherty
and
Honourable Minister for Education, Employment and Training.
No. 1125 of 1995.

COMMISSIONER R.H. GIFFORD.
12 March 1996.

Order.

BY this application, the Applicant claimed that the process of recruitment and appointment for certain new positions within the Western Australian Department of Training, had not been applied in a fair and proper manner.

A Conference involving the parties, was conducted before the Commission on 20 October 1995, to consider the claim.

The Conference was adjourned to enable the parties to review their respective positions, in light of matters raised at the Conference.

A further Conference was conducted on 30 October 1995, to enable a report back to occur.

The Conference was concluded on the basis that the question of the Commission's jurisdiction in this matter, would be referred to arbitration.

This matter was listed for hearing for 10 November 1995.

By letter received from the Western Australian Department of Training, dated 9 November 1995, the Commission was advised that the jurisdictional question was no longer to be pursued. The hearing date of 10 November 1995, was then vacated.

The application was then listed for hearing for 24 November 1995, to hear arguments in relation to merit.

On 15 November 1995, advice was received verbally from the Applicant, that he wished to discontinue his application.

A Notice of Discontinuance was filed by the Applicant with the Commission on 21 November 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.

Carolyn Clare Donovan

and

Office Link (Australia) Pty Ltd.

No. 1161 of 1995.

COMMISSIONER P E SCOTT.

6 March 1996.

Order.

WHEREAS this is an application pursuant to section 29(1)(b)(ii) of the Industrial Relations Act, 1979; and,

WHEREAS conferences were held in this matter on Wednesday the 22nd day of November and Thursday the 14th day of December, 1995; and,

WHEREAS the Applicant advised the Commission by way of a telephone conversation on Friday the 12th day of January 1996, that the matter was resolved; and,

WHEREAS the Applicant was requested to provide this advice in writing in a letter dated Friday, the 16th day of February 1996, 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 dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ms F Emery

and

Eucla Motor Hotel.

No. 1150 of 1995.

COMMISSIONER P E SCOTT.

28 February 1996.

Reasons for Decision.

THE COMMISSIONER: This is an application by Ms Emery pursuant to section 29(1)(b) of the Industrial Relations Act, 1979 that she has been unfairly dismissed from her employment. The applicant says this occurred when her employer sought to unilaterally change her contract of employment, she refused, and was advised that there was no further work for her. The applicant says that reinstatement is impracticable and therefore seeks compensation in lieu of reinstatement. The respondent says that the applicant's contract of employment required her to perform whatever duties were allocated to her, within her capacity. She refused repeatedly to undertake work which the employer directed her to perform, and, accordingly evinced an intention to repudiate her contract.

The circumstances of Ms Emery's employment were described in conflicting evidence given by herself and representatives for the respondent being one of the owners of the Eucla Motor Hotel, Mr Steve Patupis and by Ms Rasa Patupis who originally interviewed Ms Emery for the job.

In her evidence Ms Emery says that when she was engaged this interview was very short. The job had not been advertised but she had been advised that a position was available. The applicant had worked in the hotel industry for a number of years in both New Zealand and in Australia. She gave evidence that she has worked as a waitress and an assistant manager, and undertaken work associated with waitressing including bar work, cooking, food preparation and cashing up, and in roadhouses, also mopping floors. The applicant says that her position with the respondent was as a waitress but that other work was ancillary to this main classification.

On the other hand, Mr Patupis says that all employees are required to do whatever work is necessary because of the size and isolation of the business so there is a need for all employees to fit in where necessary and that he does not engage people in specialised classifications.

The applicant says that the dispute between the parties which led to the termination of the contract of employment arose when Mr Patupis and the applicant had a discussion regarding the arrangement of some days off duty for her. Notwithstanding the dispute as to what was or was not said in this regard, the end result was that Ms Emery's taking of these days was subject to Ms Patupis being available to fill in for her. Ms Patupis, having been very busy with work and other commitments, felt that she was too tired to take on this work. Therefore, Ms Emery was not able to take the days as she has previously arranged them. In a conversation with Mr Patupis she advised him that she thought that Ms Patupis had been selfish in this respect, and Ms Emery says that from this point she believed that there was to be some sort of retribution against her.

In any event, within a number of days of this occurring Ms Emery arranged and took two days off The employer then, due to staff taking leave etc, needed someone to fill in at the motel, and he chose Ms Emery. Upon her return, on Friday 6 October 1995, the applicant was advised by Mr Patupis that the following Monday she was to report for duty at the motel units rather than undertake work in the restaurant and take away area. Ms Emery indicated that she did not wish to do this work, she did not like it. Ms Emery says that Mr Patupis advised her that she would have a new job and a new boss being the supervisor of the motel area, Yvonne. She says there was no mention of this being for any particular reason although Ms Emery says that when she asked what she had done wrong, Mr Patupis said that she argued too much. It appears that there was no further meaningful or productive discussion between them in regard to this matter that day.

On Sunday 8 October 1995, at approximately 12.20pm, Mr Patupis again advised the applicant that the next day she would be doing housemaiding work. She says that she once again advised him that she did not wish to do that work and that he ended the discussion. The following day, the applicant arrived for work at 7.55am prepared to work in the restaurant and take away area and went to see Mr Patupis. Both parties agree that the respondent directed the applicant three times to undertake the work at the motel and on each occasion she refused. Mr Patupis then advised the applicant that he had no work for her there 'inside' and the applicant then alleges that Mr Patupis asked when she would like to collect her pay. There was no discussion as to this arrangement being permanent or temporary but simply that the applicant was required to report to the motel for work. It appears that the applicant then left Mr Patupis' office and did not further attend for work. She returned to collect her pay and an employment separation certificate in which Mr Patupis had noted that the termination of employment was on a voluntary basis.

The applicant says that she believed, due to a comment by a fellow employee to the effect that Mr Patupis intended to force her to move to the motel units, work which she alleges he knew she did not wish to perform, for the purpose of forcing her to resign. On this basis the applicant alleges that the dismissal was a constructive dismissal.

The applicant appears also to have been under the impression that the respondent had reason to be unhappy with her because of the comment she had made that Ms Patupis was selfish over the incident regarding the days off. In addition, the applicant says that Mr Patupis picked on her more than other employees although she was unable to elaborate on this. She also appears to be alleging that part of Mr Patupis' intention to terminate her employment may have related to Mrs Patupis being unhappy with the applicant's standard of dress and on a number of occasions required her to return home and change, and on another occasion required her to comb her hair. I am not satisfied that any of these other matters were involved in the termination of the applicant's contract of employment.

Was this a matter of a constructive dismissal or did the applicant evince an intention to repudiate the contract by refusing to perform work within her contract of employment thus allowing the employer to accept such repudiation and terminate the contract?

The Commission was referred to a number of authorities by the advocates for the parties. In terms of constructive dismissal Mr Crossley for the applicant referred the Commission to M Brown, "Western Australian Industrial Law" at page 194 section 914, which notes:

> Constructive Dismissal
>
> [914] Intolerable behaviour by the employer which forces the employee to resign is regarded as constructive dismissal for the purpose of the s 29(b)(i) jurisdiction. The Full Bench in *Transport Workers' Union of Australia, WA Branch v Eastern Goldfields Transport Board* (1989) 69 WAIG 1895 [the *Eastern Goldfields Transport Board* case][48] at 1897, before making an extensive review of the authorities on constructive dismissal, said:
>
> > An employee constructively dismissed may leave employment without giving the requisite notice (ie. where the conduct of the employer amounts to a repudiation of the contract). The test is whether the employer's breach of contract was of such a fundamental kind as to entitle the employee to regard himself as released from all obligations under the contract ... [49]
>
> The principles which govern constructive dismissal were reiterated by the Full Bench in *Federated Clerks' Union of Australia, WA Branch v Cargill Australia Ltd* (1990) 70 WAIG 2553, at 2555. They are as follows:
>
> (1) The existence of a threat which could cause the employee to resign amounts to constructive dismissal.
>
> (2) The fact that an act of resignation subsumed the act of dismissal does not alter the essential character of the transactions between the parties.
>
> (3) If the employee terminates the contract by reason of the employer's conduct he is constructively dismissed. [50]

The Commission was also referred to Yerbury, Dictionary of Industrial Relations, 1992, at page 97 which deals with the employer's conduct which leaves the employee with no alternative but to leave employment.

Further the Commission was referred to R Taylor and Dominion Mining (72 WAIG 1642) where it was noted that the employer ought to have known better and provided procedural fairness, and should have sought advice in the process of termination.

The applicant says that the constructive dismissal was brought about by the employer seeking to unilaterally vary the contract of employment and the employee flatly refusing. The Commission was referred once again to Brown (supra) at page 223 where the issue of the unilateral variation of employment terms by the employer is dealt with. This notes that an employer has no entitlement to unilaterally change the terms of an employee's contract of employment to the employee's disadvantage and that this amounts to a breach of contract.

The respondent referred the Commission to the decision of the Full Court of the Industrial Relations Court of Australia in Gunnedah Shire Council v Raymond Grout (661 of 1995) 19/12/1995 dealing with the repudiation by the employee, and the employee evincing an intention not to be bound by the terms of the contract.

I find that based on the evidence of both Mr Patupis and Ms Patupis and further upon the concessions made by the applicant in cross examination that when she was engaged to work for the respondent it was not in any particular limited capacity or area. Whilst she may have nominally had a title of Waitress for some purposes, in fact the applicant could be required to undertake any work within her capacity as directed by the employer. She understood this to be the case and in fact worked in this manner. In her evidence the applicant indicated that on a number of occasions she had worked in the motel area in accordance with direction from her employer. She had done this for a day at a time and not on any permanent allocation, but nor was she permanently allocated to work in any particular area within the employer's business.

As to the use of the title or classification of "waitress", it is the case that a title is often a good indicator of the role or scope of work to be performed. However, if in fact, as in this case, the title does not reflect the whole range of work to be performed under the contract of employment then its use as an indicator of actual duties to be performed is limited.

In examination in chief, the applicant gave evidence that she was engaged to work primarily in the restaurant-takeaway area, but at page 14 of the transcript, the following evidence was given by her:

> "What would you say if the commission was told you had to go and service motel units?—I wasn't told that in the beginning.
>
> When were you told that?—Well, like, if they were stuck or busy they'd—they wouldn't ask you. You were just told to go into the motels, but we didn't do it for the day, but to do it full-time is different. I don't mind doing any job that's like, for a day, but to changeover—that was because they were stuck. We were—basically, we were just told what to do and we did it, except when—this case. Well, I was told it was full-time so; no, I didn't.
>
> All right. During your employment at the motel, how many times did you service the motel units?—Probably—I think about twice. Two—two or three times. I'm pretty—yeah.
>
> On those occasions, were you told to go and do them or did you volunteer?—Twice I know I definitely was told, and I know definitely one I voluntary did it because they were really busy and first I went in—it was my only time—one of the girls in the motel helped me do the dishes at night-time, so I thought it would be fair and my time to go and clean in the motels and help them out. So I did the kitchen first. Walked in and see if they needed help—this was when the Variety Bash was going on. There was 500 people and they were stuck. One of the girls was waitressing and one was cooking and they were busy. So I just walked in and helped them and—in there, and then I knew I was going to help in—like, housemaiding and then do my normal shift in the afternoon, the full shift. So I did it and I also got paid for it, but I only did it because they were stuck, they were busy, and because one of the other girls helped me, you know, the night when we had a coach in. She helped us do it.
>
> All right. How long did you work for the motel?—13 months.
>
> 13 Months. So are you saying that you worked in the servicing of the motel units for about three times in 13 months?—Yeah.
>
> At your first interview with Rasa, did she tell you that you had to work anywhere in the business besides the restaurant?—No."

Also, at page 19, Ms Emery gave the following evidence:

> "On the three occasions you went into the motel units, was it made clear to you by either Rasa or Mr Steve that that was expected of you as part of your job?—We normally just get told what to do and we normally just do it."

Ms Emery gave evidence about the circumstances of her previous employment and her expectations and understanding regarding her employment with the respondent and said at pages 39 and 40 of transcript:

> "So you are multi-talented? You did a lot of things?—Uh huh.
>
> And it is quite usual, is it not, that in isolated communities you are expected to pitch in and help out?—Yes.
>
> — in all sorts of capacities?—Yes.
>
> And that would be the basis upon which you took on the employment?—Yes.
>
> Isn't that right?—yes.
>
> Now, when you got the job with the Eucla Motel, I put it to you that it was exactly the same basis upon which the job was offered and you accepted?—Yes.
>
> Isn't that correct?—Yes.
>
> Now, when you got the job with the Eucla Motel, I put it to you that it was exactly the same basis upon which the job was offered and you accepted?—Yes.
>
> Isn't that correct?—Yes.

So you knew from the very first day of your employment that, whilst your job might primarily involve waitress type or waiting type duties, you would be expected to bog in and pitch in wherever you were needed?—Yes.

Is that true?—Yes.

Now, why is it then that you said at the beginning of your evidence in chief that you were not told these things?—Chris probably should—knew I was going to do it—like, do what you just said.

I put it to you that, when you actually applied for the job, Rasa Patupis (sitting behind me)—she interviewed you for the job?—Yes.

Yes? I put it to you that she clearly recalls telling you that, if you were employed or to be employed by the Motor Hotel, you had to be prepared to bog in and do any job that was required, beyond just waitressing?—No. She didn't say that I had to do housemaiding or something like that. She really didn't say much in the beginning: she just told me—just said "Oh, you've done this all before haven't you?" And then she said "Come in and do a couple of hours", and she just showed me the restaurant and then the takeaway, and in the kitchen, and said "mop floors" and ... (inaudible) ...

Are you saying that she didn't tell you you were expected to do more than just waitressing?—She didn't tell me that I was going to do, like, housemaiding, but I just presumed that if they were stuck, we would do it.

But you assumed, correctly, I might add, that normally you would be expected to do these duties?—Yes.

And you accepted that as a term of your employment?—Yes.

Even though it might not have been spoken by Ms Patupis? —Yes."

Also, at page 42, Ms Emery confirmed this arrangement:

"I'll put it another way; we've already covered this. When you first accepted employment, you agreed that it was normal, in that environment, for an employee to do all the work that was necessary to be done, and within your capacity to do it—Yes.

You accept that?—Yes.

And you accepted that when you were employed by the Eucla Motel, you understood that this was the normal thing to be done in that employment situation—Yes.

Therefore, I put it to you one step more—that you understood that the employer could request you at any time to do any other work within your capacity?—Yes.

And that was a term of your employment?—Yes.

Indeed, I put it to you that in the time that you did work there, you did in fact help out in other areas, and you've confirmed that?—Yes.

In this way, it is clear from the applicant's evidence that she had a confused and contradictory view of her contract of employment. On one hand she believed she could not be compelled to perform work she did not wish to perform, or could only be required to perform it for no more than a shift or two, or could not be moved permanently to the motel units, when in fact, she understood that she had entered into a contract of employment where she could be required to do whatever work was necessary, and she did so. Her evidence is contradictory and unreliable. On this basis, I accept the evidence of Mr Patupis and Ms Patupis that the applicant's contract of employment was such as to require her to undertake whatever work she was reasonably directed to perform.

The applicant decided that she was not prepared to work in the motel units and from her own evidence and the evidence of Mr Patupis, she had become argumentative and the employer found this somewhat frustrating to deal with. As a result it was not explained to her that Mr Patupis intended this to be for a short time only, to replace someone on leave. I believe that his reference to her being argumentative was not by way of a reason for the allocation of that work but that he was not prepared to discuss it further because she was argumentative. I find that the basis upon which Mr Patupis decided to have Ms Emery undertake work in the motel units is a genuine one being that there was a need to fill a position there whilst another employee was away. His intention was that the applicant undertake this work in the short term although he had not resolved what would happen later. His decision to choose Ms Emery to do this work rather than the other employees was to "allow her to cool off". This may or may not have been expressed to the applicant and it appears that this lack of clear communication may have played some part in her erroneous belief that he intended to force her resignation. In any event, it was for the employer not for the employee to decide who will perform what work, when the employee is able to be directed to that work.

The applicant refused to work as directed on a number of occasions. Her refusal was, from her evidence, premeditated and deliberate. She indicated in evidence that she believed that the employer was intending to create a situation which would result in her termination and that she and others had discussed how she should deal with this matter. It appears that the applicant had her mind made up that her employer was attempting to do something with which she was not prepared to comply and this set her on a course of refusing to perform work that she was lawfully required to perform.

Furthermore, the applicant had an alternative to flat refusal to undertake the work, yet her own intentions and argumentativeness prevented her from looking at options. However, she had already made up her mind that her employer's intention was to force her to leave, and she acted accordingly. The applicant made assumptions about her employer's motives and intentions which were not sustained by the evidence. When told of the arrangement, the applicant's response, whilst attempting to elicit information and clarify the position, was argumentative. She set herself on a course designed to make her own beliefs about her employer's motives and intentions a reality.

On this basis I find that the applicant acted in a manner which evinced an intention to repudiate her contract of employment by refusing to undertake work as directed in accordance with her contract of employment. The employer was then entitled to believe that the applicant had no intention of continuing with her contract of employment. The employer simply acted to formally terminate the contract on this basis. Whilst the employer took the final act of termination, it was in response to the employee's repudiation of the contract. The employer's behaviour could not be described as intolerable or a fundamental breach of the contract such as to constitute constructive dismissal.

Section 23AA(1) of the Industrial Relations Act, 1979 provides that there is an onus on the employer to show that there is a ground on which the Commission could find that the dismissal was justified. Subsection 3 provides that for the purposes of section 23AA, a dismissal is justified where those reasons are connected with the "employee's capacity or conduct". In this case, it was the employee's conduct which has provided the employer with the basis upon which to justify the dismissal.

On this basis, I find that the termination of the applicant's employment was not carried out unfairly by the employer, but was in response to the applicant's clear intention to repudiate the contract of employment by refusing to perform in accordance with her contract of employment. This was based on her confused view as to her contract of employment and her erroneous view as to her employer's intentions and motives.

Mr Jones urged the Commission, if it found that the application was not sustained, to award costs to the respondent in accordance with section 27(1)(c)—

"27. (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it—

(a) ...

(b) ...

(c) order any party to the matter to pay to any other party such costs and expenses including expenses of witnesses as are specified in the order, but so that no costs shall be allowed for the services of any legal practitioner, or agent;"

Mr Jones says that this is on the basis that the applicant, whilst she may not have a great understanding of the detailed

aspects of contract law, knew that she was obliged to obey her employer's lawful commands and that her contract of employment required her to perform duties including the motel work. Therefore, she must have known the consequences of refusal to work in the capacity in which she was engaged. On this basis, the respondent says that the application has been pursued without a reasonable expectation of success and constitutes a vexatious prosecution of the claim.

I am satisfied that the applicant had a confused or illogical but genuine belief as to her contract of employment. I say this in light of the fact that whilst the applicant conceded in cross examination that her contract of employment was established on the basis that her employer's business being in an isolated location and of the size and nature that it is and from her past experience she was required to perform whatever duties were within her capacity but, still seemed to have some belief that because most of her work involved the restaurant and take away area that she should not be required to work in another area. The employer's lack of communication with her about his intentions in the long term in respect of the move to the motel units did not assist her in understanding the situation. The employer has a responsibility to communicate effectively with his employee and in this case the employer failed to advise the applicant that this would most likely be only for the short term. The employer had a responsibility to explain this intention to her. On this basis, I am not satisfied that there is sufficient cause for the employee to be required to pay the respondent's costs on the grounds set out by Mr Jones.

An order for dismissal of the application will issue.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ms F Emery

and

Eucla Motor Hotel.

No. 1150 of 1995.

COMMISSIONER P E SCOTT.

28 February 1996.

Order.

HAVING heard Mr T C Crossley on behalf of the Applicant and Mr D Jones 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

(Sgd.) P. E. SCOTT,

[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Howard Flaherty

and

Siemens Australia Limited.

No. 559 of 1995.

Siemens Australia Limited

and

Gary Howard Flaherty.

No. 835 of 1995.

COMMISSIONER A.R. BEECH.

26 February 1996.

Reasons for Decision.

THE COMMISSIONER: Application 559 of 1995 is an application by Mr Flaherty claiming that he was unfairly dismissed on the 6th December 1994. Mr Flaherty also claims that he has not been allowed by his employer benefits to which he is entitled pursuant to his contract of employment.

Application 835 of 1995 is an application by Siemens Aust Ltd (Siemens) to have application 559 of 1995 struck out for want of jurisdiction.

On the 9th May 1995 the Parliament of Western Australia enacted the *Industrial Legislation Amendment Act 1995*. Relevantly, that Act amended the *Industrial Relations Act 1979* (the Act) in relation to unfair dismissal matters. It provided that a referral may be made by an employee in respect of a dismissal that occurred before the 9th May 1995 if it was, on that date, the subject of an application under s.170EA of the *Industrial Relations Act 1988 (Cth)* which had not been determined under that Act and if it is lodged in this Commission no later than 28 days after the 9th May 1995 (s.42(3)). Mr Flaherty claims that his application fits within those requirements. Siemens however argues that the Commission does not have the jurisdiction to deal with the claim. Alternatively, it argues that the Commission should dismiss the matter pursuant to s.27(1)(a) of the Act. The Commission heard the parties on this question and reserved its decision.

The background to this matter is that Mr Flaherty's present application is the second application he has brought to this Commission. The first application, which was in identical terms to application 559 of 1995, was made by Mr Flaherty on the 5th January 1995. This was more than 28 days after his dismissal. Siemens argued that the Commission did not, therefore, have the jurisdiction to entertain Mr Flaherty's claim. This was upheld by the Commission which struck out Mr Flaherty's application for want of jurisdiction on the 1st May 1995 (75 WAIG 1676).

On the 7th April 1995, just prior to the Commission's decision, Mr Flaherty lodged a claim of unlawful termination of employment in the Industrial Relations Court of Australia (WI-95-1409). Thus, when the relevant provisions of the *Industrial Legislation Amendment Act 1995* came into operation on the 9th May 1995, Mr Flaherty's dismissal, which occurred before that date, was the subject of an application under s.170EA of the *Industrial Relations Act 1988 (Cth)* which had not been determined under that Act. His present claim was lodged within 28 days of that date.

The first reason why Siemens urges the Commission to dismiss Mr Flaherty's application can, in my view, be shortly disposed of. Siemens argues that the Commission is *functus officio* because Mr Flaherty's claim has already been determined by this Commission. That is a reference to Mr Flaherty's first application. This argument cannot succeed. It is certainly the case that the Commission is *functus officio* in relation to the first application. That is because a final order has issued and the Commissioner has discharged all his official functions in the case before him (*RRIA v. AMWSU and Another* (1990) 70 WAIG 2083 per Brinsden J at 2085). But that does not mean that the Commission does not have the jurisdiction to entertain a fresh claim that is made, even a fresh claim which is in identical terms. There is no statutory bar to an applicant

lodging a subsequent application in the same terms as that which has already been dismissed in an earlier application. However, in enquiring into and dealing with that subsequent application, the Commission would be likely to dismiss the claim pursuant to s.27 of the Act unless some special or extraordinary reason existed why it should not (*Western Australian Bakers, Pastrycooks and Confectioners Union of Workers v. De Campo Bakery* (1984) 64 WAIG 987). But that does not mean that the Commission does not have the jurisdiction to enquire into and deal with that fresh claim.

Further, Mr Flaherty's first application was not heard and determined on its merits. Rather, the Commission struck out the application because it was filed out of time and without considering the merits. In my view an order for the dismissal of proceedings not following a hearing on the merits would not give rise to an estoppel or a defence of res judicata: *Baines v. State Bank of New South Wales* [1985] 2 NSWLR 729 at 738. Siemens was never at risk of there being an adverse judgement made against it: *McCorry v. Como Investments Pty Ltd* (1989) 69 WAIG 1000 per Brinsden J at 1002. Accordingly I am of the view that if Mr Flaherty's current application is otherwise properly before the Commission then the fact of the first application would not lead the Commission to dismissing the claim at this stage.

In considering whether Mr Flaherty's application is, indeed, otherwise properly before the Commission it is as well to note that Mr Flaherty's application consists of two claims. Each claim raises different considerations. The Commission will deal firstly with the claim made pursuant to s.29(1)(b)(i) of the Act that he was harshly, oppressively or unfairly dismissed. This involves a consideration of s.42(3) of the *Industrial Legislation Amendment Act 1995*. Siemens argues that the mere fact that Mr Flaherty had lodged an application under s.170EA of the *Industrial Relations Act 1988 (Cth)* is insufficient. Siemens argues that the application must be one that is validly made under that Act. It argues that Mr Flaherty's application was not validly made because his salary exceeded the $60,000 limit prescribed by s.170CD of that Act and that therefore Mr Flaherty's application could not have been determined under that Act. Mr Flaherty however, through his agent Mr Clohessy, argues for a literal reading of s.42(3). In his submission, the mere fact that an application exists is sufficient to meet the tests of that section.

I have given the matter some thought and have concluded that it is indeed necessary that the application lodged pursuant to s.170EA of the *Industrial Relations Act 1988 (Cth)* be an application that is capable of being determined under that Act. That is so because s.42(3) requires the application under s.170EA to have not been determined under that Act. It follows, in my view, that the application must be one which is capable of determination under that Act. I consider it unlikely that s.42(3) was intended to apply to a dismissed employee whose dismissal occurred before the coming into operation of that section who was not able to have a claim of unlawful termination determined under that Act.

It is my understanding from the submissions of the parties that the mere lodging of an application pursuant to s.170EA of the *Industrial Relations Act 1988 (Cth)* does not carry with it any implication that the application is one which is able to be determined under that Act. Whether the application is capable of being determined is a matter which would be determined by the Industrial Relations Court of Australia. In this instance, and in accordance with the usual procedures, Mr Flaherty's application was referred to the Australian Industrial Relations Commission and conference proceedings were held under the auspices of that Commission. The issue of whether Mr Flaherty's application was capable of determination was raised at that time by Siemens. Agreement was not able to be reached. Mr Clohessy lodged a Notice of Discontinuance of Mr Flaherty's application on the 10th August 1995. Mr Clohessy indicates that this was done because Mr Flaherty was aware that there was an argument regarding jurisdiction because of his salary which would not exist if his application was brought by means of s.42(3) of the *Industrial Legislation Amendment Act 1995* before this Commission.

In considering this part of the matter it is necessary for the Commission to determine some facts. In this regard, I note that neither Mr Flaherty nor a representative of Siemens gave evidence in the proceedings. The Commission has before it an affidavit by Siemens' personnel manager, Mr Mark Baxter. This affidavit was tendered with the agreement of both parties. On that basis I find that Mr Flaherty was employed by Siemens from the 1st March 1994 to the 6th December 1994. I also find that Mr Flaherty's conditions of employment initially consisted of an annual salary of $56,268, a car allowance of $9,000 per annum, superannuation benefits, and payments pursuant to Siemens' incentive scheme of $1,000 per month. During September 1994 his salary was increased to $59,076 per annum and the car allowance was increased to $11,000.

Section 170CD of the *Industrial Relations Act 1988 (Cth)* relevantly provides that the remedies in respect of unlawful termination do not apply to an employee whose relevant wages exceeded $60,000 per annum. Applying that to Mr Flaherty, I find that "relevant wages" refers to Mr Flaherty's salary only, and does not include the incentive payment nor the car allowance nor the superannuation entitlement (*Ardino v. Count Financial Group Ltd*, (1994) 126 ALR 49 at 55; *Wolfer v. Computer Associates Pty Ltd* (Industrial Relations Court of Australia, 12th April 1995, No. WI 538 of 1994, unreported)). It is to be noted that "relevant wages" is defined to mean either the wages that Mr Flaherty received, or was entitled to receive (s.170CD(4)). It appears to be common ground that Mr Flaherty was entitled to receive a salary of $59,076 per annum. This is less than the applicable amount of $60,000. However Mr Flaherty was employed for less than twelve months and accordingly the correct calculation should be made in accordance with the formula prescribed in s.170CD(1)(b). I find from Mr Baxter's affidavit that Mr Flaherty was employed for 281 days. Applying the formula contained in that section the applicable amount is $46,191.78. The affidavit of Mr Baxter shows that Mr Flaherty actually received $46,351.71. On the evidence before the Commission therefore Mr Flaherty would not have been able to have his application determined pursuant to s.170EA of the *Industrial Relations Act (Cth)* because the amount of wages he received exceeded the applicable amount prescribed. That being the case, Mr Flaherty's claim in this Commission that he was harshly, oppressively or unfairly dismissed is not one covered by s.42(3) of the Act and accordingly the Commission does not have the jurisdiction to deal with his claim.

Subsequent to the Commission reserving its decision in this matter Mr Clohessy wrote to the Commission seeking to have the proceedings re-opened. Mr Clohessy has indicated that the affidavit of Mr Baxter had not previously been known to Mr Flaherty and that Mr Flaherty disputes one of the monthly figures contained in attachment 4 to that affidavit. He forwarded to the Commission a facsimile of a document on Siemens' letterhead showing, as at the 5th September 1994, that Mr Flaherty's salary received was, in fact, $44,008.02. The application to re-open is opposed by Siemens. Siemens in turn wrote to the Commission insisting that the amount specified in Mr Baxter's affidavit was correct and indicating that proof of the disputed amount has been sent to Mr Clohessy. The Commission has a discretion whether to re-open proceedings but in my view it should only do so if circumstances are such that the fresh evidence is so material that the interests of justice require it, that the evidence, if believed, would most probably affect the result and further that the evidence could not, by reasonable diligence, have been discovered before: *Watson v. The Metropolitan (Perth) Passenger Transport Trust* [1965] WAR 88.

In my view the Commission should not re-open the proceedings. While the concern raised in Mr Clohessy's letter is on a central point, in my view there is nothing that could not with reasonable diligence have been discovered before. The validity of Mr Flaherty's claim in the Industrial Relations Court of Australia, whether his salary exceeded the applicable amount and the jurisdiction of the Commission to entertain his present claim were clearly issues which were to be addressed in these proceedings. Mr Flaherty was clearly put on notice of the issues to be argued before the Commission by Siemen's own application to have his claim struck out. Siemen's application and Mr Flaherty's application were listed for the purposes of considering jurisdiction only and the parties were given seven weeks' notice of the hearing. Mr Baxter's affidavit was admitted with the agreement of the parties. This was confirmed by Mr Clohessy during the course of the hearing (transcript

p.45). In my view this is a clear example of circumstances where the fresh evidence now sought to be addressed could easily have been anticipated and, with due diligence, the evidence could have been produced to the Commission at the time. I therefore do not grant leave to re-open the proceedings.

In my view therefore, on the evidence before the Commission, the Commission does not have the jurisdiction to entertain Mr Flaherty's claim that he was harshly, oppressively or unfairly dismissed because it was lodged out of time and does not come within s.42(3) of the *Industrial Relations Legislation Amendment Act 1995*.

Mr Flaherty's claim pursuant to s. 29(1)(b)(ii) of the Act that he has not been allowed a benefit to which he is entitled under his contract of employment raises different issues. Mr Flaherty's claim was lodged after his employment with Siemens ended on the 6th December 1994. Prior to the 9th May 1995 a claim by an employee after the termination of the employment that he or she had not been allowed a benefit under the contract of employment was not an industrial matter as defined in the Act unless there was also a claim for reinstatement before the Commission (*Coles Myer Ltd v. Coppin and Others* (1993) 73 WAIG 1754). Thus, in relation to Mr Flaherty's first application before the Commission, once his claim that he was unfairly dismissed was held not to be before the Commission then his claim for a denied contractual benefit similarly lapsed because it was not an industrial matter. On the 9th May 1995, with the passage of the *Industrial Legislation Amendment Act 1995*, the Act was amended to provide that a matter relating to the dismissal of an employee or the refusal or failure of an employer to allow an employee a benefit under his contract of service is and remains an industrial matter even though the relationship as employee and employer has ended (s.7(1a)). Given that Mr Flaherty's claim of unfair dismissal has now been found not to be before the Commission, Mr Flaherty's claim for denied contractual benefits will not be an industrial matter unless s.7(1a) applies to his circumstances. However Mr Flaherty's claim applies to events which occurred before s.7(1a) came into operation. The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to past events (*Maxwell v. Murphy* (1957) 96 CLR 261 per Dixon J at 267). It will be construed as not attaching new legal consequences to facts or events which occurred before its commencement (*Fisher v. Hebburn Ltd* (1960) 105 CLR 188 at 194; and see too *Geraldton Building Co Pty Ltd v. May* (1977) 13 ALR 17). There is no intention expressed in the *Industrial Legislation Amendment Act 1995* that the amendment to s.7(1a) of the Act is to apply retrospectively. The presumption against the retrospective effect of legislation may not apply if the amending legislation affects mere matters of procedure (*Rodway v. R* (1990) 92 ALR 385 at 387,9). However s.7(1a) is not a mere matter of procedure. It amends the definition of an industrial matter following the interpretation given to it by the Industrial Appeal Court in *ADSTE v. RRIA* (1978) 68 WAIG 11 ("Pepler's Case") and *Coles Myer* (*op. cit.*). In doing so it affects the right of an employee to bring to the Commission and have dealt with claims of unfair dismissal or of denied contractual benefits unaffected by the fact of the termination of employment. Once the change to that right is recognised it is clear that the argument that s.7(1a) affects mere matters of procedure cannot stand. Therefore s.7(1a) does not operate retrospectively.

If s.7(1a) does not operate retrospectively it does not have any effect upon a person's rights prior to it coming into operation on the 9th May 1995. Prior to that date a person whose employment had terminated did not have a right to have the Commission determine a claim relating to a benefit under his or her contract of employment in the absence of a claim for re-instatement. Mr Flaherty's right to have the Commission determine his claim that he has not been allowed a benefit under his contract of employment in the absence of a claim of re-instatement ended with his termination on the 6th December 1994. If s.7(1a) has the effect now claimed it would revive a right in Mr Flaherty, or impose a liability on Siemens, which had ceased to exist. The presumption is against such an interpretation. Therefore Mr Flaherty is unable to rely upon s.7(1a) of the Act to bring his claim to the Commission. Accordingly it too must be dismissed for want of jurisdiction.

Order accordingly.

Appearances: Mr RW Clohessy on behalf of the applicant.

Mr L Levine (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Howard Flaherty

and

Siemens Australia Limited.

No. 559 of 1995.

Siemens Australia Limited

and

Gary Howard Flaherty.

No. 835 of 1995.

COMMISSIONER A.R. BEECH .

26 February 1996.

Order.

HAVING heard Mr RW Clohessy on behalf of the applicant and Mr L Levine (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT application 559 of 1995 be dismissed for want of jurisdiction.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bruno Furina

and

B.E. Equipment Rental Pty Limited.

No. 836 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 1996.

Order.

BY this application, the Applicant claimed that he 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 8 September 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 on 13 November 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.

Sarah Jane Hammond
and
Oldham Boas Ednie & Brown.
No. 1318 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.
15 February 1996.

Reasons for Decision.

SENIOR COMMISSIONER: This is an application pursuant to Section 29 of the Act, in which the applicant alleges that she was unfairly dismissed by the respondent and claims the sum of one thousand two hundred and sixty dollars ($1260) which represents seven weeks wages. The matter was heard in Broome on 8th February, 1996 and the decision reserved. The first issue is whether the applicant was dismissed from her employment, as she claims, or "quit her job voluntarily" as the respondent contends. Set out hereunder are the relevant transcript excerpts:

"On this particular day—I'm getting off the point here—I said to her "You know, you don't live in Africa any more. This is Australia. This is 1990. I don't have to put up with this sort of treatment. I am not an African servant". She just went totally spare again, and she said—quote: "I've never treated you like a piccaninny". She jumped up and she said: ""That's it. That's it. I'm going to get the boss. I'm going to get the boss".

I was dumbfounded, because as far as I was concerned, she was the boss. I mean, I was interviewed by her. I was employed by her. I think I saw Mr Pickwell on about three occasions, and on those three occasions he probably would have spoken 12 words to me. He was hardly ever there. He was always away on business, and she was always in control of what was going on there.

...

Next minute, Mr Pickwell came out and he said: "What seems to be the problem here?" I said: "I don't really know what the problem is. I wish I knew. She just came out here, threw this handful of tools at me, and started ranting and raving about how she was having a nervous breakdown. That's not my problem if she's having a nervous breakdown".

...

So I said to her - - when Mr Pickwell came out he said "What's the problem?", and I said" "Well, I don't know what the problem is. She's been yelling at me that she's got personal problems, that she's having a nervous breakdown, and I don't think that's got anything to do with me, and I don't think I should have to put up with this".

He said: "Well, in that case you better quit". I said: "Fine". I turned around and I said to Annette: "Would you be good enough to go in and ring Perth and let them know that I'm finishing up, and could they finalise my pay?" She absolutely flatly refused to do that. I said: "In that case, could I please use your office phone so that I can do it myself?" She absolutely refused to let me do that, and I said: "Well, how am I supposed to let them know? I don't have a telephone connected. I live right out on the entrance point, which is way out of town near the jetty".

...

MS HAMMOND: He said to me: "You'd better quit".

HALLIWELL SC: Yes?

MS HAMMOND: And that's virtually what he said. Mrs Pickwell did the rest of the talking, or the rest of the shouting. That's virtually all he said to me. "What is the problem?" I tried to explain the problem to him, and he said: In that case, you better quit". I just said: "Fine". Then I requested that they ring Perth and they refused to do it.

They didn't give me the opportunity of giving 2 weeks' notice. What I first started - -

...

MR PICKWELL: I went through that door, which is adjacent to the garden shed, and Sally was outside on the patio, very agitated, as was my wife. Quite clearly the two of them had had a row, and Sally embarked to tell me what she thought the situation was, which was similar to the description given to you; and my wife disputed that.

So I said: "Well, quite clearly neither of you are very happy people". Sally said she's been treated like a servant and this had been going on for far too long, and she's had enough of it. I said: "What do you propose to do about it?" She said" "Quite honestly, I quit". So she then embarked on abusive language and invective which one prefers not to remember or recall. I said: "Well, I think perhaps you ought to leave".

She then actually apologised and said that she was going to leave there and then, and she wasn't going to give any notice and then started to leave; but on the way out towards the gate, more abuse, I said: "Well, you really had better leave". She kept at it, and then my wife said: "Please leave, Go. Get lost. We don't want to hear any more of this".

...

MS HAMMOND: Mr Pickwell came out and he said to me: "What is the problem?" I said: "I don't know what the problem is. I've no idea. She just came out and threw these tools at me and started banging the rake." She said she was having a nervous breakdown; she had personal problems; she had to go to Canberra. He said to me: "Well, you may as well quit. You better quit".

I said: "Fine". I said: "Would you be kind enough, Annette, to go and inform Perth that I have been terminated? Could they organise to have my pay made up and sent to me" or whatever I had to do to get it. I didn't ask for payment there and then.

...

MS HAMMOND: - - at, because as far as I was concerned, Mrs Pickwell was my employer, and Mr Pickwell was the one that told me to quit. They didn't give me an opportunity to put in any notice. I wasn't told that I could stay for the 2 weeks, work the 2 weeks out. Mr Pickwell told me I had better quit there and then, and I said: "Fine. That's what I will do"."

(Transcript Pages 4, 5, 6, 7, 11, 12, 14, 15 & 19)
(Emphasis Added)

The Commission closely observed the applicant and respondent whilst they recounted their respective versions of the events of the 7th November, 1995.

In the result, the Commission concludes on balance of probabilities that Mr Pickwell invited the applicant to resign or "quit" her position because of the strong verbal disagreement on that day (7/11/95) between the applicant and Mrs Pickwell. The applicant accepted the invitation and ended her contract of employment then and there. Put another way, Mr Pickwell did not dismiss the applicant rather in light of the altercation between the applicant and Mrs Pickwell, he strongly suggested that the applicant "quit her position". It was then open to the applicant to accept or refuse the suggestion made. If Ms Hammond had refused the invitation to quit, she may have been dismissed by Mr Pickwell. This did not occur, however.

In these circumstances there was no unfair dismissal and thus the claim must be refused.

Appearances: Ms S. Hammond appeared for the applicant.

Mr L. Pickwell appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sarah Jane Hammond

and

Oldham Boas Ednie & Brown.

No. 1318 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

15 February 1996.

Order.

HAVING heard Ms S. Hammond on behalf of the Applicant and Mr L. Pickwell 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 dismissed.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr G S Hardie

and

P T & B D Slade.

No. 1265 of 1995.

COMMISSIONER P E SCOTT.

1 March 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of proceedings and as edited by the Commissioner)

THE COMMISSIONER: This is an application by Mr Hardie pursuant to section 29 of the Industrial Relations Act, 1979 that he has been harshly, oppressively and unfairly dismissed from his employment with the Respondent.

Having heard the evidence and observed the witnesses, I must say that where there is a conflict in the evidence I prefer the evidence of Mr Slade because his evidence has been supported by the documentation that he has and because of the logic that supports his evidence. That is not to say that I find that Mr Hardie has been deliberately misleading, or anything of that nature, but merely that the evidence of Mr Slade has been more consistent and logical in that sense.

I am satisfied that Mr Slade and his wife, when they need to employ staff on an ad hoc basis to undertake the seasonal work that arises on the property, do so from a list of people who are normally available to undertake that work and who are known to them. When the applicant was engaged, this was on the basis that the respondent had approached a number of people on this list and they were unavailable. The respondent then approached the Commonwealth Employment Service to obtain other names.

I find that whilst Exhibit 1 may support the applicant's case for his contention that it was permanent employment that was offered, in fact it might also support the prospect of the vacancy being of a casual nature.

It is possible to confuse the issue of "permanency" with "full time" in that the hours of work may be of a full time nature, that is 38 or 40 hours per week, as opposed to a lesser number, which would be part time. However, such full time hours would not necessarily have to be of an ongoing nature, but could be casual in that it is ad hoc, as required. I believe that this is the nature of the employment which was offered to the applicant by the respondent, that it was as required to perform specific work for a limited period. The nature of the arrangement between them regarding pay, being the hourly rate of pay, supports the arrangement being of a casual nature.

It is possible that the casual employment could have been for the period which the applicant contends, being five days per week up until Christmas and three days per week thereafter. However, I am not satisfied that that was the case, particularly noting the actual hours worked.

In any event, the applicant was injured during the course of his employment and that is a matter for regret, but nonetheless it occurred. Whilst he gave evidence that he was given clearance by the doctor after a couple of weeks, it appears that the work for which the employer engaged him was by then complete. Even if it had not been, from the applicant's own evidence, the contract was frustrated by the applicant being capable only of performing sedentary work from the time of that accident, even until 10 January, which goes beyond the period for which the applicant seeks consideration.

On this basis, I find that there was not a dismissal by the employer, which would constitute grounds for consideration of unfair dismissal, but a frustration of the contract, which led to the contract simply being terminated as a result. On this basis I find that the application of unfair dismissal is not made out and will be dismissed.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr G S Hardie

and

P T & B D Slade.

No. 1265 of 1995.

COMMISSIONER P E SCOTT.

1 March 1996.

Order.

HAVING heard Mr G S Hardie on his own behalf and Mr J Flanagan (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.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Hay

and

Gardner Perrott a Division of Brambles Australia Limited.

No. 727 of 1995.

COMMISSIONER A.R. BEECH.

12 January 1996.

Reasons for Decision.

THE COMMISSIONER: This is an application brought pursuant to s.29 of the Industrial Relations Act. In it Mr Hay claims that he has been denied by Gardner Perrott a benefit under his contract of service. Although the case at first seemed straightforward, as will become apparent later, it contains a number of different elements which might be described as interesting. Certainly some of the elements of this case are matters which the parties themselves indicated that they had not been able to fully research, or where there were insufficient references or authorities to guide the parties in their submissions.

The heart of the dispute is whether Mr Hay was entitled to be paid wages for four periods in April 1993, October 1993, April 1994 and May 1995. By way of observation it is appropriate to note that Mr Hay was employed as an industrial sandblaster and spraypainter by the respondent on the North Rankin A Platform (the rig) on the Northwest Shelf. For the periods mentioned above Mr Hay was "stood down" by Gardner Perrott for the principal reason that maintenance work was to be carried out on the rig and there were insufficient beds on the rig available for persons such as Mr Hay. Gardner Perrott therefore stood Mr Hay down for those periods.

The Commission heard evidence from Mr Hay, Mr Oliver who is a fellow employee, and also from Mr Hornhardt who is the northwest manager of Gardner Perrott. The Commission was presented with only limited submissions to assist the Commission in resolving the complexities which are thrown up by this application and the manner in which it has been approached by the parties.

I am satisfied that Mr Hay was employed by Gardner Perrott for the periods mentioned. In order to determine whether Mr Hay has not been allowed by his employer a benefit, not being a benefit under an award or order, to which he is entitled under his contract of service, the Commissioner turns to examine Mr Hay's contract of service.

For this purpose it is convenient to consider the period of Mr Hay's employment prior to 9th May 1994. Prior to that date it is common ground that Mr Hay's employment was award free. After that date there is an argument between the parties regarding whether or not a decision of the Australian Commission made Mr Hay's employment subject to a Federal award.

I therefore turn to consider the period prior to 9th May 1994. Although Mr Hay's employment was award free I am satisfied from the evidence that the contract of employment between Mr Hay and Gardner Perrott was based upon the rate of wage and other wage entitlements due to a tradesperson pursuant to the Mechanical and Electrical Contractors (North West Shelf Project Platform) Award 1986 No A 10 of 1984 of the Commission. The other conditions of his employment were those applicable to the other employees on the rig, that is, Part III of the Hydrocarbons and Gas (Production and Processing Employees) Award 1986, an award of the Australian Commission. Thus, although Mr Hay's employment was award free, his claim will be determined by reference to the above awards because the parties agreed to incorporate their terms into the contract of employment between them. Whether Mr Hay has not been allowed a benefit due under his contract of employment will therefore depend upon the terms of the awards.

If it is the case that the parties agreed that Mr Hay's conditions of employment would be governed by the Hydrocarbons and Gas Award then subclause (e) of Clause 8.—Contract of Employment of that award becomes relevant. That subclause is in the following form:

> "Subject to the provisions of Clause 7 of this Part, the provisions of this clause shall not affect the right of the employer to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown of machinery or any stoppage of work by any cause beyond the employer's reasonable control. Provided that the employer shall advise the union representative and the appropriate full time official of the union, in writing, including telegram or telex, 48 hours prior to implementing any stand downs, in the case of personnel who are not in dispute."

I shall refer to this clause as the "stand down clause". The application of the stand down clause to Mr Hay's circumstances is not straightforward. It is not uncommon to find clauses of the above type in awards in both the Federal and State jurisdictions. But it is not common to find circumstances such as these and the Commission was not informed of any previous example where the provisions of the stand down clause have been applied to those circumstances. This then brings us to the stand down clause. On the facts of this case the only right Gardner Perrott had to stand Mr Hay down would be derived from that provision. If, on these facts, the stand down clause does not permit Mr Hay to be stood down then Mr Hay was incorrectly stood down. In that event Mr Hay is entitled to be paid pursuant to his contract of service. If the stand down clause permitted Mr Hay to be stood down then Mr Hay's claim fails.

I turn therefore to examine the terms of the stand down clause as placed before the Commission (exhibit D). In doing so I note that the onus in proving that the stand down was done in accordance with the stand down clause rests with Gardner Perrott. That is, while Mr Hay bears the onus of proving this application overall, Gardner Perrott bears the onus in relation to the stand downs which occurred, and in this regard I adopt, with respect, the rationale and the conclusion of Morling J in *Townsend and Another v. General Motors-Holden's Ltd* (1983) 4 IR 358 at 363.

I find the following to be the facts. Mr Hay was employed by Gardner Perrott in approximately March 1990. From that time until approximately 1993 he was employed for discrete periods of time, for example 9½ months, at which point he would be terminated and re-employed when the next part of a contract came up (transcript p.22, p.62). On such occasions it was not necessarily the same persons who were re-employed following the terminations, but it was the case in relation to Mr Hay that he was re-employed. Then in approximately 1993 the "whole concept of the contract" changed because the client (Woodside Offshore Petroleum Pty Ltd) had decided that it would prefer to run the contract over a whole 12 months instead of stopping and starting, but with shut downs during that time for maintenance (transcript p.62). As to the shut down and its effect I find as follows. The shutdown is for the upgrading or maintenance of equipment which cannot be done during general operational business. Gas flow and production is slowed right down and the equipment is overhauled. The employees of Gardner Perrott are "not skilled enough and not required to do that work" (transcript p.65) and consequently are the first ones to be "stood down". However, at the time of the shut down, the work for which Gardner Perrott is contracted is still available for the employees of Gardner Perrott, but probably not the whole crew (transcript p.65). The main reason for the stand down is simply the lack of available beds on the rig, but there is also a lot of mechanical equipment opened at the time which is a fairly messy operation and the client cannot afford to have abrasives and paint getting into those opened areas (transcript p.65).

I find that although the concept of the contract between Gardner Perrott and Woodside changed, Mr Hay was not informed of this change (transcript p.37, p.62). When the first shut down occurred in April 1993 Mr Hornhardt travelled to the rig and explained the situation to the employees. I find on the evidence that Mr Hornhardt spoke to both shift cycles and that Mr Hay was present, although Mr Hay is uncertain on this point. Mr Hornhardt put to the employees that "it was going to be a reasonable length of time that we would be off the Rankin" (transcript p.63) and put to them that they could be terminated (with no guarantee of re-employment), take annual leave where employees had accrued it or be stood down. His evidence is that all employees decided on the annual leave option, with standing down in cases where an employee had insufficient annual leave for the period of time they would be off the Rankin.

Mr Hay's evidence is that he took annual leave for the periods of the shut downs, but that on some occasions he had insufficient annual leave accrued. On those occasions, he received no pay (transcript p.26).

I also find that on each occasion claimed the "stand down" of Mr Hay occurred for the same or similar reasons except in April 1994 when the advent of a cyclone caused the intended stand down of one swing to be extended.

I turn now to consider the terms of the stand down clause against those facts. The first part of the clause refers to "the provisions of clause C7 of this part" but I have not found that reference to be relevant, and neither have the parties. The clause has been set out earlier in these reasons and there is no need to repeat it here. Relevantly it provides that the employer may deduct payment for:

(i) any day

(ii) the employee cannot be usefully employed because of

(iii) any strike

(iv) or through any breakdown of machinery

(v) or any stoppage of work by any cause beyond the employer's reasonable control.

There is then a proviso that, in the case of personnel who are not in dispute, the employer should advise the union representative and the appropriate full time official of the union in writing 48 hours prior to implementing any stand downs.

In relation to the proviso it is accepted that Gardner Perrott did not advise the union representative and the appropriate full time official of the union in writing 48 hours prior to implementing any stand downs as the proviso requires. However that fact was either not mentioned or avoided (transcript p.55) by the parties and the Commission was not presented with any submissions as to the consequence of the proviso not being met. On one view, the proviso conditions the whole of the clause so that in the event that the proviso is not observed then the employer is not able to claim the benefit of the clause as a whole. An alternate view would be that the proviso provides for an additional step to be taken by the employer, but failure to comply with that step would not negate the whole of the clause. The difficulty is that the reference to "personnel who are not in dispute" refers to a situation where an industrial dispute has arisen and that is simply not the case here. Indeed, there are no personnel who are in dispute in the manner implied by that reference. Given that the onus, at this point, is on Gardner Perrott to show that its reliance on the stand down clause is valid its failure to comply with the proviso is an argument against it. However, in the absence of submissions on this point, and given the approach of the parties generally, I do not find that Mr Hay's claim stands or falls only on the non-compliance with the proviso. Mr Hay did not argue the matter that way and I will therefore not decide the matter that way.

I return therefore to the first sentence of the clause. As it is set out above, (i) is not in issue. Mr Hay was "stood down" for complete days and it was not argued otherwise.

That part of the clause set out in (ii) above is slightly more complicated. The words "cannot be usefully employed" are described by the learned authors of *The Law of Employment*, Macken, McCarry and Sappideen, 3rd edition at p.249 as "a troublesome phrase". It is, as Morling J noted earlier, a phrase which caused much debate in the case before him. I find it useful to pass over those words at the moment because they will only arise if there has been a strike, a breakdown of machinery or a stoppage of work by any cause beyond the employer's reasonable control. I turn therefore to examine those stipulations.

Patently, there has not been a strike. Nor is there any evidence of a breakdown of machinery, whether beyond the employer's reasonable control or not. Certainly the shut down occurred to enable the upgrade or maintenance of machinery but that occurred in the context of a planned shut down for the purpose and can be distinguished from a situation where machinery breaks down or where it breaks down by any cause beyond the employer's reasonable control. I therefore find that that stipulation does not apply here.

The next stipulation is (v) where there is "any stoppage of work by any cause beyond the employer's reasonable control". Although there was a shut down, there was still work for the employees of Gardner Perrott, although not the whole crew. Woodside required Gardner Perrott to vacate the rig to allow beds to become available. In that circumstance can it be said that there was a stoppage of work by any cause beyond the employer's reasonable control? In these proceedings, Gardner Perrott urges the view upon the Commission that the shut down is something beyond the control of Gardner Perrott and that accordingly there was such a stoppage of work. Certainly the shut down as such was beyond the control of Gardner Perrott. Indeed, the evidence of Mr Hornhardt, which I accept, is that in many cases, at least in the beginning, management of Gardner Perrott did not know the precise dates when the shut downs were going to occur but were informed about them prior to them occurring by their own employees on the rig. On these facts I tend to the view that the instruction by Woodside to Gardner Perrott to vacate the rig, albeit to provide bed space, effectively meant that the work being undertaken on the rig by the employees of Gardner Perrott could not physically continue. Certainly, it was not argued that Gardner Perrott would be able to continue with its work on the rig given the apparent instruction from Woodside. I therefore accept that there was a stoppage of the work Gardner Perrott was contracted to do which was beyond the reasonable control of Gardner Perrott.

However the matter does not end there because if there was a stoppage of work by a cause beyond Gardner Perrott's reasonable control then Gardner Perrott has to show that the employees cannot be usefully employed because of that stoppage. In this application there is an obligation on Gardner Perrott to demonstrate to the Commission that there was no useful work for Mr Hay because of the stoppage of work. Further, the onus on the company has to be seen in the context that Gardner Perrott was aware that it would be instructed to vacate the rig for certain periods of time. But there is no evidence that it was particularly interested to find out in advance when the shut downs would occur. It waited until it was told by its client. In this case, Gardner Perrott knew that the work of its employees would be stopped for the shut down. All of the shut downs were planned shut downs (transcript p.67) and Gardner Perrott knew well in advance that they were going to occur (transcript p.68). But there is no evidence that Gardner Perrott did anything other than merely wait for the shut down and then present its employees with the option: be terminated or be stood down with the option of taking annual leave (transcript p.63, p.64). As for finding useful work, it was the case on each occasion of merely "looking around and trying to find out if there is something there" (transcript p.64, p.73). There is evidence that on one occasion Gardner Perrott anticipated gaining a contract in the northwest on which it could employ some or all of the employees who would be affected by the requirement on Gardner Perrott to vacate the rig. Mr Hornhardt's evidence is that he did contact the metropolitan area to find out if anything was available to them. But Mr Hornhardt's evidence could not embrace what work was actually available in Perth because he cannot answer for the people in Perth (transcript p.69).

One is left to imply from the evidence that no plan was made by Gardner Perrott for continuing the work of their employees during the course of a shut down. Rather, it was left to chance. That is, that when the shut down did occur, possible contracts in the northwest may or may not have eventuated, or the Perth and other divisions would be contacted and useful employment for some of the employees affected might eventuate. If it did not, then Gardner Perrott would rely on the stand down clause. However one is driven to the conclusion that in the circumstances reliance upon the stand down clause was a natural and probable consequence of the lack of any planning on the part of Gardner Perrott to ensure the provision of useful employment opportunities for the employees affected when it knew well in advance that the need would arise.

The case that is before the Commission does not concern all of the employees of Gardner Perrott who were stood down. The claim is in relation to Mr Hay, although the consequence of a finding in favour of Mr Hay upon other employees in similar situations is appreciated and understood by the Commission. The onus is upon Gardner Perrott to show that Mr Hay could not have been usefully employed. The evidence from Gardner Perrott is that there was no useful work available. However, employees were spoken to as a group (transcript p.70). Individual circumstances were not considered. Gardner Perrott did not even know that Mr Hay was a registered painter and decorator (transcript p.69). In that case, how can it validly be said that Gardner Perrott tried to find useful employment for Mr Hay, but found there was no useful work available? In my respectful view, it cannot. And this is where I have found Mr Oliver's evidence of relevance. He was employed in the same circumstances as Mr Hay, and is embraced by the general evidence of Mr Hornhardt that there was no useful work available. However, on one occasion Mr Oliver rang Gardner Perrott's factory in Perth and found employment for the duration of the shut down. It begs the question: if, according to the evidence, there was no useful work available, how was it that Mr Oliver found it? It was a question raised in the proceedings and not satisfactorily answered. Given that it did not look specifically for work for Mr Hay, and that to the extent that it did, it did not know that he was also a registered painter and decorator and available for that work, Gardner Perrott has not been able to show that there was no useful work for

Mr Hay to perform during the time when he was stood down. On that finding Gardner Perrott is unable to rely on the stand down clause to support Mr Hay not being paid.

There are some issues which still require consideration. The evidence of Mr Hornhardt, already referred to, is that he flew to the rig and effectively gave the employees, including Mr Hay, a choice. To what extent does this fact affect the circumstances of Mr Hay whose employment was award free? The parties to an award free contract of employment are at liberty to vary the terms of the contract if they agree to do so. Can it be argued that the terms of the stand down clause provide the only circumstances where Gardner Perrott could stand Mr Hay down? In my view, in the circumstances of this case, the answer to the question is in the affirmative. That is because the submissions and evidence before the Commission indicate that the parties intended Mr Hay's terms and conditions of employment to be no different from the conditions of employment of his fellow employees employed on the rig. That is to be inferred from the contract between Gardner Perrott and Woodside Offshore Petroleum Pty Ltd which became exhibit B in the proceedings. Thus, the parties would wish to avoid any unfairness which might arise from the significantly different treatment of one tradesperson on the rig from another. If, generally speaking, the tradespersons employed on the rig are covered by an award then, in the case of those employees there is no ability to stand them down outside the terms of the award. Therefore, so too should it be in the case of Mr Hay. Even if I am wrong in that conclusion I do not think that Gardner Perrott can rely upon the agreement of Mr Hay that he accept stand down as an alternative to termination. Mr Hay was not presented with any real choice. The choice was either to take annual leave and/or suspension without pay or be dismissed. In such a circumstance I suspect that Mr Hay has little alternative other than to accept the stand down (and see the comment by Mr McCallum in his useful article "*Exploring the Common Law, Layoff, Suspension and the Contract of Employment*" (1989) 2 AJLL 211 at 233). I am reluctant to find that there was a consensual variation to Mr Hay's contract of employment with Gardner Perrott as a result of the choice put to him by the company. That is not to be critical of Mr Hornhardt. Indeed, if the situation is indeed "an interesting conundrum" as Mr Dietrich submitted to the Commission (transcript p.81), then within those limits Mr Hornhardt endeavoured to secure the most agreeable outcome. But to hold that Mr Hay and Gardner Perrott varied Mr Hay's contract of employment by mutual agreement would be to allow Mr Hay to be treated differently from other employees covered by the award as of right and whose contract of employment is not able to be so varied, and I have already observed that this does not appear to have been the intention.

Furthermore, although Gardner Perrott knew that the stand down was going to occur there is no evidence that, at least in 1993, Mr Hay knew that it was going to occur. There is no real evidence from which one could draw the conclusion that the periods of stand down were incorporated into Mr Hay's contract of employment by the agreement of the parties.

Mr Hay's claim therefore has been made out.

This conclusion is applicable to all of the stand downs to 9th May 1994 claimed by Mr Hay. But in relation to the additional period in April 1994, when the advent of a cyclone extended the period of stand down, Mr Hay should be treated in accordance with any relevant provision of the Hydrocarbons and Gas Award relating to the advent of cyclones. The Commission takes this point no further as it was one of the matters upon which no submissions were made by the parties.

I have already noted that part of Mr Hay's conditions of employment were as prescribed by the Mechanical and Electrical Contractors (North West Shelf Project Platform) Award. That award contains a stand down provision in clause 6.—Contract of Employment in the following form:

> "(8) The provisions of this clause shall not affect the right of the employer to deduct payment for any day the employee cannot be usefully employed because of any strike or through any breakdown of machinery or any stoppage of work by any cause beyond the employer's reasonable control."

Because Mr Hay's contract of employment also referred to that award I consider it prudent to examine it for the purpose of this claim. In doing so I find it is sufficient to observe that the terms of the stand down clause in that award are not different from the terms of the stand down clause in the Hydrocarbons and Gas Award. And to the extent that they are different then I would be prepared to hold that the terms of the stand down clause of the Hydrocarbons and Gas Award are to be preferred. In any event, I am not persuaded that the analysis of the Commission in this matter, if it were applied in the context of the stand down clause of the Mechanical and Electrical Contractors (Northwest Shelf Project Platform) Award, would produce a different result.

It remains to consider the period after 9th May 1994. The final two periods claimed by Mr Hay are affected by proceedings which occurred before Harrison C of the Australian Commission on 9th May 1994. In those proceedings Gardner Perrott agreed to being roped in to the Hydrocarbons and Gas Award (C No. 20563 of 1994). Subsequent proceedings before Harrison C on 15th June 1994 inserted the classification and wage linkage of a "painter" employed on the rig (C No. 21444 of 1994). I note that Mr Hay was employed as an "industrial sandblaster and spraypainter". I have no submissions before me which would allow me to conclude that that description is not embraced by the title "painter", and given the specific roping-in of Gardner Perrott, I am not sure that such a submission could validly be made. The Commission has not been told of an order which has issued from those latter proceedings but I find, on the basis of the transcript, that from 15th June 1994 Mr Hay's employment was governed by the terms of the Hydrocarbons and Gas Award as of right. I am also aware that there are currently proceedings before the Australian Commission to have the decisions of Harrison C set aside. This finding raises the issue whether the Commission has the jurisdiction to deal with a claim for a denied contractual benefit when the entitlement to the benefit claimed arises from an award of the Australian Commission. The issue was not dealt with and is a matter upon which, if pursued, the Commission would wish to hear further from the parties.

I therefore find as follows:

1. Mr Hay has been denied a benefit under his contract of employment as he has claimed, other than as provided below.
2. The claim for the period after 15th June 1994 is adjourned sine die.
3. In all other respects, an order will issue requiring the payment to Mr Hay of the wages he would have earned if he had not been stood down. The rate at which he should be paid is the on-shore rate which he would have received had useful work been found for him during the shut down. A liberty to apply will be allowed in the event that the parties cannot agree on the sum involved.

Minutes of a proposed order will now issue.

Appearances: Ms J Harrison for the applicant. Mr G Dietrich for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Hay

and

Gardner Perrott a Division of Brambles Australia Limited

No. 727 of 1995.

COMMISSIONER A.R. BEECH.

22 February 1996.

Order.

HAVING heard Ms J Harrison on behalf of the applicant and Mr G Dietrich on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders:

1. THAT Gardner Perrott pay Mr Hay for the periods he was incorrectly stood down in April 1993, October 1993 and April 1994.

2. THAT the payment to be made in Order 1. hereof:
   (a) be for the days that Mr Hay would have worked had he not been stood down;
   (b) be reduced by any payment for annual leave made to him for those periods;
   (c) be reduced by the amount of any other income received by Mr Hay during those periods;
   (d) be at the rate of wage Mr Hay would have received if he had been employed by Gardner Perrott on-shore for those periods.
3. THAT liberty is reserved to the parties to have the Commission determine the amount of payment to be made to Mr Hay in accordance with this Order in the event that the parties are unable to agree on the amount.
4. THAT the claim for payment for the period in May 1995 be adjourned sine die and may be relisted upon the written request of Mr Hay, with notice of that request to Gardner Perrott.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

C Kovacs

and

Caffe Piazza.

No. 1267 of 1995.

COMMISSIONER A R BEECH.

7 March 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the parties have reached agreement;

AND HAVING heard Mr J.J. Walshe on behalf of the Applicant and Mr M.F. Holler (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,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Lawless

and

Paul Downie and Associates.

No. 957 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 1996.

Order.

BY this application, the Applicant claimed that he was dismissed in a harsh, oppressive or unfair manner and had been denied contractual benefits, by the Respondent company. The claims were denied by the company.

A Conference involving the parties, was conducted before the Commission on 14 September 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 further Conference was listed for 25 September 1995, to enable a report back to occur.

Prior to this Conference, the Applicant's solicitor requested that the Conference be cancelled as the claims had been settled between the parties.

A Notice of Discontinuance was filed by the Applicant's solicitor with the Commission on 15 November 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.

Jeff Lee

and

Hancock Prospecting Pty Ltd.

No. 1381 of 1995.

COMMISSIONER A R BEECH.

27 February 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the parties had discussions and reached agreement;

AND HAVING heard Mr R.E. Keen (of Counsel) on behalf of the Applicant and Mr A. Lucev (of Counsel) and with him Ms J. Siddins 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.

Turei Ratu Lewis

and

A.G. Direct Sales Pty Limited.

No. 1001 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 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 by the company.

A Conference before the Commission was listed for 29 September 1995, to consider the claim. Although there was no attendance by the Applicant, the Applicant's agent attended.

The Conference was adjourned to enable the Applicant's agent to make enquiries with the Applicant, regarding his intentions.

A Notice of Discontinuance was filed with the Commission by the Applicant's agent on 15 November 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.

Murray Wayne McKeagg

and

Dyno Wesfarmers Limited Explosives.

No. 811 of 1995.

COMMISSIONER R.N. GEORGE.

1 March 1996.

Reasons for Decision.

THE COMMISSIONER: The Applicant in these proceedings commenced employment with the Respondent on 12 August 1994 under terms and conditions set out in a letter in the form of an offer of employment from the Respondent to the Applicant dated 8 August 1994 (Exhibit E). The offer was for a position as Operator at the Brockman Mine with the initial assignment being to the Yarrie Mine Site.

Under the terms and conditions of the offer a probationary period of three months applied and salary and conditions were set out under the heading of "Brockman Award Conditions". The letter of offer was signed by the Applicant in acceptance of the conditions set out therein.

The Commission was not informed of the status of what is referred to in the letter of offer as the "Brockman Award". There is no record, however, of an award fitting that description in either the State or Federal jurisdictions and it would appear the "Brockman Award" is in fact the Brockman Mining Project Enterprise Agreement 1992 (Print K7528). Although the Respondent is not a party to the Brockman Mining Project Enterprise Agreement 1992, it is clear from a comparison between the letter of offer (Exhibit E) and the Agreement that the employment contract entered into substantially adopted its terms.

On 12 July 1995 the Applicant's services were terminated for reasons set out in a letter of termination which, formal parts omitted, was in the following terms.

> "It is with regret that I inform you that your employment with Dyno Wesfarmers Ltd has been terminated, effective on the expiration of a one week notice period which will be paid to you in lieu of notice.
>
> Upon speaking with your doctor, Dr Nigel Sinclair, I was informed that you require bypass surgery and that following this you would probably remain unfit for normal duties for a minimum period of two months. However, the National Road's and Transport Commission's Standards for Medical Examination of Commercial Vehicle Drivers state that your condition would not meet their criteria for licensing for a minimum twelve month period, and even then only after you were symptom and medication free. Your current position requires that you hold a 'B' Class Truck Licence.
>
> Retraining or redeployment was an option that was considered but unfortunately there are no positions available that match your skills and/or experience.
>
> Consequently, we are of the view that there is a frustration of the employment contract. A cheque representing any outstanding moneys owed to you will be forwarded immediately.
>
> Murray, I am hopeful that following surgery you may return to full fitness and once again be gainfully employed."
>
> [Exhibit B]

To the date of termination the Applicant had been on a combination of paid and unpaid sick leave totalling 111 days out of 228 days which could have been worked.

In the course of proceedings the Commission raised with the Applicant the question of whether the employment contract reflected in the letter of offer operated alongside an award of the Commission or whether the Applicant was award free. The Applicant was unable to satisfactorily answer the question but during the luncheon adjournment Mr Connell for the Respondent made enquires and in the course of his opening submissions on the resumption of proceedings, he advised the Commission that the Applicant was in fact covered by the Federal Explosives Manufacturing and Distribution Award 1990, an award of the Federal Industrial Relations Commission to which the parties are identified as being the Australian Workers Union and the Respondent. Mr Connell went on to submit that in the circumstances, applying the authority in Metropolitan (Perth) Passenger Transport Trust v. Gersdorf (1981) [61 WAIG 611] (hereinafter referred to as "Gerdorf's case"), this Commission was without jurisdiction to hear and determine the matter before it.

The issue raised by Mr Connell for the Respondent arises out of the operation of S.152 of the Industrial Relations Act 1988 (Cwth) which provides as follows.

> "Where a State law, or an order, award, decision or determination of a State industrial authority is inconsistent with, or deals with a matter dealt with in, an award, the latter prevails and the former, to the extent of the inconsistency or in relation to the matter dealt with, is invalid."

The effect of that provision and whether there is inconsistency between Federal awards and employment legislation of the States is examined in detail by Fielding C. in Walter Gordon Eatts and General Manager, Aboriginal Hostels Ltd (70 WAIG 2877) and I respectively adopt what was said by the learned Commissioner in that matter. Put simply, the questions to be asked in this case are whether the Federal Explosives Manufacturing and Distribution Award 1990 applies to the Applicant's employment and if so, whether the award expressly provides for dismissal on notice and whether a possible effect of S.29(b)(i) of the Industrial Relations Act 1979, which authorises the Commission to order the reinstatement of an employee it finds to be unfairly dismissed, would be to cut down that right by altering, impairing or detracting from the operation of the award thereby creating an inconsistency which meets the test explained by Dickson J in Victoria v Commonwealth (1937) 58 CLR 618 at p.630 and referred to and relied upon by members of the Industrial Appeal Court in Metropolitan (Perth) Passenger Transport Trust v. Gersdorf (Supra). If the answers to those questions are in the affirmative then this Commission is without jurisdiction to determine the Application before it.

So far as it is material to the matter now under consideration the Federal Explosives Manufacturing and Distribution Award 1990 makes the following provisions.

> "4.—SCOPE AND PARTIES BOUND
>
> Locality of application
>
> 4.1 This award shall apply in all States and Territories of Australia.
>
> Application of award
>
> 4.2 This award shall apply to The Australian Workers' Union and the members thereof, and persons eligible to be members and to the employers named in the Schedule hereto, who are engaged in or in connection with, or incidental to the chemical industry associated with the manufacture and supply of explosives products throughout Australia.
>
> 5.—CONDITIONS OF EMPLOYMENT
>
> Engagement
>
> 5.1 Engagement shall be by the week, (except for the engagement of casual employees), provided that permanent status shall not be achieved until the completion of three months service, or appointment by the employer, whichever is the sooner.
>
> .....

Termination of employment

5.5 (a) Termination of all weekly engagements shall require a week's notice on either side given at any time during the week, or the payment or forfeiture of a week's wages as the case may be.

(b) Provided that where the employer has given such notice, the employer shall, if requested, grant leave of absence for one day, to enable the employee to look for alternate employment.

(c) Provided that by mutual arrangement between the parties, an employee after having given notice, may leave his employment prior to the expiration of the notice period and receive wages up to the last working hour worked only.

Summary dismissal

5.6 Notwithstanding the provisions of subclause 5.5(a) and the provisions of clause 8.—Job representatives' the employer shall have the right to dismiss any employee for neglect or refusal of duty in which case, the employee shall be paid wages up to the time of dismissal only. Such dismissal shall stand unless the union notifies the Commission within one week of the dismissal that it disputes the employer's action, in which case the Commission shall hear and determine the matter and the parties shall be bound by the decision subject to their normal rights of appeal.

Provided further an employee found to have breached any Statutory Safety Regulation by the appropriate Authority Inspector shall be deemed to be guilty of neglect or refusal of duty.

13.—RATES OF PAY AND ALLOWANCES

Wage rates

13.1 Except as elsewhere provided in this Award, a weekly employer shall be paid at the wage rate prescribed herein for the classification of work.

Group		Per week $
1	Supervising Operator	471.50
2	Senior Operator	435.60
3	Operator Grade 1	415.10
4	Operator Grade 2	410.00
5	Operator Grade 3	402.30
6	Operator Grade 4	397.20
7	Operator Upon commencement	391.60

14.—PAYMENT OF WAGES

.....

Payment on termination

14.3 When notice is given in accordance with subclause 5.5 all moneys due to the employee pursuant to this award shall be paid at the time of termination; where this is not practicable, the employer shall, within two clear working days of the termination, send to the employee's home address all moneys due by registered post provided that if the money is not posted within that time then any time spent waiting to be paid for at ordinary rates, such payment to be at the rate of eight hours per day up to one week at the expiry of which time the right to waiting time ceases.

30.—DEFINITIONS

General definitions

30.1 .....

(c) "Operator" shall mean an employee employed as such and engaged on any facet of the operational processes of the plant and associated testing areas including the use and operation of any materials handling or carting equipment or machinery.

SCHEDULE OF RESPONDENTS

Dyno Wesfarmers Limited, 357 Military Road, Cremorne, NSW 2090."

As to the question of award coverage, it can be seen from the above that the award applies in all States and Territories of Australia and "to the Australian Workers Union and the members thereof, and persons eligible to be members and to their employers named in the Schedule hereto, who are engaged in or in connection with, or incidental to the chemical industry associated with the Manufacture and Supply of explosive products throughout Australia." The Respondent in this matter is the only Respondent named in the Schedule to the Federal Explosives Manufacturing and Distribution Award 1990. The Applicant was employed as an Operator which is a classification under that Award defined in the following terms.

> "Operator" shall mean an employee employed as such and engaged on any facet of the operational processes of the plant and associated testing areas including the use and operation of any materials handling or carting equipment or machinery.

The prime function/job mission, as set out in the Job Description for the position in which the Applicant was employed, was "To provide to our customer explosive products and services safely, efficiently and on time every time through responding to customer requests and maintaining equipment and facilities to a level consistent with company standards and procedures" (Exhibit 8). Mr Smith, Operations Manager of the Respondent, in his evidence described the work the Applicant was required to perform in the following terms.

> "His primary duty is to operate the bulk delivery truck and to provide or produce the explosives and deliver them to the blast hole which is typically drilled by the customer and then the customer takes charge of the explosives once it has been delivered."
>
> [Transcript p.60]

Both the Job Description and the work described by Mr Smith are in my view contemplated within the definition of "Operator" under the award.

Notwithstanding the conditions which were applied under the terms of the offer to the Applicant dated 8 August 1994, an examination of the award provisions and the evidence before the Commission leads to the conclusion that the Applicant's employment was subject to the Federal Explosives Manufacturing and Distribution Award 1990.

Having found that the Federal Explosives Manufacturing and Distribution Award 1990 applies, the remaining question is whether Section 29(b)(i) of the Industrial Relations Act 1979 impairs or detracts from, if not alters, the operation of that award in such a way that it meets the test of inconsistency referred to and relied upon by the Industrial Appeal Court in Gersdorf's case (Supra). It is apparent from the evidence and the award provisions set out above that there is no material difference between the circumstances disclosed by this case and those considered in Gersdorf's case (Supra). The Federal Explosives Manufacturing and Distribution Award 1990 expressly authorises the employer to dismiss an employee with notice. It is therefore not possible to say that the provisions of S.29(b)(i) of the Industrial Relations Act 1979, which authorise the Commission to order the reinstatement of an employee it finds to be unfairly dismissed, do not detract from the award.

While the provisions of the award in Gersdorf's case (Supra) are different from the award now in question in that the former contained a grievance procedure for dismissed employees, this does not alter the conclusion reached above. As said by Fielding C. in Eatts' case (Supra) when referring to a similar difference between the award in Gersdorf's case (Supra) and the award then under consideration "it was the fact that an order for reinstatement by the Commission would negate the provision of that Federal Award which expressly provided for dismissal on notice which was important in determining the outcome of that case, more than the fact the Metropolitan (Perth) Passenger Transport Trust Traffic Employees Award 1973 also contained an extensive grievance procedure for dismissed employees."

In the circumstances the Commission has no alternative but to dismiss the application before it for want of jurisdiction and it is therefore unnecessary to examine the merits of the claim before it.

Appearances: Mr M.W. McKeagg on his own behalf.

Mr P. Connell on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Murray Wayne McKeagg

and

Dyno Wesfarmers Limited Explosives.

No. 811 of 1995.

COMMISSIONER R.N. GEORGE.

1 March 1996.

Order.

HAVING heard the Applicant on his own behalf and Mr P. Connell 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 dismissed for want of jurisdiction.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr A N Ross

and

Burravilla Contractors.

No. 1197 of 1995.

CHIEF COMMISSIONER W.S. COLEMAN.

19 February 1996.

Reasons for Decision.

CHIEF COMMISSIONER: This is an application under Section 29(1)(b)(ii) of the Act. The applicant claims payment for shearing undertaken as an employee of Burravilla Contractors.

The application was lodged with the Commission on 27 October 1995. On 27 November, following service of the application on the respondent, the Commission received a request from the applicant for the matter to be heard and determined. The matter was referred to the Acting Deputy Registrar for action pursuant to Section 93(8) of the Act. Despite numerous attempts to contact the respondent by telephone nothing could be arranged through the Registry which may have assisted in obtaining a response to the claim from the Respondent.

On 29 January the parties to the matter were advised of a conference convened by the Commission for 11.30am Wednesday, 14 February 1996. That advice also stated that if the matter was not settled in conference it would proceed for hearing and determination immediately following the conference. The parties were advised that time had also been set aside the following morning to hear the matter. A Notice of Hearing (Form 24) was also forwarded to the parties confirming proceedings set down to hear the matter at 2.00pm on Wednesday, 14 February 1996.

The respondent did not attend the conference convened at 11.30am on 14 February 1996 and did not appear when proceedings commenced at 2.15pm that day after some time had been allowed for any delay that the respondent may have encountered in attending the Commission.

In those proceedings the applicant spoke to the "invoice/statement" dated 27 September 1995 to establish the basis of his claim for unpaid contractual benefits arising from his employment with Burravilla Contractors.

In summary the "invoice/statement" which was said to have been written by Mrs I Egerton of Burravilla Contractors, identified the number of sheep shorn by the applicant at various properties in September 1995. Provision had been made for tax and other expenses (board, the purchase of drinks and advance payments of wages). Allowing for arithmetical errors in computing the "invoice/statement" the following reflects the amount sought:

Shearing duties at various locations at the rate of	
3315 sheep @ $1.52 per head	5038.80
Less Tax	1008.00
Sub total	4030.80
Less advance payments	500.00
board	352.35
drinks	25.80
Sub total	3152.65
Plus outstanding wages	
July-August 1995	19.35
Sub total	3172.00
Less cash received on 27 August 1995	400.00
Sub total	$2772.00

The applicant presented evidence under oath. He claims that the outstanding wages is not a benefit covered by an award and that the contractual relationship with Burravilla Contractors was that of an employer-employee. He was directed by his employer to the properties where he undertook shearing duties. Income Tax was deducted by his wages.

In the absence of an appearance by the respondent in proceedings on 14 February the matter was adjourned and relisted for 15 February. This was in line with the advice sent to the Respondent on 19 January 1996 that time would be set aside on he morning of Thursday 15 February.

Prior to the resumption of the hearing at 10.30am Thursday, the Commission endeavoured to make telephone contact with the respondent but to no avail.

There was no appearance when the hearing resumed.

I am satisfied on what is before me that the applicant's claim should succeed. As an employee he is entitled to the payments identified by reference to the "invoice/statement" (subject to correction) prepared by Burravilla Contractors. In determining this I am satisfied that Mr Ross is an employee and there is nothing to suggest that the entitlement he seeks is a benefit under an award or order.

The Order which issues reflects the claim as amended to correct errors in the "invoice/statement" of his entitlement.

Appearances: Mr A N Ross, the Applicant appeared on his own behalf. There was no appearance on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr A N Ross

and

Burravilla Contractors.

No. 1197 of 1995.

CHIEF COMMISSIONER W.S. COLEMAN.

26 February 1996.

Order.

HAVING heard Mr A N Ross the applicant and there being no appearance from the respondent and being satisfied that the outstanding benefit sought is an entitlement under this contract of service I hereby order that the respondent pay the applicant the sum of $2772.00 within 7 days of the date of this Order.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Corinne Elizabeth Salmon

and

Curtin Student Guild.

No. 373 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 1996.

Order.

BY this application, the Applicant claimed that she had been denied a contractual entitlement, by the Respondent.

The Commission, as constituted by Mr Commissioner J.A. Negus, had earlier declared, namely at the conclusion of proceedings in application No. 524 of 1992 on 10 March 1994, that the Respondent did have a contractual obligation to pay the Applicant for overtime worked during her period of employment.

A Conference involving the parties, was conducted before the Commission on 22 August 1995, to consider the claim.

The Conference was adjourned to enable the Respondent to review the terms of the offer of settlement they intended to put to the Applicant, in light of matters raised at the Conference.

A further Conference was conducted before the Commission on 5 September 1995, to enable a report back to occur.

The Conference was adjourned to enable both parties to review their respective positions, in light of matters raised at the Conference.

A further Conference was conducted before the Commission on 18 September 1995, to enable a report back to occur.

No resolution was reached at the Conference, and the matter was then to be listed for hearing, in order to hear jurisdictional arguments only.

By letter received from the Applicant's agent, dated 21 November 1995, the Commission was advised that the matter had been settled between the parties, and that the Applicant 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,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr D.J. Skene

and

Matilda Bay Brewing Company T/A Brass Monkey Hotel Pub and Brasserie.

No. 673 of 1995.

COMMISSIONER A.R. BEECH.

29 February 1996.

Order.

WHEREAS a conference of the parties was held;

AND WHEREAS the applicant's agent subsequently filed a Notice of Discontinuance;

AND HAVING heard Mr J. Johnstone on behalf of the Applicant and Mr M. Dwyer (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,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David Smith

and

Stratco (W.A.) Pty Limited.

No. 929 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 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 19 October 1995, to consider the claim.

The Conference was adjourned to enable both parties to review their respective positions in light of matters raised at the Conference.

A further Conference was conducted before the Commission on 7 November 1995, to enable a report back to occur.

A settlement of the claim was reached at the Conference.

A Notice of Discontinuance was filed by the Applicant with the Commission on 27 November 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.

Andrew Swartz

and

Tippla Pty Ltd.

No. 1157 of 1995.

SENIOR COMMISSIONER G.G. HALLIWELL.

21 February 1996.

Order.

HAVING heard Mr A. Swartz appearing on his own behalf and there being no appearance on behalf of the Respondent, and having proceeded to hear the matter under Section 27(1)(d) of the Act, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT Mr Richard Thorp—Tippla Pty Ltd of 4/50 Bedford Ave, Subiaco WA 6008, shall pay the sum of Nine thousand and seventy dollars ($9070) to Mr Andrew Swartz of 105 The Avenue, Warnbro WA 6169, within 14 days of the date of this Order.

(Sgd.) G.G. HALLIWELL,
[L.S] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Rieky Thompson
and
Helen and Terry Gibson.
No. 575 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 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 Conference was listed for 5 July 1995, to consider the claim. As there was no appearance by the Applicant, the Conference did not proceed.

A Conference was conducted on 20 July 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.

A further Conference was conducted before the Commission on 25 September 1995, to enable a report back to occur.

The Conference was adjourned to enable the Applicant to further review her position in light of matters raised at the Conference, and to then advise the Commission of her intentions.

A letter from the Commission, dated 14 November 1995, was sent to the Applicant, in order to ascertain her intentions. The Applicant was informed that if there was no contact made by her with the Commission by 28 November 1995, then her application would be formally discontinued.

To date, no further contact has been made with the Commission, by the Applicant.

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.

M Torchia
and
Caffe Piazza.
No. 1217 of 1995.

COMMISSIONER A R BEECH.

7 March 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the parties have reached agreement;

AND HAVING heard Mr J.J. Walshe on behalf of the Applicant and Mr M.F. Holler (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,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Courtenay Jonathan VanNamen
and
Arestes Pty Limited trading as Bayswater Hotel and Motel.
No. 635 of 1995.

COMMISSIONER R.H. GIFFORD.

12 March 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 by the company.

A Conference involving the parties, was conducted before the Commission on 13 September 1995, to consider the claims.

The Conference was adjourned to enable the company to obtain further information required, as a result of matters raised at the Conference.

A further Conference was conducted on 28 September 1995, which the Applicant did not attend.

A letter from the Commission, dated 12 October 1995, was sent to the Applicant, requesting him to advise of his intentions. No response to this letter was forthcoming.

A further letter dated 8 November 1995, was sent to the Applicant, in order to ascertain his intentions. The Applicant was informed that if there was no contact made by him with the Commission by 22 November 1995, then his application would be formally discontinued.

To date, no further contact has been made with the Commission, by the Applicant.

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.

Lorraine Wolinski
and
Estate Realties—Mr F DiNardo.
No. 1034 of 1995.

COMMISSIONER P E SCOTT.

6 March 1996.

Order.

WHEREAS this is a claim of unfair dismissal and denied contractual benefits pursuant to section 29(1)(b) of the Industrial Relations Act, 1979; and,

WHEREAS a conference was convened on Tuesday the 21st day of November 1995; and,

WHEREAS the Commission sent correspondence to the applicant on the 16th day of February, 1996 requesting advice as to the progress of the application by the 29th day of February, 1996, and advising that if no reply was received by that date, then the matter would be dismissed; and,

WHEREAS no reply has been 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 dismissed.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr Ashley Young

and

Swan Drycleaners.

No. 1138 of 1995.

COMMISSIONER A.R. BEECH.

29 February 1996.

Order.

WHEREAS an application was lodged in the Commission;

AND WHEREAS the Commission scheduled a conference for Friday the 2nd day of February 1996 and the applicant failed to appear;

AND WHEREAS the Commission wrote to the applicant on the 2nd day of February 1996 advising that his claim would be struck out for want of prosecution unless he advised the Commission within 14 days why the Commission should not do so;

AND WHEREAS the applicant has not responded to the Commission's letter;

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 dismissed for want of prosecution.

(Sgd.) A.R. BEECH,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

P Zumbo

and

Caffe Piazza.

No. 1216 of 1995.

COMMISSIONER A R BEECH.

7 March 1996.

Order.

WHEREAS a conference was convened in the Commission;

AND WHEREAS the parties have reached agreement;

AND HAVING heard Mr J.J. Walshe on behalf of the Applicant and Mr M.F. Holler (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,
[L.S] Commissioner.

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 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.

22 February 1996.

Correction Order.

WHEREAS an error occurred in Order No. C 25 and C 31 of 1996 dated 14 February, 1996, (unreported), the following correction is made:

(1) Delete paragraph 3 of this Order and insert in lieu thereof:

WHEREAS, the parties had negotiations and have now reached agreement in full and final settlement of all claims on the Liquor Burning Project as to site allowance; and

(2) The Order be varied by deleting the instruction and inserting in lieu thereof:

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 and shall cease to operate on practical completion of the project.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transfield Construction Pty Ltd and O'Donnell Griffin

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another.

No. C 70 of 1996.

SENIOR COMMISSIONER G.G. HALLIWELL.

29 February 1996.

Order.

WHEREAS pursuant to Section 44 of the Act an industrial dispute was referred to the Commission; and

WHEREAS on the 28th day of February, 1996 a conference was held by the Commission pursuant to Section 44 of the Act; and

WHEREAS industrial action commenced on Wednesday, 21st February, 1996 and is continuing at this date; and

WHEREAS the parties negotiations have to date been unsuccessful; and

WHEREAS after seven days of industrial action it is now necessary to prevent further deterioration of industrial relations between all the parties, the Commission hereby Orders pursuant to Section 44(6)(ba) of the Act:

(1) THAT the elected safety representatives inspect the construction site and associated facilities at 9.00am, Thursday, 29th February, 1996.

(2) In light of (1) above all employees resume normal duties on the site at 9.00am, Friday, 1st March, 1996.

(3) THAT the employer's pay all employees twenty four (24) hours at the normal time rate.

(4) THIS Order shall operate until further conciliation by the Commission or arbitration finally resolves the matters and no further industrial action shall occur in respect to these issues.

(Sgd.) G. G. HALLIWELL,

[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB Installation and Services Pty Limited

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. C 30 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

15 February 1996.

Order.

WHEREAS the parties were in dispute and the employees of the Applicant Company had taken industrial action;

AND WHEREAS on 5 February 1996 a conference was convened and discussions took place between the parties on the terms of settlement of issues arising from enterprise discussions;

AND WHEREAS the workforce subsequently rejected the offer put by the Company and following a breakdown in further negotiations industrial action commenced on 12 February 1996;

NOW THEREFORE following a resumption of the conference on 15 February and negotiations conducted by the parties in the Commission the following terms reflect the agreement reached.

It is accepted by the workforce and the Union that industrial action will cease and that there will be a return to work without any bans or limitations from 7.00am Friday, 16 February 1996 and that the terms of this Order are accepted in full and final settlement of matters giving rise to the dispute.

NOW THEREFORE the Commission by consent and pursuant to Section 44(8) hereby makes this Order binding on the parties in the terms of the following schedule.

(Sgd.) W. S. COLEMAN,

[L.S.] Chief Commissioner.

Schedule.

1. Clothing:

Each permanent employee will be provided with three sets of work clothing which will be replaced on a "fair wear and tear" basis.

Items of clothing that, in the opinion of the employee, require replacement are to be inspected by site management prior to the issue of any replacement article.

The items of clothing which has been agreed to be replaced may remain with the employee.

The laundering of Company provided clothing is the responsibility of the employee.

2. Location/Job Rotation:

When possible, permanent employees will be rotated through the work areas.

3. Hearing Test:

It is agreed that each permanent employee will be provided with a "base line" hearing test, and will be encouraged to undertake an annual test whilst engaged on the project works.

4. Dirty Work Area:

Where agreement is reach that employees are working in excessively dirty conditions, then employees will be allowed five minutes wash up time at the completion of their scheduled shift.

5. Payout of Sick Leave:

Unused sick leave would be paid out upon termination of service by the Company. If termination is effected by the employee and this termination does not affect the progressive activities of the project then unused sick leave will also be paid out.

If an employee is transferred to another site or project, the unused sick leave would remain an entitlement and would be paid out on termination.

In all cases unused sick leave will not be paid out on termination by the Company for reasons of wilful misconduct.

6. Wage Increases:

	Beginning of First Full Pay Period to Commence after 1 Jan 1996	Beginning of First Full Pay Period to Commence after 1 July 1996	Beginning of First Full Pay Period to Commence after 1 Jan 1997	Beginning of First Full Pay Period to Commence after 1 July 1997
Electronics Tradesperson	665.61	688.91	713.02	737.98
Electrician Special Class	599.12	620.09	641.79	664.25
Instrument Fitter Electrical Grade 2	607.88	629.16	651.18	673.97
Electrical Installer	571.55	591.55	612.25	633.68
Electrical Fitter	571.55	591.55	612.25	633.68
Instrument Fitter Electrical Grade 1	591.59	612.30	633.73	655.91
Linesperson Grade 1	571.55	591.55	612.25	633.68
Cable Jointer	571.55	591.55	612.25	633.68
Linesperson Grade 2	551.05	570.34	590.30	610.96
Electrical Assistant	488.91	506.02	523.73	542.06

The above increases are in addition to the existing EBA rates of pay (at this time 10% above award base).

7. Site Disability Allowance:

The site disability allowance is increased to $2.25 per hour flat from 1 January, 1996 and to $2.50 per hour flat from 1 April, 1996. An adjustment in line with the CPI movement for the period from 1 July, 1996 to 31 December, 1996 will be implemented with effect from 1 January, 1997. Six monthly adjustments will be made in accordance with subsequent CPI movements.

8. Project Productivity Allowance:

Project Productivity Allowance of $20.00 per week will be paid on achievement of agreed targets. Payment will be made on a four weekly basis. This payment would be subject to adjustment each six months in line with CPI movement. Both the CEPU and the employees commit themselves to the implementation and maintenance of Company Continuous Improvement Programme.

9. Winter Jacket:

A suitable winter jacket will be provided to all permanent employees who are at the project site for a period of in excess of 4 weeks during the months of April to August.

General

(a) The above clauses are to form part of the existing registered EBA (AG 180 of 1994) and it is agreed that a revised EBA containing these conditions will be registered in the Western Australian Industrial Relations Commission.

(b) The terms of the agreement reflect the complete package which resolves all outstanding matters.

(c) The Company , in all good faith, has meet all reasonable demands placed on it by the CEPU and believe that this agreement will result in a continuing good relationship between the Company, employees, and the CEPU and that this will ensure a cost effective result for the Client.

CONFERENCES—
Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Union of Australia (Union of Workers) Western Australian Branch

and

Bristile Clay Tiles.

No. CR 276 of 1995.

COMMISSIONER P E SCOTT.

12 March 1996.

Reasons for Decision.

THE COMMISSIONER: This matter comes to the Commission by way of a conference pursuant to section 44, having failed to resolve the matter by conciliation and the matter being referred for hearing and determination.

The Schedule attached to the memorandum of matters referred for hearing and determination states—

> "The Union claims that its members Peter Bastian, Grant Clatworthy and Joseph Michaels were unfairly dismissed from their employment with the respondent employer as a result of a redundancy situation in which they were selected for redundancy in preference to other employees and contrary to the respondent's own specified criteria for selecting employees to be made redundant.
>
> The Union seeks an order from the Western Australian Industrial Relations Commission that the respondent offer Messrs Bastian, Clatworthy and Michaels re-employment in their former positions without loss of benefits, or in the alternative, compensation for loss or injury caused by their dismissal in a sum equivalent in each case to six months' contract benefits.
>
> The respondent employer opposes each of the claims by the Union."

Section 23AA of the Industrial Relations Act, 1979 sets out the basis upon which the Commission is to deal with claims of unfair dismissal and it states:

"**23AA** (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.

(2) If—

(a) the employer does not show that there is a ground or are grounds on which the Commission could find that the dismissal was justified; or

(b) the employee establishes that, whether or not it was justified, the dismissal was harsh, oppressive or unfair, the claim is taken to have been established.

(3) For the purposes of this section, a dismissal is justified if there was a valid reason, or were valid reasons, connected with the employee's capacity or conduct, or based on the operational requirements of the undertaking, establishment or service, for the dismissal."

In this way there is an onus placed upon the employer to demonstrate that there is a ground or are grounds upon which the dismissal is justified. In this case it is said by the employer that there is a valid reason which relates to the operational requirements of the business.

The Union does not deny these reasons for the employer deciding to terminate the employment of some of its employees, but it says that the process undertaken by the employer in selecting these particular employees was an unfair process.

The employer says that these employees chosen for redundancies were not incompetent and their performance of their duties per se is not criticised but that in comparison with other employees, in accordance with the selection process undertaken, on the basis of a variety of criteria, they were selected for redundancies, and fairly selected.

The Commission heard evidence from the three employees selected for redundancy, Messrs Bastian, Clatworthy and Michaels who each say that they were unfairly selected. Further Mr Bastian is said to have been selected on the basis of his participation in an enterprise bargaining process which involved considerable conflict and for this reason it is said that he was earmarked for redundancy regardless of other criteria and that this is unfair. Mr Bastian has identified two other employees who he says ought to have been more fairly chosen than himself, being Aaron Paul and Bruce Davison and he cited certain criteria for that selection. Mr Clatworthy gave evidence that he had been unfairly selected at least partly due to his involvement in enterprise bargaining and further due to an alleged feud between his father and Mr Newman over a claim for payment and that this was Mr Newman's way of retribution. Mr Clatworthy identified David White and Colin Scrimshaw as employees who ought to have been made redundant in preference to himself. Mr Michaels gave evidence that there was no reason he ought to have been singled out for termination. Mr Michaels gave evidence that there were two employees who ought to have been made redundant in preference to himself and they were Bob Kiernan and Derek Hill.

Mr Bainbridge, the Secretary of the Applicant Union gave evidence as to his analysis of the employee profile forms completed by the supervisors in respect of all employees and of discussion and correspondence with the respondent.

Mr Peter Stanton, a university lecturer in business research methods gave evidence as to the analysis of the employee profile survey.

Mr Gavin Howorth, an employee who had been a member of the enterprise bargaining committee gave evidence of a similar nature to that given by Mr Bastian as to a discussion with Mr Les Mathews, the General Manager of the Company regarding difficulties being experienced during the enterprise bargaining process. He says that in around mid 1994 Mr Mathews stopped an enterprise bargaining meeting and everybody left—

> "Peter and I were asked to stay back and Les Mathews proceeded to tell Peter and I that we were being stubborn; trying to dictate the term of the EBA; that the Company usually had a policy of looking after its people, but in the case of Peter and I, if we happened to have an accident, broke our legs, that that would be put into jeopardy."

Mr Howorth said that he took this as a threat. (Page 91 Transcript).

Mr Howorth also gave evidence of conversations he had had with a number of supervisors who had taken part in the selection process.

Mr Desmond Newman, the Operations Manager for the respondent who was responsible for organising the supervisors and the selection process also gave detailed evidence of that process.

Messrs Ray Masters, John Agnew, Mark Sattel, and Lex Mathews, supervisors who participated in the selection process, also gave evidence, as did Mr Les Mathews, the General Manager.

The assessment of the evidence of those witnesses and their credibility will be dealt with later in these reasons.

Background

The respondent is a manufacturer of clay tiles. It is not disputed that in 1995 there was a downturn in demand for its product, and it was decided that there was a need to reduce by eight the number of employees engaged in production. Mr Les Mathews discussed with Mr Newman the need for reductions to be made and which shifts should be affected and suggested that Mr Newman get the supervisors together and resolve a process for choosing employees to be made redundant. He says that he made a point that the process must be fair and just but did not indicate to Mr Newman any particular employees who ought be considered.

The decision to proceed with this selection process was prompted by the enterprise bargaining committee on 23 August 1995 and the Company agreed to finalise the names of people to be made redundant within three weeks.

Process

Mr Newman and Mrs Kylie Fitzgerald whom Mr Newman understood to have some knowledge of such matters through her studies, prepared a document headed "Employee Profile". This document was distributed to each of the supervisors in the relevant areas and they were required to complete them in respect of employees with whom they had had contact, not simply the employees supervised by them. This form included details of the period of service, absenteeism rate and in a numerical point scale, assessment of—

- Performance;
- Reliability; broken down into punctuality, requirement for supervision, working of overtime;
- Attitude to work including aspects such as swapping shifts when required, undertaking casual work, keenness to learn new stations in jobs, knowledge of higher stations but choosing not to work in them, use of initiative, disruptiveness etc;
- Skill levels including ability to learn new stations in jobs, safety, suitability to be leading hand and current skills. This last item simply called for particular current skills to be circled, not given a numerical value.

Each of these categories from reliability onwards contained room for comment by the supervisor.

The last question required a circling or listing of any committees or extra duties which the employee participated in such as the Safety Committee, Enterprise Bargaining Consultative Committee, Social Club Committee, Colour Committee, and others. There was also room for "Further Comment" at the end of the survey form.

Each of the supervisors other than Mr Agnew completed and returned these survey forms prior to 12 September 1995. Some gave evidence that they believed the employee profiles would be used by management as part of a determinative process. Mr Newman says that these were completed as a preliminary step to the meeting which took place on 12 September 1995, and he undertook a preliminary sorting of those he had into four piles—excellent, good, average and less than average.

On the afternoon before the meeting, being 11 September 1995, Mr Newman asked Mr Masters, a supervisor with considerable experience in the operation to join him and over a period of half an hour they discussed the production staffing needs. Then, for approximately an hour, Mr Newman went through each pile and advised Mr Masters what names were in each pile and asked for his input and they appear to have had some discussion on the matter. Mr Masters says in evidence that he commented that one particular person ought be moved into another pile, to which Mr Newman replied that the person's supervisor would be unhappy with that. Mr Masters says that after this he formed the opinion that notwithstanding that his role was to give input into the process that his views were not welcome and he chose to make no further comment.

The next day, supervisors Masters, Mathews, Patten and Agnew met with Mr Newman in the board room to discuss the process to be used and then to select who was to be made redundant. At this point there was no predetermined selection process. Mr Agnew arrived late for the meeting and had not previously submitted his forms. At the meeting his forms were not collated and allocated into the four piles. On this basis the preliminary assessment and allocation previously done did not include those survey forms completed by him.

There is some conflicting evidence as to what occurred during this meeting and at what point certain resolutions were reached. However, there is evidence that at the commencement of proceedings there was discussion as to the employees in the piles of forms who were the better employees and it was agreed that it was more worthwhile to concentrate on the employees who were in the less satisfactory categories. Initially, Mr Newman did not participate in the voting and there is evidence that there was an initial attempt at a ballot although this ballot was not finalised. It had initially been thought that no employees from Mr Sattel's area were likely to be chosen for redundancy and therefore Mr Sattel had not initially been invited to participate. However it was noted that Mr Hilsley, an employee supervised by Mr Sattel was in contention. The meeting was adjourned to enable Mr Newman to ask Mr Sattel to participate in the meeting due to Mr Hilsley's inclusion on the list, and Mr Sattel joined the group and participated fully in the discussion and debate, not only in respect of his own employees, as did the other supervisors.

At some point, Mr Newman wrote on the whiteboard the fifteen names from the pile of employees who were least satisfactory. Mr Newman then asked those present if they wished to add or delete any names.

There were eight employees to be chosen and it was decided that three casuals should be chosen as the first step. There was then some discussion and a first formal ballot. The supervisors and Mr Newman each noted the names of five employees who they believed ought to be made redundant. This was done by secret ballot and all votes were collected and tabulated by Mr Newman. They resulted in Mr Franich receiving six votes, Mr Clatworthy five votes, and Mr Trussell four votes and they were chosen as the first three of the remaining five to be selected. Those employees who had received only one or no votes were deleted from the selection process leaving four employees on the list being Michaels, Scrimshaw, Bastian and Short, two of whom needed to be selected. There were then two indecisive attempts to choose between them.

During the process of making this final selection, the General Manager, Mr Les Mathews entered the meeting and remained as an observer.

It was then resolved that the method of selection for the final two would be that the group would assess each of the four employees on the basis of the questions asked in the employee profile by allocating an agreed numerical value to each question for each employee. As noted earlier, these forms did not provide for a numerical value to be placed on the participation in company activities, rather it was circled and/or a comment noted. There was some discussion and debate about each employee. The issue of Mr Bastian's involvement in the enterprise bargaining committee was noted and that he received three points in recognition of this involvement.

Finally, at the end of a meeting lasting approximately six hours, the supervisors and Mr Newman arrived at a joint decision to choose Mr Bastian and Mr Michaels to be made redundant along with Messrs Franich, Clatworthy and Trussell. This was a very close result. Mr Mathews, the General Manager, asked the participants if they had felt that the outcome was fair and just and he says that some answered yes whereas others nodded in approval. There was no dissent expressed by any of the participants, however Mr Masters and Mr Agnew sought to be reassured that what had been undertaken was a legal and fair process. Mr Newman indicated that he would seek advice and he telephoned Mr Bainbridge with the purpose of seeking such assurance. However, it seems that it was not specifically explained to Mr Bainbridge what was sought, and no particular assurance as to those matters was given. Mr Bainbridge indicated that provided the process was fair and that there were no complaints, it was not an issue for the Union.

The Applicant's Case

Mr Hocking for the Applicant in a very thorough way, noted a number of areas where he says that the process was unfair. These included:

(1) The Company implied by undertaking the survey on the Employee Profile that it could be relied upon to apply the survey results in a determinative manner and it failed to disclose to the supervisors or the work force that this was not the case.

(2) Mr Newman undertook a subjective preliminary assessment based on his own knowledge and this demonstrated that the surveys were a sham.

(3) The involvement of Mr Masters by Mr Newman on 11 September 1995 was, in effect, to have Mr Masters rubber stamp Mr Newman's subjective analysis. Mr Masters had no real opportunity to influence that allocation.

(4) Mr Newman tried to lead the group to believe that he and Mr Masters had undertaken a joint analysis yet Mr Newman could not recall the name of one employee discussed between himself and Mr Masters.

(5) Mr Agnew's forms were not included in this preliminary assessment. It is said that this is the clearest example that Mr Newman had already decided who was going to be on the list for consideration, and that this is a clear clue that the information contained within the employee profiles was irrelevant to considering the matter and was in fact ignored.

(6) Prior to Mr Sattel's presence, Mr Newman did not vote and when Mr Sattel arrived, Mr Newman commenced voting on the basis that he believed, having been through the preliminary process prior to Mr Sattel's arrival, that he needed to influence the outcome as he was unhappy with progress to date and he needed to exercise control. It is said that the evidence of Mr Mathews' conflicts with that of Messrs Masters and Agnew and therefore the evidence of Masters and Agnew should be preferred.

(7) It is said that there is conflict in the evidence as to why Mr Sattel became involved. Mr Hocking says that if this was due to Mr Hilsley being on the list then why was Mr Sattel not invited at the commencement of the meeting as Mr Newman must have known from his assessment on the previous afternoon that an employee of Mr Sattel's was involved. Alternatively, it was said that if there is no need for redundancies in the yard, why would Mr Hilsley's name have been included?

Mr Hocking encouraged the Commission to draw the conclusion that Mr Sattel was invited for the purpose of supporting Mr Newman and that whilst there was no evidence of any conversation between them which would indicate collusion, what actually occurred demonstrates that this collusion existed.

(8) The introduction of the "involvement in committees" as a criteria in the final step could only be seen to be discriminatory against Mr Bastian as he was the only one who had committee involvement. It is said that with Mr Newman and Mr Les Mathews being present and having Mr Bastian's involvement in the enterprise bargaining committee drawn to their attention, the supervisors would have understood from their knowledge of the unsatisfactory situation regarding enterprise bargaining that they were expected to see this as a negative factor for Mr Bastian. The fact that Mr Newman raised the matter was his way of earmarking Mr Bastian for selection.

(9) Mr Newman's advice to the group that he had received confirmation from Mr Bainbridge that the process was both fair and legal was in fact wrong and Mr Newman deliberately attempted to diffuse the unease by misleading the group into thinking that he had sought and gained the Union's confirmation of the process. Mr Hocking says that this is an abuse by the employer of its right to terminate and an unfairness.

(10) Mr Hocking interprets Mr Les Mathews' chatting with participants during the breaks and arriving uninvited in the meeting at the time of Mr Bastian's selection as being designed to influence the choice towards Mr Bastian who the Company wanted to go.

(11) Mr Newman's fax to the Union led the Union to believe that the process was objective when in fact it was not. It was only after some further probing that the Union was given all of the details about the process including that the employee profiles were not the basis of the decision making but were only an aid.

The applicant says that there was also attempts made by the Company to prevent Messrs Masters and Agnew from giving evidence and this must be seen as an attempt to prevent the unfairness being demonstrated.

Mr Hocking then examined the evidence of Mr Stanton and said that if a mathematical approach had been properly undertaken then the three chosen would not have been chosen. Whilst Mr Stanton said that if the method used by Mr Newman in his assessment had been accurately done it would have come out with the same result as his own assessment, it did not, and Mr Hocking draws the conclusion that Mr Newman's assessment was wrong.

In addition, Mr Hocking noted the evidence of Messrs Bastian, Clatworthy, Michaels and Howorth that other employees ought to have been chosen ahead of the first three noted. Also, Mr Masters' evidence was that the supervisor of the particular person is the best equipped to make a decision regarding that person. Mr Masters gave evidence that others should have been chosen before Mr Bastian, and Mr Agnew gave similar evidence in respect of Mr Clatworthy. It is said that this clearly demonstrates that the process had gone off the rails. The reference given by Kylie Fitzgerald to Mr Bastian seems to suggest that the process was flawed and that there was ample evidence that others ought to have been chosen.

Mr Hocking notes that a number of the assertions he has made were characterised by Mr Tomlinson as a conspiracy theory. However, he says that it is not possible to read the thoughts of the witnesses but that it is necessary to look at their behaviour and there being consistently unusual behaviour demonstrates that there was a problem. He says that the climate at the operation was one of hostility and repression and that Mr Les Mathews and Mr Newman had a strong motivation to get rid of Mr Bastian and Mr Clatworthy due to their involvement in enterprise bargaining committee. He says also that Mr Newman had the motive of the feud with Mr Clatworthy's father to get rid of Mr Clatworthy.

It is also said that the method chosen indicates that when Mr Newman undertook the initial culling of the employee profiles, he was in an unchallenged position to make sure that the people he wanted chosen were on the list for consideration, that part way through the process he decided to change the process to give himself a vote and to keep a person on the list until it got down to the final numbers. Mr Hocking says that the evidence demonstrates that if Mr Newman maintained a vote in one direction, it could achieve the purpose that he set out to achieve—that it was mathematically possible to achieve that purpose. Mr Newman had the opportunity to ensure that those he wanted to get rid of stayed on the list for consideration. There was not going to be evidence given directly by Mr Newman or others but it was clear that there was evidence as to motive, method and opportunity.

Mr Sattel's involvement was said to be for the purpose of supporting Mr Newman. Mr Sattel was described by Mr Hocking as "a bit of a hothead", easy to anger and eager to get even with someone who had upset him. He says this is sustained by the evidence of Mr Sattel trying to get another employee who had upset him five minutes earlier put on the list but that the other supervisors had rejected this proposition. He said also that the evidence was that Mr Sattel had a problem with Mr Bastian.

It was noted that Mr Bastian has very recently been re-employed to replace another employee whose employment was terminated on the basis of misconduct. It was said that this was really an exercise in damage control.

In respect of the evidence regarding Mr Kiernan's inclusion on the list, Mr Hocking says there was no evidence that Mr Kiernan was originally on the first list of fifteen except for the evidence of Mr Newman. If he were not on the list then there was at least one amendment to the initial assessment.

The applicant urged the Commission to consider the evidence in the context of the climate and the strained relationships and that the supervisors were particularly vulnerable to subtle pressure. It says that the process was flawed in at least nine to ten different aspects which shows that the unusual behaviours of Mr Newman in particular were aimed at the process being channelled in a particular direction aimed at a particular outcome.

It says that the supervisors of the employees concerned have given evidence that other employees ought to have been chosen in preference to those employees. This shows that the process was corrupted and it urges the Commission to order the reinstatement of the employees.

Mr Hocking's analysis of the situation is quite compelling if based upon the interpretation of the evidence as suggested by him.

The Respondent's Case

The respondent says that the process was a fair and thorough process which involved discussion and debate between the supervisors and those who have a knowledge of the opera-

tion. The process was conducted extremely fairly without any perceived bias or any preordained method to achieve a predetermined outcome. The respondent says that the allegation that Mr Bastian was chosen because of his enterprise bargaining involvement cannot be sustained. Mr Bastian was one of a number of employees involved in enterprise bargaining and Mr Howorth also played an active, if not a more active role in the enterprise bargaining difficulties than did Mr Bastian but that he was not chosen for termination.

It is said that there is "not a single skerrick of evidence" of any plan or conversation between the supervisors, or between Messrs Newman and Sattel or others, that Mr Newman was intending to lead the group to a particular resolution. There is no evidence of Mr Newman seeking to achieve a particular outcome. His entire role was that of facilitator and chairman and later, participant, and that he did not once recommend Messrs Bastian or Clatworthy or anyone else be chosen.

In respect of the process, it is said that the meeting between Messrs Newman and Masters lasted for approximately an hour and a half, the first half hour of which was spent dealing with shift arrangements. On this basis approximately one hour was spent on discussions as to which employees should be placed in which piles. Mr Masters was called on because of his seniority and because he would be best able to provide assistance to Mr Newman. There was no discussion of which employees Mr Newman would like to see dismissed. It said that Mr Masters' lack of comment could only be seen by Mr Newman as acquiescence. If Mr Masters was less than forthcoming, that was his choice and his own fault but does not infer that the process, at that point, was unfair. Mr Newman read out every name and Mr Masters said that his only comment was in respect of Mr Kiernan being moved to another pile, to which Mr Newman replied that Lenny (Patten) would not like that. Mr Masters acknowledged that Mr Patten would have a better opportunity to know Mr Kiernan yet in any event Mr Kiernan was included in the fifteen for selection at the next meeting. It is said that Mr Newman was entitled to believe that Mr Masters thought the process undertaken to that point was acceptable.

The surveys are said to be for the purpose of the supervisors considering each employee prior to the meeting. They were not told that the surveys would be the only process used but they were merely a starting point. There was no evidence of criticism of the fairness of the surveys.

Mr Tomlinson for the respondent says that he is not aware of any previous cases where such an extensive process has been used and challenged by the Commission as being unfair or unacceptable. The employee profile form was designed by an employee of the Company and it was a reasonable attempt to consider all of the appropriate factors. There was no evidence to suggest that the questions or the profile were unfair except that Mr Masters expressed, in his evidence, reservations about one question. He had not previously expressed any reservations or criticism as to the questions or the process.

Mr Tomlinson says that the lack of Mr Agnew's forms being included in the initial sorting does not pollute the process. He was late getting his forms back and he was late arriving at the meeting and, in any event, the forms were used only as a starting point for discussion.

The meeting started by going through the pile of names of employees who were not to be considered for redundancy and then it was considered that this was not a useful exercise. The supervisors were given an opportunity to consider whose names went on the white board. Both Mr Sattel and Mr Mathews suggested extra people but the consensus of the group was that those extra names not be included. When the meeting started there was no process in place—the meeting ran itself and the method of determination was chosen by the group through discussion and agreement. There was no participation by Mr Newman in the first vote. It is suggested by Mr Tomlinson that if Mr Newman had intended to direct the outcome then he would have voted from the outset. It is said that the decision of the group to include Mr Sattel was a logical one bearing in mind that Mr Hilsley's name had appeared on the list. With Mr Sattel's arrival the list of fifteen was thrown open for reconsideration. It is said that the process was fair, open and logical. Every supervisor in charge of employees had completed forms. There were secret ballots and no evidence of manipulation. No supervisor who gave evidence indicated that he felt intimidated or pressured and each contributed one sixth of the decision. Mr Newman joined the process as a voter because he was as much part of the process and, as the most senior person present, he carried an equal share of responsibility for the decision. The first three employees were chosen almost unanimously.

There is no evidence to support Mr Clatworthy's assertion regarding his being chosen being related to an alleged feud involving his father.

In respect of the issue of who is the best to judge an employee, it was noted that Mr Masters did not believe that Mr Bastian was the worst nor did Mr Agnew believe that Mr Clatworthy was worst, however there was a need to temper the views of particular supervisors with the views of the other supervisors. Mr Tomlinson relied upon the evidence of Mr Masters that supervisors tend to be sympathetic towards and have an allegiance with their own employees. By allowing a particular supervisor a veto in respect of his own employees would not have allowed the system to work. In addition it was noted that Messrs Bastian and others were known by a variety of supervisors. Mr Sattel's evidence was that the behaviour of Mr Bastian in his presence was different from his behaviour in the presence of his own supervisor. The views of all of the supervisors temper the views of others and removes the prospect for bias.

Mr Tomlinson addressed the issue of the methodology for analysing the survey results and said that in accordance with Exhibit T1, if the Company placed some reliance on that information then Mr Bastian scored the lowest. Even if the Company used that then the final three would not have been chosen but they were chosen through discussion. Mr Tomlinson reminded the Commission that the choice of these persons was not in relation to their performance per se but by comparison with other employees. He says that whilst the process was not flawless there must be some elements of subjectivity associated with human considerations.

Conclusions

In assessing the evidence I make the following comments. I found as a most credible witness Mr Lex Mathews. He was clear and unequivocal in his recollections and I was impressed by his memory of the detail of the process. He required no prompting and was unshaken in his evidence.

He says that the first discussion of the group on 12 September 1995 was in respect of the top group of people. He recalls this being discussed because he had a list of people and shifts and recalls ticking off names of the people in the top group when they were discussed at the commencement of the meeting. He also noted that he objected to one name in the top half but the others disagreed with him. In respect of the issue of the first ballot, prior to Mr Sattel joining the group, his evidence appears to conflict with Mr Masters' evidence in that Mr Masters says that there was a first vote in which Michaels and Short received a number of crosses and that this was prior to Mr Newman and Mr Sattel voting. When Messrs Newman and Sattel voted there were three crosses and he asked if anyone had changed their vote and no-one acknowledged having done so. On the other hand Mr Mathews whose evidence is quite clear and unequivocal says that he believes the first ballot was not counted. He remembers that his was handed back to him and he screwed it up.

Mr Mathews also agreed with Mr Sattel's view of Mr Bastian and thought that Mr Masters was protecting Mr Bastian.

He believed that the process was fair, he did not think that there was any hint of unfairness. "Six of us agreed with the ratings on the board." The outcome was not based on any preliminary assessment by Messrs Masters and Mathews—"they just saved us some legwork—we would have arrived at the same result" (Transcript—page 299).

In respect of the evidence given by Mr Newman, having observed him, I am satisfied that he was of good intent and although I must say that there were some flaws within the process due to a lack of their being thought out properly and planned in detail prior to the meeting, at least some of which was his responsibility, I am not satisfied that he attempted to influence the outcome. In fact, this lack of planning a process

for selection but allowing the group to determine its own process exemplifies this. I believe that he genuinely desired to see a fair and equitable outcome. Whilst he may have had his own views on particular individuals based on his experience of them, his original assessment was aimed at facilitating the process not at manipulating it. Although his memory of detail was lacking at times, his general demeanour lead me to the view that he sought a fair outcome. I accept his evidence of the purpose of the surveys set out at page 123 of the transcript and repeated elsewhere that—

> "The primary objective was to make certain that all the supervisors had reviewed, to the best of their ability, the circumstances of each employee, such that they were mentally prepared to go through the process of selection of such people that we had to make redundant."

As this was their purpose, the evidence of Mr Bainbridge and Mr Stanton as their statistical analysis of the forms is of little if any value.

Upon receipt of these forms Mr Newman undertook a preliminary assessment. At pages 149 and 150 Mr Newman, in cross examination reaffirms this purpose. At page 150, he says that he undertook this assessment by placing the forms into various piles on the basis of his own experience with these employees—

> "plus reading through them and picking out anything in an adverse comment or things like that which would tend to put them in my preliminary pile."

He went on in page 151 to say that he was able to do this on the basis of his experience of the employees and, in general terms, his familiarity with their work, "together with the — with going through those employee's profile sheets" (page 151 Transcript). Mr Newman undertook an initial assessment of the forms returned to him using both his own knowledge and after having examined both the comments and looking briefly at the score sheets of the employee profiles. (Page 125—Transcript). It is to be noted that the detailed analysis of the scores contained in Exhibit T1 was prepared by Mr Newman after the claim was made by the Union, not during his preliminary assessment.

At the commencement of the hearing of evidence, the Commission made an order for witnesses out of court. Mr Les Mathews, the General Manager for the respondent remained in the court room apparently on the assumption that he would not be giving evidence. On this basis he was present or able to be present for all of the evidence. This evidence included that of Messrs Bastian and Howorth as to a conversation he was alleged to have had with them during conflict associated with the enterprise bargaining process. On the last day of hearing, Mr Tomlinson sought to call on Mr Mathews to give his perspective of that evidence. Having heard from both of the parties, the Commission decided that, bearing in mind the process of the hearing to that point and the fact that the applicant had been given the opportunity to reopen its case to bring evidence from Messrs Masters and Agnew and the difficulties which had arisen during the hearing the Commission would hear the evidence of Mr Les Mathews and consider the weight to be given to it. I found the evidence of Mr Mathews to be credible.

It is most unfortunate that Mr Mathews' comments to Messrs Howorth and Bastian have been interpreted in the way in which they have been interpreted by those two men. However, during an obviously conflict ridden process it appears that there was room for some misinterpretation by the employees concerned although I am not satisfied that their interpretation was justified.

I accept the evidence of Mr Les Mathews that he made no attempt to influence the outcome of the selection process. No evidence was called which supported the assertion that he did. It is appropriate and understandable that when the supervisory and management staff of an organisation is choosing employees for redundancy that the general manager would be at least interested and wish to see how they are progressing without wishing to influence the outcome. I see nothing sinister in his chatting with participants during the breaks nor in his attendance after the meeting had been in progress for some six hours. On the contrary, he had a responsibility to satisfy himself that the process was fair and to provide moral support to the people making a difficult and stressful decision.

I found Mr Masters' evidence to be somewhat self serving. He says that when he had an opportunity to assist Mr Newman, he chose to back away from participation. Whilst Mr Masters said that he had no opportunity to participate in a real preliminary assessment, in fact Mr Newman went through all of the forms one by one and advised Mr Masters of the initial assessment he had made and Mr Masters, who was there for the purpose of assisting Mr Newman, engaged in some discussion with Mr Newman and in this way did participate in this preliminary assessment. Their discussion on this issue lasted for approximately one hour.

In cross examination Mr Masters said that Mr Newman had read out every name and that there was discussion. He said the conclusion could be drawn that he had agreed with the allocation Mr Newman had made on the afternoon prior to the meeting. The supervisors assumed that the preliminary assessment had been conducted jointly with Mr Masters. Mr Masters, in his participation the next day, did nothing to indicate to the others that he had not really been involved in that initial sorting process. In any event, the group went through the list of employees to be retained before starting on the list of others, and then had detailed discussions including opportunities to add or delete names, before their various secret ballots. Mr Masters lacks credibility because he participated actively all the way through the process (other than, according to him, in the original meeting with Mr Newman), and he did not protest in respect of any alleged unfairness or flaws in the process or express any reservations about the questions in the survey, except at one point when Mr Newman was out of the room he queried whether other supervisors had changed their vote, in a process involving a secret ballot. He did not raise this with Mr Newman or ask for it to be recounted. He said that his influence was one sixth of the process, no more nor less than anyone else's. "I didn't influence the process, I was part of the process". (Page 210 and 216—Transcript). He did not object to anyone being on the list. At no time did he say that Messrs Bastian, Clatworthy or Michaels should not be made redundant (Page 218—Transcript). He acknowledged that Mr Bastian received benefit from the enterprise bargaining consideration. (Page 218—Transcript). Yet, after the event, he has chosen to attempt to distance himself from the outcome.

Whilst he may have sought reassurance at the end of the meeting that the process was fair and legal, I am not satisfied that Mr Masters was in fact alleging that it was not so. I believe that such expressions as given by himself and Mr Agnew were simply those which were understandable from people undertaking a traumatic and unsought after process of having to choose employees to be sacked and that they sought some reassurance and comfort that what they had done was right.

I am satisfied that, at the end of this meeting, when Mr Newman contacted the Union, he did not seek the clarify what he was asked to, and that he did not accurately report back to the meeting. However, this failure on his part does not make the process or the choices made previously in the meeting unfair. A determination of those things could only have been made in a detailed way by this Commission. I accept that after a long and stressful meeting, Mr Newman was anxious for the matter to be finished.

Mr Agnews' evidence was somewhat equivocal. He was an unsure witness and appeared to be lacking in confidence in his answers. He recalls Mr Masters querying the vote regarding Messrs Short and Michaels when Mr Newman was out of the room. He said that the procedure seemed all right to him and that he thought Mr Masters said he went through the surveys with Mr Newman (Page 237—Transcript). He said he would not say that the decisions were already made. "I just put across what I thought". He was not stifled from expressing an opinion regarding the process or choices. He said that Mr Newman was not dominating the meeting or preventing opinion being expressed. He felt the process was fair and reasonable and yet in re-examination said that it was not fair that his documents were not included therefore the process was unfair.

The fact of Mr Agnew's late arrival and his forms not being included in the original sorting, is not ideal. However, based on the purpose of the forms being completed by the supervisors to ensure they were mentally prepared for the meeting,

and as there was an opportunity to add or delete names from the list of 15, Mr Agnew's input to that list was invited and included, notwithstanding that his forms were not included in the original assessment.

As to the evidence of Mr Clatworthy, there was nothing to support his assertion that some alleged feud existed between his father and Mr Newman and that this was visited upon him as part of Mr Newman's choice of him for termination. I find that Mr Clatworthy's evidence, where it conflicted with other evidence, was not reliable.

The onus rests on the applicant to demonstrate that the process and/or the outcomes were unfair. In respect of the process, it must be noted that whilst Mr Tomlinson describes it as thorough it was perhaps a lack of planning and a lack of consideration of the process by Mr Newman which led it to being somewhat complex and convoluted. This of itself does not necessarily make it unfair. The process included a number of aspects which provide room for criticism. I am satisfied though, that the survey form was for the purpose stated by Mr Newman and that a number of conclusions may be drawn from it, however it was an aide to discussion and no more. For this reason, as noted earlier a tallying of results without consideration of the comments and the discussions which took place at the meeting is of little if any value.

When names were selected for the fifteen for consideration for redundancy, the supervisors were invited to add or subtract names. Whether they actually decided amongst themselves to change the list or not is not material. They did discuss and decide on each suggested change, and on each person chosen. It was the group of six which made the choice to change or not, and as to the process and the final outcome.

As to the question of Mr Bastian being discriminated against because of his involvement in the difficulties of the enterprise bargaining process, Mr Howorth was also involved in that process, perhaps more so, however there is no evidence of his suffering as a result. Mr Bainbridge acknowledged that Mr Howarth was the most vocal and aggressive in enterprise bargaining. Mr Howarth, in his evidence, also said that he was the most vocal. Furthermore, Mr Bastian's involvement in enterprise bargaining was not commented upon in a negative way by any of those in the meeting. He received positive consideration for his participation and a benefit when it came to the voting. Whilst it is said that he still scored lower than the other employees in total, and therefore must have received some negative consideration over his enterprise bargaining involvement it should be noted that the overall scores related to a whole range of criteria as set out in the employee profile, not simply the involvement in the enterprise bargaining committee. On these bases, I am not satisfied that this participation resulted in Mr Bastian being chosen for redundancy or acted against his interests during the selection process.

There is room for criticism of the process on the basis of the inconsistency of Mr Newman not voting at the outset but then voting when Mr Sattel was included. There is room for criticism for the failure to have Mr Sattel present from the outset however, Mr Masters and others gave evidence that no objection was raised to Sattel being there—Mr Masters supposed it was appropriate for him to be there. Mr Newman asked the group if it was appropriate to include him, and they agreed.

It was questioned whether each supervisor's vote should have been of equal value with other supervisors with respect to that supervisor's own employees, however from the evidence of supervisors including Mr Sattel in particular, each supervisor's knowledge and experience of employees was not limited to his own current employees, and in some cases was at least equal to the knowledge and experience of other supervisors in respect of employees other than his own.

Further, as Mr Masters said it was natural for supervisors to be protective of their own workers, and at page 224 of transcript said that "I know I looked after my own, put it that way." At page 224 of transcript Mr Masters acknowledged that "the only way to ensure that a supervisor doesn't just look after his or her own, is to have as many people involved in the process as possible". Mr Lex Mathews said at page 298 that during discussion regarding Mr Bastian that Mr Masters was protecting Mr Bastian. It is clear too that the supervisor's knowledge of employees was not limited to those they supervised at the time of the decision. Mr Bastian gave evidence that Mr Sattel had regular contact with him. Mr Patten had supervised him once a fortnight for approximately three years and John Agnew had supervised him on overtime. He said that Mr Mathews' assessment of him would be correct. It is clear from Mr Bastian's evidence that he had contact with a number of supervisors, some of whom did not actually supervise his work but were involved in areas where he worked e.g Mr Sattel who was in charge of the yard where Mr Bastian was required to take accessory packs and they had various discussions. Mr Lex Mathews was involved in that Mr Mathews was learning the ropes as a supervisor from Mr Masters.

Mr Clatworthy says that his supervisor was Mr Lex Mathews. Mr Agnew supervised him for two years and would have the most knowledge of him. Ray Masters was his acting supervisor.

Mr Michaels says that Lenny Patten was his supervisor but says "he doesn't like me". Mr Masters also supervised Mr Michaels.

It is quite clear in reviewing the evidence of the various witnesses that there was a significant amount of discussion during the day as to the relative merits of the particular employees. Some recall certain aspects of the discussion whereas others recall other aspects.

Whilst there may be room for criticism of the process, I am not satisfied that it was actually unfair. These aspects which provide room for criticism support the view that there was a lack of planning and thereby a lack of predetermined outcome. I accept that the supervisors and Mr Newman undertook a difficult, stressful and unpleasant task without fear or favour. They openly discussed and debated the relative merits of each employee and diligently sought to do what was fair and right. In the end, the six arrived at a consensus. It is possible, with the benefit of hindsight, to find some ways to improve the process or to make other changes, but essentially, the supervisors had made efforts to familiarise themselves with the employees, they discussed various methods of arriving at a solution, and discussed openly the merits and otherwise of the employees, before arriving at a joint decision. Subject to what I have previously noted regarding the evidence of Mr Masters, it is clear from the evidence of the supervisors, Mr Newman and Mr Mathews that there was no dissent expressed by any of the participants as to process or the final outcome. The supervisors gave evidence that they were not placed under any pressure or intimidation in this process.

As to Mr Hocking's submission that the matter ought be examined in the context of a climate of hostility and repression, I note the evidence of Mr Bainbridge that the relationship between the Company and the Union is generally positive, although he noted some difficulties associated with enterprise bargaining some time ago. Further, apart from the evidence regarding the conversation between Mr Les Mathews and Messrs Bastian and Howarth, with which I have already dealt, the evidence from those who participated in the meeting was that they were under no pressure or threats. They each gave evidence of the full, frank and open manner in which they participated.

As to whether the fax sent by Mr Newman to the Union was accurate, this letter (Exhibit H2) says in relevant parts—

> "The redundant personnel were selected from the whole of the production workforce by a selection panel consisting of all of the 5 supervisors and myself, on the relative criteria of:
>
> - Reliability
> - Attitude to Work
> - Skill level
> - Company participation
> - Versatility/adaptability
> - Safety"

I am not satisfied that this letter misstates the basis of selection. It does not state them in the order or particular categories used in the Employee Profile, but it is true that each criterion was used in the group discussion. Whilst this list is not exhaustive I am not satisfied that it is misleading or was intended to mislead. Nor am I satisfied that by using the employee profiles in the way in which it did that the Company deliberately mislead anyone, or implied certain things which it failed to achieve.

Further, during conciliation conferences before the Commission, the respondent clearly indicated that the employee profile forms were not determinative before it provided copies of those forms for examination by the Union. If the Union did not pick up on this advice, it was nonetheless provided.

There was no evidence to support a proposition of some conspiracy between Mr Newman and Mr Sattel. There is no explanation for Mr Sattel not being included at the commencement of the meeting, but there was good reason for him to be invited to participate. Mr Newman invited him with the agreement of the group.

As to the fairness of the result, evidence was called from each of the employees who it is claimed were unfairly chosen. Each assessed himself and compared himself with others who he said were more appropriate to be chosen and I have listed those names earlier in these reasons. I found their assessments both very limited and subjective. I am not satisfied that it is clear that they were unfairly selected. While Mr Masters and Mr Agnew respectively said that they thought that Mr Bastian and Mr Clatworthy were about average, each of those supervisors was one part of a group which made the decision, and their views need to be seen as part of that decision in the context earlier noted regarding the involvement and experience by the supervisors of a range of employees, and the need to balance competing interests. It must be recognised that their termination was not due to poor performance per se but merely by comparison with others, they were appropriate to be chosen. In fact, Mr Bastian has been re-engaged upon a vacancy arising and whilst it may be alleged that that is merely "damage control", it is consistent with the respondent's approach, as he was in the last two to be chosen.

As to Kylie Fitzgerald's reference for Peter Bastian, it should once again be noted that Mr Bastian was not found to be an unsatisfactory employee. Rather, he was chosen by comparison with other employees, none of whom were considered to be unsatisfactory either. His reference contains the views of the Production Manager as to certain aspects of his work and character. It is not exhaustive, and is couched in positive terms, as would be expected in the circumstances. Ms Fitzgerald, the writer of the reference, was not called to give evidence, therefore, combined with my comments above, very little can be drawn from this reference one way or the other.

A full comparison of these employees with their fellow employees was undertaken by a group qualified to do so in a process which has not been demonstrated to be unfair, nor has the final outcome been shown to be unfair. On this basis, the matter will be dismissed.

Further Investigation

It should be noted for the record that during the course of this hearing Mr Hocking was adducing evidence from Mr Howorth which was hearsay evidence as to conversations with supervisors who had participated in the process. The Commission raised with Mr Hocking that this was hearsay evidence and concern that it went to the nub of the issue. The Commission's comments were noted and the applicant then concluded its evidence and its case was closed. That concluded the first day's hearing. At the commencement of the second day's hearing the applicant sought to reopen its case and to call evidence from two of the supervisors, Mr Ray Masters and Mr John Agnew. The Commission was advised that summonses had been issued to those persons to attend the Commission that morning to give evidence so as to ensure that the best evidence available was put before the Commission.

On the basis that the respondent had not yet commenced its case, that the applicant's witnesses, according to the advice to the Commission, were on their way and would be arriving in a very short time, that it would not prejudice the respondent's case and not delay the matter, the Commission agreed that the witnesses be heard.

The witnesses had not arrived at the time indicated by the applicant. [It was later discovered that they had not been properly summonsed and had arrived at the Commission believing that they would be served with their summonses on the Commission premises without the proper formal procedures being undertaken. As they had not been properly served, they were directed by a representative of the respondent to return to work.]

On the basis of the information then available and with the time for the hearing passing, the Commission decided that it was appropriate to proceed with the respondent's case and that the applicant's witnesses would be heard if and when they arrived provided that certain conditions were met.

The hearing was adjourned as the Commission was advised of certain allegations of irregularity and these were investigated by the Registrar. The hearing reconvened for the Commission to hear from the parties as to what they thought ought be the procedure, for the Commission to decide whether to hear those two witnesses and, in effect to allow the applicant to re-open its case, particularly bearing in mind that the respondent had already commenced its case and was halfway through the evidence of its first witness. The Commission decided that it was appropriate to hear the evidence of the two witnesses notwithstanding the difficulties experienced so far. However, in the hearing of 19 January 1996 each party made allegations against the other and sought a direction from the Commission for investigation of those allegations.

I have considered those requests in the light of the objects of the Act, the relationship between the parties and the nature of the allegations. The essential matter before the Commission of the allegation of unfairness of the selection of Messrs Bastian, Clatworthy and Michaels for redundancy, and the conduct of this case has raised questions about the relationships and the potential harm to industrial harmony. I am not satisfied that the issues raised, whilst of a serious nature, justify the potential for further and ongoing damage to industrial relations between the parties. It is important to move forward, and to deal with this matter and resolve it. I am not of the view that investigation of the issues raised would enhance or further industrial harmony. On the contrary, I believe that they would lead to further disputation between the parties and still not resolve the issue. On that basis, I am not persuaded that it is appropriate for investigation of those allegations made by each of the parties.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Union of Australia (Union of Workers) Western Australian Branch

and

Bristile Clay Tiles.

No. CR 276 of 1995.

COMMISSIONER P E SCOTT.

12 March 1996.

Order.

HAVING heard Mr G Hocking (of Counsel) on behalf of the Applicant and Mr A C Tomlinson 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.) P.E. SCOTT,
Commissioner.

[L.S]

UNIONS—
Application for alteration of rules—

WESTERN AUSTRALIA
INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1979.

s62

In the matter of an application by the BAKING INDUSTRY EMPLOYER'S ASSOCIATION OF WESTERN AUSTRALIA for alteration of registered rules.

1358 of 1995.

ROBIN COLBERT LOVEGROVE
DEPUTY REGISTRAR.

1 March 1996.

Decision.

HAVING read the application, there being no person desiring to be heard in opposition thereto, after consulting with the President, and upon being satisfied that the requirements made thereunder have been complied with, I have this day registered an alteration to rules 10 and 18 of the applicant organisation in the terms of the application as filed on 1 December 1995.

ROBIN COLBERT LOVEGROVE,
Deputy Registrar.

CORRECTIONS—

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.

21 February 1996.

Correction Order.

WHEREAS, an error occurred in Order No. 1240 of 1995 dated 1 February, 1996 (unreported), the following corrections are made:

(1) The Order be varied by deleting the instruction and inserting in lieu thereof:

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. 1026 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.

(2) Delete the Order No. 1310 of 1993 contained in Clause 1.—Title of the Schedule and insert in lieu 1026 of 1994.

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

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.

20 February 1996.

Correction Order.

WHEREAS, an error occurred in Order No. 1241 of 1995 dated 1 February, 1996 (unreported), the following correction is made:

In Clause 5.—Travelling Allowance, replace subclause (1) with the following:

(1) For those employees residing in the Waroona township. (including Caravan Park)	11.30

(Sgd.) G. G. HALLIWELL,
[L.S.] Senior Commissioner.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

In the matter of the Industrial Relations Act, 1979

and

In the matter of an application for an extension of the time in which an answering statement to Application No. 657 of 1995 is to be filed in the Commission.

No. 722 of 1995.

COMMISSIONER P E SCOTT.

6 March 1996.

Order.

WHEREAS an In-Chambers conference was held on the 29th day of June, 1995 to hear an application for an extension of time; and,

WHEREAS by consent, the time for filing a response by Armacrete (WA) Pty Ltd was extended by ten days from the date of the conference; and

WHEREAS by consent, the parties agreed to a further extension of time for filing a response; and,

WHEREAS the Commission wrote to the Applicant on the 16th day of March 1996 advising of the intention to discontinue this matter, 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,
[L.S] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr E J Poat

and

Eagle Communications Pty Ltd

No. 1219 of 1995.

COMMISSIONER P E SCOTT.

14 February 1996.

Order.

WHEREAS by this application the applicant applied for Further and Better Particulars related to his claim of unfair dismissal; and

WHEREAS a conference was held in this matter on the 12th day of February 1996;

WHEREAS having heard Mr E J Poat on his own behalf and Mr S Wallace on behalf of the Respondent;

NOW THEREFORE the Commission, pursuant to the powers conferred upon it under the Industrial Relations Act, 1979 hereby orders—

THAT the following documents be provided to Mr E J Poat by Eagle Communications Pty Ltd within *ten* days of the 12th day of February 1996—

1. Copy of the Jobstart Agreement between the parties which allows termination by the Respondent where there are reasonable grounds for such termination.
2. Copy of Bank Statements and Cheques in respect of payments made by the Respondent to Mr Poat.
3. Copy of documents proving payments made to Mr Poat whilst he was absent.
4. Copies of notes of meetings between the parties dealing with the issues relating to the termination of employment.
5. Copy of lists of equipment which the Respondent alleges that Mr Poat took from it without authorisation.
6. Copy of a letter dated 26 July 1995 headed "Scope of Operation" which the Respondent says gave the Applicant certain directions.
7. Copy of documents related to the purchase of "Jane's Space Directory".
8. Copies of extracts from Mr Wallace's diary of 8 July 1995 and 14 July 1995 regarding receipts by Mr Poat.

THAT the following documents be provided to Mr E J Poat by Eagle Communications Pty Ltd within *fourteen* days of the 12th day of February 1996—

9. Full details of all benefits paid to the Applicant by the Respondent, including wages, holiday pay, superannuation, termination pay, group certificate.

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

[L.S.]

NOTICES—
Cancellation of Awards/ Agreements/Respondents—
Under Section 47—

CHILD CARE (OUT OF SCHOOL CARE-PLAYLEADERS) AWARD
No. A 13 of 1984.

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 Child Care (Out of School Care—Playleaders) Award, namely—

Out of School Care Association, Mimosa Avenue, Graylands WA 6010

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 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 150 on all correspondence.

Dated this 7th day of March, 1996.

J.G. CARRIGG,
Registrar.

CONCRETE MASONRY BLOCK MANUFACTURING AWARD 1969.
No. 28 of 1969.

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 award, namely the—

Concrete Masonry Block Manufacturing Award 1969

on the grounds that there are no longer any persons employed under the provisions of that award.

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.

Dated this 22 day of February , 1996.

J. G. CARRIGG,
Registrar.

EARTHMOVING AND CONSTRUCTION AWARD
No. 10 of 1963.

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 Earth moving and Construction Award, namely—

Perron Bros Pty Ltd

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 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 121 on all correspondence.

Dated this 13th day of March, 1996.

J.G. CARRIGG,
Registrar.

ENGINE DRIVERS' (GENERAL) AWARD
No. R 21A of 1977.

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 Engine Drivers (General) Award, namely—

F.H. Faulding and Co. Limited

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 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 188 on all correspondence.

Dated this 26th day of February, 1996.

J.G. CARRIGG,
Registrar.

HOSPITAL WORKER (GOVERNMENT) AWARD No. 21 of 1966.

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 Hospital Workers (Government) Award No. 21 of 1966, namely—

Board of Management, Dampier District Hospital

Board of Management, Quo Vadis Hospital

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 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 190 on all correspondence.

Dated this 26th day of February, 1996.

J.G. CARRIGG,
Registrar.

PAINT AND VARNISH MAKERS' AWARD No. 22 of 1957.

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 Paint and Varnish Makers' Award No. 22 of 1957, namely—

Dulux Australia Ltd.

West Australian Paint and Varnish Pty. Ltd.

Berger Paints Pty. Ltd.

Walpamur Paints Pty. Ltd.

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 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 19 on all correspondence.

Dated this 19th day of February, 1996.

J.G. CARRIGG,
Registrar.

AWARDS/AGREEMENTS—Consolidation by Registrar—

THE FRUIT GROWING AND FRUIT PACKING INDUSTRY AWARD No. R 17 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 2nd day of February, 1996.

(Sgd.) J. CARRIGG,
Registrar.

The Fruit Growing and Fruit Packing Industry Award

1.—TITLE

This award shall be known as The Fruit Growing and Fruit Packing Industry Award and replaces Award No. 2 of 1954 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

2A.— STATE WAGE CASE PRINCIPLES—SEPTEMBER 1989

It is a term of this award that the union undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 1940 of 1989 not to pursue any extra claims, award or overaward except when consistent with the State Wage Principles.

3.—SCOPE

This award shall apply to all workers employed by the Respondents in the Classifications contained in clause 24.—Wages engaged in the Fruit Growing and Fruit Packing Industry, including the preparation of land, cultivation, planting, care, picking, handling, treating, packing and dispatching of all fresh fruits including tomatoes on or from gardens, farms, orchards and in packing sheds.

4.—AREA

This award shall apply throughout the State of Western Australia.

5.—TERM

This award shall operate for a period of one year from the date hereof.

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 a worker without notice for misconduct and a worker 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 worker concerned his ordinary wages for the period of notice to which he would otherwise be entitled.

(4) (a) Where a worker 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 at which the worker was last ready, willing and available for work during ordinary working hours under contract; and

(ii) the provisions of subclause (2) of this clause shall be deemed to have been complied with if the worker pays to the employer, whether by forfeiture or otherwise, an amount equivalent to the worker'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 worker, 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, a worker 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 worker he shall be advised accordingly.

(b) A worker shall, for the purpose of this award, be deemed to be a casual worker—

(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 worker is dismissed through 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 worker is required to present himself for duty, except when such absence from work is due to illness and comes within the provisions of clause 13.—Absence Through Sickness or such absence is on account of holidays to which the worker is entitled under the provisions of this award.

(8) (a) The employer is entitled to deduct payment for any day or part of any day upon which a worker 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 worker 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 the endeavours made by the employer to repair the breakdown.

7.—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.

8.—JUNIOR WORKERS

(1) Junior Workers, upon being engaged, shall furnish the employer with a certificate containing the following particulars:

(a) Name in full

(b) Age and date of birth

(2) No worker shall have any claim upon an employer for additional pay in the event of the age of the worker being wrongly stated either on the certificate or, if no such certificate is furnished verbally to the employer. If any junior worker shall wilfully mis-state his age, either verbally to the employer or in the certificate, he alone shall be guilty of a breach of this award, and in the event of a worker having received a higher rate than that to which he was entitled, he shall make restitution to the employer.

9.—FIRST AID KIT

The employer shall provide a first aid kit for use by workers in the event of accident and such kit shall be kept renewed and in proper condition.

10.—HOURS

(1) Fruit Packing and Sorting:

(a) The ordinary hours of work shall be forty per week or eight in each working day (Monday to Friday inclusive) and except for a meal break, shall be worked continuously between the hours of 7 a.m. and 5 p.m. Provided that the spread of hours contained herein may be varied by agreement between the employer and the worker(s) concerned.

(b) Meal Breaks shall be for a period of not less than half an hour and not more than one hour.

(c) No worker shall be required to work for more than five hours without a meal break.

(2) Fruit Growing and Fruit Picking:

There shall be no fixed hours of duty for workers employed in this area, however workers who work for more than forty hours or fifty two hours per week shall be paid the appropriate hourly rates prescribed in the Clause 24.—Wages.

11.—OVERTIME—(FRUIT PACKING ONLY)

(1) All time worked in excess of ordinary 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.

(2) All time worked in excess of ordinary hours on a Saturday before 12.00 noon shall be paid for at the rate of time and one half for the first two hours and double time thereafter and all such time worked on a Saturday after 12.00 noon or on a Sunday shall be paid for at the rate of double time.

(3) All time worked on a holiday prescribed in clause 15.—Holidays and Annual Leave shall be paid for at the rate of double time and one half.

(4) In the computation of overtime, each day shall stand alone.

(5) When a worker is recalled to work after leaving the job—

(a) he shall be paid for at least three hours at overtime rates;

(b) time reasonably spent in getting to and from work shall be counted as time worked.

(6) (a) When overtime work is necessary it shall, wherever 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 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.

(c) If, on the instruction 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 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.

(d) Where a worker (other than a casual worker) 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 paragraphs (b) and (c) of this subclause 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 subclause, when the actual time worked is less than three hours on each of such recalls.

(7) (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) No Union party to this award, or worker or workers 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.

12.—MEAL BREAK (FRUIT PACKING ONLY)

(1) A worker shall be entitled to a meal break as provided for in clause 10. Hours of this award.

(2) When a worker is required for duty during any meal break whereby his meal break is postponed for more than one hour, he shall be paid at overtime rates until he gets his meal.

(3) (a) A worker required to work overtime for more than two hours without being notified on the previous day or earlier that he will be so required to work shall be supplied with a meal by the employer or paid two dollars and fifty cents for a meal.

(b) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer, unless he has notified the workers concerned on the previous day or earlier that such second or subsequent meals will also be required, shall provide such meals or pay an amount of one dollar and seventy five cents for each such second or subsequent meal.

(c) No such payments need be made to workers living in the same locality as their place of employment who can reasonably return home for such meals.

(4) If a worker in consequence of receiving the notification referred to in subclause (3) of this clause has provided himself with a meal or meals and is not required to work overtime or is required to work less overtime than notified, he shall be paid the amounts prescribed therein in respect of any meal or meals not then required.

13.—ABSENCE THROUGH SICKNESS

(1) Subject as hereinafter provided a worker shall be entitled to payment for non-attendance on the ground of personal ill-health for one-twelfth of a week for each completed month of service until the 31st of December next following the date upon which he completes twelve month's service with his employer and thereafter he shall be entitled to payment for non-attendance on the ground of personal ill-health for two fifteenth's of a week for each completed month of service. Provided that absence through sickness through such ill-health shall be limited to forty hours in each calendar year until the said 31st of December and to sixty four hours in each calendar year thereafter.

Payment hereunder may be adjusted at the end of each calendar year or at the time the worker leaves the service of the employer in the event of the worker being entitled by service subsequent to the sickness to a greater allowance than that made at the time the sickness occurred. This clause shall not apply where the worker is entitled to compensation under the Worker's Compensation Act.

(2) A worker shall not be entitled to receive any wages from his employer for any time lost through the result of an accident not arising out of or in the course of his employment or for any accident, wherever sustained, arising out of his own wilful default or for sickness arising out of his own wilful default.

(3) No worker shall be entitled to the benefits of this clause unless he produces proof satisfactory to his employer of sickness, but the employer shall not be entitled to a medical certificate unless the absence is for three days or more.

(4) A worker to be entitled to payment for non-attendance on the grounds of personal ill-health shall, as soon as reasonably practicable but within twenty four hours of commencement of the absence through sickness, advise the employer of his inability to attend for work, the nature of his sickness (so far as is practicable) and the estimated duration of the absence.

(5) Not withstanding the provisions of subclause (3) of this clause a worker who is absent through sickness for one day only or less shall not be entitled to payment for non-attendance on the ground of personal ill-health if in the year he has already been allowed sick leave on more than one occasion for one day only or less unless he produces to the employer, if he be requested so to do, a medical certificate to the effect that he was unable to attend for work on that day by reason of sickness.

(6) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (1) of this clause which has in any year not been allowed to any worker by his employer as paid sick leave may be claimed by the worker, and subject to the conditions hereinbefore prescribed, shall be allowed by his employer in any subsequent year without diminution of the sick leave prescribed in respect of that year. Provided that the sick leave which accumulates pursuant to this subclause shall be available to the worker for a period of five years but no longer from the end of the year in which it accrues.

(7) The provisions of this clause do not apply to casual workers.

14.—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 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 worker in two ordinary working days. Proof of such death shall be furnished by the worker 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 worker concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

(3) The provisions of this clause do not apply to casual workers.

15.—HOLIDAYS AND ANNUAL LEAVE

(1) (a) The following days, or the days observed in lieu shall subject to clause 10. 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 the subclause.

(b) When any of the days mentioned in paragraph (a) of this subclause 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 ob-

served on the next succeeding Tuesday. In each case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted.

(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 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 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.

(iii) (a) The rate applicable to him as prescribed in Clause 24—Wages of this award.

(b) Any other rate to which the worker is entitled in accordance with the 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 in lieu of those payments prescribed by Clause 11—Overtime, nor any payments which might have become payable to the worker as reimbursement for expenses incurred.

(c) (i) During the period of annual leave a worker shall receive a loading calculated on the rate of wage prescribed by paragraph (b) hereof of 17½ per cent.

(ii) The loading prescribed by this paragraph shall not apply to proportionate leave on termination.

(4) If any prescribed holiday falls within a workers 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.

(5) (a) If, after one month's continuous service in any qualifying period a worker lawfully leaves his employment or his employment is terminated by his employer through no fault of the worker, the worker shall be paid one third of a week's pay for each month of continuous service.

(b) In addition to any payment to which he may be entitled under paragraph (a) hereof 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 subclause (8) or (9) 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.

(6) 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, long service or annual leave as prescribed by this award shall not count for the purpose of determining his right to annual leave.

(7) In the event of a worker being employed for portion only of a year, he shall only be entitled, subject to subclause (5) 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 with full pay.

(8) In special circumstances and by mutual consent of the employer, the worker and Union, annual leave may be taken in not more than two periods.

(9) (a) A worker who, at the commencement of his annual leave, has an entitlement to payment for non-attendance on the ground of personal ill health for not less than forty hours under the provisions of clause 13—Absence Through Sickness of this award and who within fourteen days of resuming work, produces to the employer a certificate from a qualified medical practitioner that during his annual leave he was confined to his home or to a hospital for a period of at least seven consecutive days for a reason which, if he had not been on annual leave, would have entitled him to payment under the provisions of the said clause 13 shall be deemed to be absent from work through sickness for so much of that period as he would otherwise have been entitled to payment under that clause.

(b) A worker to whom paragraph (a) applies shall take the period deemed to be absence through sickness as annual leave at a time convenient to the employer but on ordinary pay, without the loading prescribed in paragraph (c) of subclause (3) of this clause.

(10) The provisions of this clause do not apply to casual workers.

16.—LONG SERVICE LEAVE

The provisions for Long Service leave set out in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6 inclusive, and as may be from time to time amended are hereby incorporated in, and form part of this award.

17.—GENERAL PROVISIONS

(1) All materials, appliances and tools required in connection with the performance of the workers duties shall be supplied to such worker by the employer without charge.

(2) (a) A worker required to use fumigants, fertilizers, hormones and/or other chemicals, shall be supplied with suitable protective clothing including suitable face masks or respirators by the employer.

(b) Workers required to work in the rain or in circumstances where their clothing becomes unduly wet, shall be supplied with suitable clothing such as oil skins, gum boots or other water proof clothing including aprons.

(3) Such equipment or clothing referred to in this clause shall remain the property of the employer—any loss of such equipment or clothing due to any cause arising out of the neglect or misuse by a worker, shall be a charge against the wages of the worker provided that no charge shall be made in respect of reasonable wear and tear.

(4) Each worker shall have access to adequate washing and toilet facilities.

(5) If any dispute arises in respect of any of the provisions in this clause the matter shall be referred to the Board of Reference for determination.

18.—DISTRICT ALLOWANCE

(1) In addition to the wages prescribed in clause 24—Wages, of this award, allowances shall, subject to the provisions of subclause (2) of this clause, be paid at the rates set out below, to workers employed in the following areas—

Boundary of Districts and Allowances per week	$
(a) Carrabin and Bullfinch to Southern Cross	1.30
(b) Southern Cross and eastward thereof to Kanowna	1.30
Except the towns of Southern Cross, Coolgardie, Kalgoorlie and Boulder and within eight kilometres thereof, where the allowance will be	0.60
(c) Coolgardie to Salmon Gums	1.30
(d) Southward of Salmon Gums to Esperance	0.60
(e) Northward of the Kalgoorlie radius	1.80
(f) Wurarga and eastward and north thereof to Meekatharra	1.80

	Boundary of Districts and Allowances per week	$
(g)	Five kilometres eastward of Meekatharra to Wiluna	2.70
(h)	Hopetown—Ravensthorpe	1.80
(i)	The area within a line commencing on the coast of 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	7.50
(j)	That area of the State situated between latitude 24 and a line running east from Carnot Bay to the Western Australian Border	14.00
(k)	That area of the State north of a line running east from Carnot Bay to the Western Australian Border.	16.00

(2) The above allowances covers a week, whether of five, six or seven days. For periods of less than five days one seventh of the above shall be payable for each day or part thereof, but a worker who has worked at least one half of a week shall be given the benefit of Sunday in the calculation of district allowances.

(3) Where board and lodging is provided or paid for by the employer pursuant to the provisions of this award, the district allowance shall be one-third of the allowance prescribed in subclause (1) of this clause.

19.—COUNTRY WORK

(1) Where a worker is engaged or selected or advised by an employer to proceed to country work at such a distance that he cannot return to his home each night and the worker does so, the employer shall provide the worker with suitable board and lodging or shall pay the expenses reasonably incurred by the worker for board and lodging.

(2) (a) The employer shall pay all reasonable expenses including fares, transport of tools, meals and, if necessary, suitable overnight accommodation incurred by a worker who is directed by his employer to proceed to country work and who complies with such direction.

(b) The worker 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.

20.—RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

(a) Name of each worker.

(b) Nature of his work.

(c) The hours worked each day and each week.

(d) The wages and overtime (if any) paid each week.

(e) The age of each junior worker.

Any system of automatic recording by 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 the representative may be allowed to take extracts therefrom. Provided that the Union shall notify the employer at least forty-eight hours before the intended date of inspecting such records.

21.—REPRESENTATIVE INTERVIEWING WORKERS

In the case of a disagreement existing or anticipated concerning any of the provisions of this award, an accredited representative of the union shall be permitted to interview the workers during the recognised meal break, on the business premises of the employer, but this permission shall not be exercised, without the consent of the employer, more than once in any one week.

22.—POSTING OF AWARD & UNION NOTICES

Space shall be provided in a mutually convenient place for the purpose of posting a copy of this award and union notices.

23.—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 regulation 52 of the Industrial Arbitration Act (Western Australian Industrial Commission) Regulations, 1974.

(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter of difference 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.

24.—WAGES

Adult Workers:

The minimum rate of wages payable to a worker under this award shall be as follows—

	Rate Per Week Column A $	Column B $
(1) Fruit Packing and Sorting		
(a) Trainee Packer & Trainee Sorter	205.20	215.20
(b) Competent Packer (as defined) & Sorter	216.60	226.60
(c) Shed Hand	216.60	226.60
(2) Fruit Growing and Picking		
(a) Orchard Hand (General)	216.60	226.60
(b) Orchard Hand (Machine Operator)	225.10	235.10
The following hourly rates shall apply to workers in this section for each hour worked in excess of 40 hours per week and not more than 52 hours per week.		
(a) Orchard Hand (General)	8.12	8.50
(b) Orchard Hand (Machine Operator)	8.44	8.82
The following hourly rates shall apply to workers in this section for each hour worked in excess of 52 hours per week.		
(a) Orchard Hand	10.83	11.33
(b) Orchard Hand (Machine Operator)	11.26	11.76

(3) Junior Workers:

Fruit Packing and Sorting or Fruit Growing and Picking wage per week or per hour as the case may be, expressed as a percentage of the appropriate adult classification rate.

	%
Under 16 years of age	40
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

(4) Casual Workers:

(a) A casual worker shall be paid 20 per cent in addition to the rate prescribed in this clause for work performed.

(b) A "Casual Worker" shall mean a worker who is engaged and paid as such.

(5) For the purpose of this clause.

A "Competent Packer" shall mean a worker who packs 500 bushels of apples per week of 40 hours.

24A.—MINIMUM WAGE

Notwithstanding the provisions of this Award, no employee (including an apprentice), 21 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 employee is employed.

25.—PIECEWORK

(1) Agreements of piecework may be entered into between the employer and the worker subject to the piecework rate being fixed and reviewed as necessary from time to time so as to enable the average competent worker to earn during ordinary working hours not less than 15 per cent above the hourly rate of the class of work performed. Such hourly rate to be ascertained by dividing the appropriate weekly rate by 40.

(2) In no case shall a worker on a weekly hire be paid less than the minimum weekly rate prescribed by this award.

(3) Where the minimum remuneration of a pieceworker falls below the minimum earnings prescribed by subclause (1) of this clause for more than three consecutive ordinary working days the peicework agreement may be terminated forthwith by either party. If neither party so elects, however, the piecework rate as originally fixed shall notwithstanding anything contained in subclause (1) of this clause be deemend to be such as will enable the average competent worker to earn not less than 15 per cent above the hourly rate prescribed in this clause.

(4) Where an agreement has been entered into the employer and worker shall carry out the terms of the agreement, and any failure to carry out any of the terms of the agreement shall be a breach of the award.

(5) Each worker party to such an agreement shall be provided by the employer with a copy of the agreement without charge.

26.—SUPERANNUATION

(1) Employer Contributions:

(a) An employer shall contribute 3% of ordinary time earnings per eligible employee into one of the following Approved Superannuation Funds:

(i) AWU Guardian Superannuation Fund; or

(ii) an exempted Fund allowed by subclause (4) of this clause.

(b) Employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer.

(c) 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. No contributions shall be made in respect of annual leave paid out on termination or any other payments on termination.

(2) Fund Membership:

(a) Contributions in accordance with subclause (1)—Employer Contributions of this clause shall be calculated by the employer on behalf of each employee from the date one month after the employee commenced employment, unless the employee fails to return a completed application to join the Fund and the employer has complied with the following:

(i) The employer shall provide the employee with an application to join the Fund and documentation explaining the Fund within one week of employment commencing.

(ii) If the employee fails to return to the employer a completed application to join the Fund within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant superannuation information, the letter of denial set out in subclause (6) of this clause and an application to join the Fund.

(iii) Where the employee completes and returns the letter of denial, no contributions need to be made on that employee's behalf.

(iv) Where the employee neither completes and returns the application to join the Fund nor the letter of denial within one week of postage the employer shall advise either the Union or the Fund Administrator in writing of the employee's failure to return the completed form.

(v) From two weeks following the employer's advice pursuant to subparagraph (iv) of this paragraph should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

Provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form or the return of a letter of denial, the employer shall make contributions on behalf of that employee from the date of return of the signed application form.

(b) Part time and casual employees shall not be entitled to receive the employer contribution mentioned in subclause (1) Employer Contributions of this clause unless they work a minimum average of 12 hours per week.

(c) Casual employees who are employed for 32 consecutive working days or less shall not be entitled to the benefits of this clause.

(3) Definitions:

"Approved Fund" shall mean any fund which complies with Australian Government's Operational Standards for Occupational Superannuation.

"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 bonus.

(4) Exemptions:

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Order:

(a) was contributing to a Superannuation Fund, in accordance with an Order of an industrial tribunal; OR

(b) was contributing to a Superannuation 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) subject to notification to the Union, was contributing to a Superannuation Fund for employees covered by this Award where such payments are not made pursuant to an Order of an industrial tribunal; OR

(d) was not contributing to a Superannuation Fund for employees covered by this Award AND

(i) written notice of the proposed alternative Superannuation Fund is given to the Union; AND

(ii) contributions and benefits of the proposed alternative Superannuation Fund are no less than those provided by this clause; AND

(iii) within one month of the notice prescribed in subparagraph (i) of this paragraph being given, the Union has not challenged the suitability of the proposed Fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(5) Operative Date:

This clause shall operate from the beginning of the first full calendar month following Western Australian Industrial Relations Commission approval of this clause.

(6) Letter of Denial:

The letter of denial shall be in the following form:

"To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand:

(1) that should I sign such form you will make contributions on my behalf; AND

(2) that I am not required to make contributions of my own; AND

(3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the fund or have any contributions made on my behalf.

.....
(Signature)

.....
(Name)

.....
(Address)

.....
(Classification)

.....
(Date)

SCHEDULE A—RESPONDENTS

M.C. Armstrong	Jayes Road, Bridgetown 6255
E. Birmingham	"Caraholly" Dwellingup 6213
Blue Moon W.A. Pty Ltd	South Western Highway, Donnybrook 6239
J.C. Bor	203 Brookton Highway, Roleystone 6111
Burridge & Warren (W.A.) Pty Ltd	29 Collins Street, Donnybrook 6239
E. Brindle	"Anchor Orchard" Parkerville 6553
Cooralong Orchard Co.,	Nelleton Road, Jarrahdale 6203
J. Correia	Kenweyth Plantation, Carnarvon 6701
J.V. Giumelli	18 Jullara Way, Lesmurdie 6076
H.C. Gubler	Mullalyup, 6252
J.S. Hamilton	P.O. Box 10, Denmark 6333
J.D. Hawley	50 David Street, Albany 6330
John M. Lowe	Fourth Street, Harvey 6220
Robert Marchesi	Muchea 6501
Newton Brothers	P.O. Box 190, Manjimup 6258
A.T. Niven	Pickering Brook 6076
E.W. Parkinson	Bindoon 6052
C.A. Summer	Riverbend, Dinninup 6245
Westralian Fruit Exports Pty Ltd	Capel Road, Donnybrook 6239
A. Wood	"Walverdene Orchard" Kendenup 6323
D.E. Yates	P.O. Box 40, Capel 6271

SCHEDULE B—PARTIES TO THE AWARD

Union Party to the Award

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

DATED at Perth this 11th day of December, 1979.

FURNITURE TRADES INDUSTRY AWARD
No. A6 of 1984.

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 1st day of February, 1996

J. CARRIGG,
Registrar.

"Furniture Trades Industry Award"

1.—TITLE

This award shall be known as the "Furniture Trades Industry Award" and replaces No. 30 of 1979 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

3.—AREA

This award shall have effect over the whole of the State of Western Australia, except such portions thereof as are comprised within premises occupied by or worked in conjunction with the Western Australian Government Railways Commission.

4.—SCOPE

This award shall apply to the industries as carried on by representative employers referred to in Schedule "A" to this award and the employees of employers engaged in those industries and classified in Clause 8.—Wages of this award.

5.—TERM

The term of this award shall be for a period of one year as from the 14th day of November 1984.

6.—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.

7.— MIXED FUNCTIONS

Any employee carrying out work classified at a higher minimum than his/her usual rate shall be paid, whilst engaged on such work, at the rate prescribed therefor.

Provided that where no record of such work is kept, the employee shall be paid at the higher rate for the whole of the day on which the work was performed.

Provided that this clause shall not apply where an employee is perfoming work for the sole purpose of training in accordance with the enterprise training programme defined in Clause 52.—Training of this award.

8.—WAGES

(1) Classifications

(a) (i) Upon engagement all employees shall be classified in the group in which they are engaged to work.

(ii) An employee will only be classified into a higher group where that employee had been trained and has met the assessment and competence criteria established for the higher group and a vacancy exists. Such reclassifications will only be made where the employee is trained and capable of performing the relevant duties of the higher group to the required standard. 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.

(iii) (aa) 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.

(bb) 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.

(cc) Should the re-examiners reach a tied decision, then this matter may be referred to a Board of Reference for determination.

(iv) The parties to this award reserve leave to apply to amend this classification structure.

(v) An employee reclassified to a higher group, will have his/her performance subject to review, and the employer may, should the employee's performance be unsatisfactory, revert the employee's classification to the previous level.

(vi) At the employee's request, any demotion pursuant to paracetum (v), will be re-examined by a panel consisting of the Supervisor, the employee's representative, a suitably qualified employee of the employee's choice with knowledge of the area of work and the Manager or the Manager's delegate.

(vii) Provided that no employee is to be prejudiced by acting or failing to act in a manner provided for in this paragraph (a).

(b) Employees will be classified into groups as follows:

(i) Furniture Making Employee Group 1

(Relativity to Group 5—78%)

Furniture Making Group 1 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Furniture Making Group 1 employee may be required by the employer to perform any, but not necessarily, all of the duties listed hereunder and for training purposes, the duties of higher classifications of employees:

Cleaning

Factory Hand

Glass - Breakout (Automatic Cutting Table)
- Vinyl Back Operating

Material Handling
- Bagging
- Drilling
- Grinding
- Loading/Unloading

(ii) Furniture Making Employee Group 2

(Relativity to Group 5—82%)

Furniture Making Group 2 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Furniture Making Group 2 employee may be required by the employer to perform any, but not necessarily, all of the duties listed hereunder.

In addition, the Furniture Making Group 2 employee will perform those duties of a lower classification related to the duties listed hereunder, and for training purposes, the duties of higher classifications of employees:

Bedding making
- Border Wiring
- Edge Banding
- Fibre Padding
- Filling
- Foam Box Assembling
- Stapling
- Tufting

Glass
- Shower Screen Assembling

Metal
- Bed Ends Assembling
- Furnace Operating
- Spring Base Assembling
- Resistance Welding

Sub Assembling

Timber
- Edging/Trimming
- Veneer Gluing and Laying
- Sanding
- Spraying
- Staining
- Varnishing
- Veneering

(iii) Furniture Making Employee Group 3

(Relativity to Group 5—87.4%)

Furniture Making Group 3 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Furniture Making Group 3 employee may be required by the employer to perform any, but not necessarily, all of the duties of the positions listed hereunder.

In addition, the Furniture Making Group 3 employee will perform those duties of a lower classification related to the duties listed hereunder, and for training purposes, the duties of higher classifications of employees:

Bedding Making
- Bagging
- Base Upholstering
- Mattress
- Spring Coiling
- Spring Unit

Blinds & Awnings
- Assembling
- Cutting

Fabric Cutting
- Pre-planned

Glass
- Automatic Cutting
- Automatic Edge Grinding/Polishing
- Automatic Levelling/ Polishing
- Cutting maximum 6mm
- Pockering

Machine Operating/Adjustments

Metal Welding

Metal/Timber (Assembling)
- Cabinet
- Chair
- Hospital Bed/Trolley
- Hospital Equipment
- Sofa
- Table

Frame Making

Packing

Picture Frame Making

Powder Coating

Sewing Machining

Spray Painting

Timber
- Woodmachining (Other)

Upholstering (Pre-Planned)

Wickerwork
- Ironwork
- Other

(iv) Furniture Making Employee Group 4

(Relativity to Group 5—92.4%)

Furniture Making Group 4 employee shall mean an employee classified as such who is engaged on work in connection with or incidental to the production, maintenance and distribution operations of the employer. The Furniture Making Group 4 employee may be required by the employer to perform any, but not necessarily, all of the duties of the positions listed hereunder.

In addition, the Furniture Making Group 4 employee will perform those duties of a lower classification related to the duties listed hereunder, and for training purposes, the duties of higher classifications of employees:

Bedding Making
- Garnetting
- Hand Cutting
- Micro Quilting
- Panel Cutting
- Tape Edging
- Spuhl Automatic Spring Maker (other)

Blinds and Awnings
- Finishing
- Installing
- Making

Mechanical Handling (Ride-on)

Receiving/Storing/Issuing
- Despatching
- Documenting
- Purchasing
- Stock Controlling

(v) Furniture Making Employee Group 5

(Classification in this Group shall be dependent upon an employee holding the appropriate trade qualifications or an employee qualified and/or engaged to perform any of the duties of a Furniture Making Group 5 employee.)

Furniture Making Group 5 employee 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 Furniture Making Group 5 employee may be required by the Employer to perform any, but not necessarily, all of the duties of the positions listed hereunder.

In addition, the Furniture Making Group 5 employee will perform those duties of a lower classification related to the duties listed hereunder, and for training purposes, the duties of higher classifications of employees:

Bedding Making
- Pocket Spring
- Spuhl Automatic Spring Maker (defined)

Floor Covering

Furniture Designing and/or Drafting
- Computer Aided Drafting
- Computer Aided Manufacturing
- Costing

Glass
- Bevelling
- Designing and/or Drawing
- Leadlight Glazing
- Sandblasting
- Silvering

Metal
- Jigmaking (Metal Furniture)
- Metal Furniture Making

Timber
- Cabinetmaking
- Chairmaking and/or Repairing
- French Polishing (Furniture Finishing)
- Wicker Furniture Making
- Wood Carving
- Wood Machining
- Wood Turning

Upholstering

(vi) Furniture Making Employee Group 6

(Relativity to Group 5—105%)

(Classification in this group shall be dependent upon an employee holding the appropriate trade qualifications and successfully completing one half of the requirements of the recognised Advanced Certificate in Furniture Studies at a College of TAFE.)

Furniture Making Group 6 employee 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 Furniture

Making Group 6 employee may be required by the employer to perform any, but not necessarily, all of the duties of the positions listed hereunder.

In addition, the Furniture Making Group 6 employee will perform those duties of a lower classification related to the duties listed hereunder, and for training purposes, the duties of higher classifications of employees:

Advanced Furniture Designing and/or Drafting
- Computer Aided Manufacturing
- Computer Aided Drafting
- Costing

Advanced Machine Programming

Advanced Metal
- Jigmaking (Metal Furniture)
- Metal Furniture Making

Advanced Timber
- Cabinetmaking
- Chairmaking and/or Repairing
- French Polishing (Furniture Finishing)
- Wicker Furniture Making
- Wood Machining
- Wood Turning

Advanced Upholstery

Toolmaking (Metal Furniture)

(vii) Furniture Making Employee Group 7

(Relativity to Group 5—110%)

(Classification in this category shall be dependent upon successfully completing the requirements of the recognised Certificate in Furniture Studies at a College of TAFE.)

Furniture Making Group 7 employee 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 Furniture Making Group 7 employee may be required by the employer to perform any, but not necessarily, all of the duties of the positions listed hereunder.

In addition, the Furniture Making Group 7 employee will perform those duties of a lower classification related to the duties listed hereunder: and for training purposes, the duties of higher classifications of employees:

Advanced Furniture Designing and/or Drafting
- Computer Aided Manufacturing
- Computer Aided Drafting
- Costing

Advanced Machine Programming

Advanced Metal
- Jigmaking (Metal Furniture)
- Metal Furniture Making

Advanced Timber
- Cabinetmaking
- Chairmaking and/or Repairing
- French Polishing (Furniture Finishing)
- Wicker Furniture Making
- Wood Machining
- Wood Turning

Advanced Toolmaking (Metal Furniture)

Advanced Upholstery

(2) Wages

The minimum rate of wage for employees covered by this award shall be:

(a)	Furniture Making Employee	Group 1	$325.40
	Furniture Making Employee	Group 2	$342.10
	Furniture Making Employee	Group 3	$364.60
	Furniture Making Employee	Group 4	$385.50
	Furniture Making Employee	Group 5	$417.20
	Furniture Making Employee	Group 6	$438.10
	Furniture Making Employee	Group 7	$458.90

(b) (i) In addition to the rates payable under the provisions of paragraph (a) of this subclause, all adult employees shall be paid a supplementary payment of $16.00 per week for all purposes of this award.

(ii) 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.

(iii) 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) Tool Allowance

Where the employer does not provide a Cabinetmaker with the tools ordinarily required by a cabinetmaker in the performance of his/her work of cabinetmaking, the employer shall pay a tool allowance of $9.50 per week.

The Tool Allowance for cabinetmaking apprentices shall be subject to the provisions hereof, and when applicable paid at the rate prescribed by subclause (3) of Clause 34.—Apprentices of this award

(4) Apprentices

(a) The minimum rate of pay per week for an apprentice shall be the percentage shown in paragraph (b) herein of the total rate of pay inclusive of supplementary payment for a Furniture Making Employee Group 5.

(b) Percentages:

(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—	%
Apprentices who have completed 12 months full time training—	
First year	55
Second year	75
Third year	88
(iv) Three Year Term—	
First year	42
Second year	55
Third year	88

(5) Junior Employees

(a) The minimum rate of pay per week for a junior employee shall be the percentages shown in paragraph (b) herein, of the total rate of pay inclusive of supplementary payment for a Furniture Making Employee Group 2.

(b) Percentages	%
Under 16 years	38
Between 16 and 17 years	46
Between 17 and 18 years	53
Between 18 and 19 years	73
Between 19 and 20 years	80
Between 20 and 21 years	85

Liberty to amend this clause is reserved.

(6) Minimum Wage

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/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 $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 employee is employed.

9.—PAYMENT OF WAGES

(1) (a) Wages shall be paid on or before Thursday of each week and shall be available to employees within 10 minutes of the usual time for finishing work.

(b) Wages shall be paid in cash, provided that an employee may agree to have his or her wages paid by cheque or by electronic funds transfer.

(2) When the engagement of an employee is terminated by the employer or where the employee lawfully leaves his employment and except for misconduct he shall be paid all wages and holiday pay due to him within two hours of the expiration of the engagement.

10.—LEADING HANDS

An employee placed in charge of—

(1) Not less than three and not more than ten other employees shall be paid $16.85 per week extra.

(2) More than ten and not more than twenty other employees shall be paid $20.75 per week extra.

(3) More than twenty other employees shall be paid $27.30 per week extra.

11.—SETTER OUT

A cabinetmaker other than a Leading Hand who sets out from plans prepared for that purpose, detailed work for other cabinetmakers shall be paid an extra $2.65 per day.

12.—CASUAL EMPLOYEES

(1) A casual employee is one engaged and paid as such. A casual employee shall be paid 20% in addition to the rate of wage prescribed in this award.

(2) A casual employee may be employed for a period up to but not exceeding three months from the date of employment.

(3) A casual employee's contract may be terminated with one hour's notice on either side or by the payment or the forfeiture of one hour's pay as the case may be where such notice is not given.

13.—HOURS

(1) Subject as hereinafter provided, the ordinary hours of work shall not exceed thirty-eight (38) in any one week and shall not exceed seven hours and thirty-six minutes daily, to be worked, except for shift employees, between the hours of 6.00 a.m. and 6.00 p.m., from Monday to Friday inclusive.

The ordinary starting and finishing time shall not be altered except by agreement between the employer and the Union, or in default thereof, by a Board of Reference.

(2) Notwithstanding the provisions of paragraph (1) hereof, an employer by agreement with the union or in default thereof, as determined by a Board of Reference, may work his factory, workroom or job site in accordance with the following provisions—

Nine eight-hour days and one four-hour day, Mondays to Fridays inclusive in any one fortnight.

(3) 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 nor more than 60 minutes to be taken at a time which as near as practicable equally divides the working day or shift, provided that more than five hours work shall be worked in any day before an employee is entitled to a meal break.

(4) When the engagement of an employee is terminated by an employer observing the provisions of paragraphs (2) and (5) hereof, or where the employee lawfully leaves his employment, all time accrued in excess of seven hours and thirty-six minutes worked daily, shall be paid to such an employee at the ordinary rate of pay.

(5) Notwithstanding the provisions of this Clause, any other working arrangement to facilitate the 38 hour working week may be implemented by agreement between the majority of employees and an employer.

14.—OVERTIME

(1) Notwithstanding anything contained herein—

(a) An employer may require any employee to work reasonable overtime and such employee shall work overtime in accordance with such requirements.

(b) An organisation, party to this award, and/or an employee or employees 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 overtime in accordance with the requirements of this subclause.

(2) In no case shall junior employees be employed on overtime, unless the proportion of adult employees to juniors as provided in this award is maintained whilst such overtime is worked.

(3) All time worked 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.

(4) Work performed on Saturdays prior to 12 noon shall be paid for at the rate of time and one-half for the first four hours and double time thereafter. All work performed on Saturdays after 12 noon or on Sundays shall be paid for at double time rates.

(5) All work performed on a holiday as presecribed in Clause 17.—Holidays shall be paid for at the rate of double time and one half.

(6) An employee's meal time may be postponed for not more than one hour, or such longer period, not exceeding two hours, as is agreed between the employer and the employee. If the employee's meal time is postponed beyond this, the employee shall be paid at overtime rates until he or she receives a meal break.

(7) (a) When overtime is necessary it shall wherever reasonably practicable, be so arranged that workers have at least 10 consecutive hours off duty between the work of successive days. By agreement between the employer and an employee a lesser period of consecutive hours off duty may be taken but shall not in any circumstances be less than 8 hours.

(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 10 consecutive hours off duty between those times shall, subject to this paragraph, 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 a worker 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) Where a worker (other than a casual worker or a worker engaged on continuous shift work) is called into work on a Sunday or public holiday preceding an ordinary working day, he shall, wherever reasonably practicable, be given 10 consecutive hours off duty before his usual starting time on the next day. If this is not practicable, then the provisions of subparagraphs (b) and (c) 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 subclause when the actual time worked is less than three hours on such recall or on each of such recalls.

(e) The provisions of this subclause shall apply in the case of shift workers who rotate from one shift to another, as if eight hours were substituted for 10 hours when overtime is worked—

(i) for the purpose of changing shift rosters; or

(ii) where a shift worker does not report for duty; or

(iii) where a shift is worked by arrangement between the workers themselves.

15.—MEAL MONEY

(1) An employee required to work overtime for more than two hours Monday to Friday inclusive, shall be supplied with a meal by the employer or paid $6.65 for a meal.

(2) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer shall provide such meal(s) or pay an amount of $4.50 for each second or subsequent meal.

(3) If an employee in consequence of receiving such notice of overtime, has provided him or herself with a meal or meals and is not required to work overtime or is required to work less overtime than notified he or she shall be paid the amounts prescribed in subclauses (1) and (2) above in respect of the meals not then required.

(4) The provisions of this clause shall not apply to weekend work, unless the hours worked exceed the normal working day.

(5) The provisions of subclauses (1) and (2) hereof shall not apply to an employee who is advised of the requirement to work overtime on the preceding day or earlier.

16.—SHIFTS

(1) 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 or ordinary working hours of the respective shifts.

(2) (a) Where work on any job is carried out on shifts and less than five consecutive shifts (other than day shift) are worked on that job then the employees 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 17.—Holidays and Clause 18.—Annual Leave of this award.

(3) The loading for shift work on the ordinary rates of pay which shall include all allowances prescribed in Clause 8.—Wages, of this award shall be fifteen per cent for any shift other than 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 experience on that job.

17.—HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject to this clause and to subclause (5) of Clause 14.—Overtime of this award, be allowed as holidays without deduction of pay:

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 in substitution of any of the abovenamed days, by agreement between the parties.

Provided further that, an employer shall not be required to pay an employee for such holiday, where that holiday has immediately been followed, or preceded by at least one day's unpaid absence, of that employee without such proof of incapacity as described by subclause (4) of clause 35.—Sick Leave of this award.

(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.

18.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, a period of four consecutive week's leave with payment as prescribed in paragraph (b) hereof shall be allowed annually to an employee by this employer after a period of twelve months' continuous service with such an 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 the employee as prescribed in Clause 8.—Wages of the award, and

(bb) subject to paragraph (c)(ii) the rate prescribed for work in ordinary time by Clause 13.—Hours and Clause 16.—Shifts of the award according to the employee's roster or projected roster.

(cc) the rate applicable pursuant to Clause 7.—Mixed Functions 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 a similar nature to or is paid for the same reasons as or is paid in lieu of those payments prescribed in Clause 19.—Away from Home and Travelling Time nor any payment which might have become payable to the employee as reimbursement for expenses incurred.

(c) During a period of annual leave an employee shall receive a loading calculated on the rate of wage prescribed by paragraph (b)(ii)(aa) hereof. The loading shall be as follows—

(i) Day Employees—An employee who would have worked on day work had he not been on leave—a loading of 17 1/2 per cent.

(ii) Shift Employees—An employee 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 employee would have received shift loadings prescribed by Clause 16.—Shifts 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 paragraph (b)(ii)(aa) hereof in lieu of the 17 1/2 per cent loading.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(2) Each employee shall where practicable be given three months' notice of the commencing date of annual leave and such leave shall where practicable, having regard to the exigencies of the employer's business, be arranged to suit the convenience of the employee.

(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: Provided that at the option of the employer any of the award holidays so falling within the period of annual leave shall be given in one of the following ways—

(a) Added to the Easter holidays, in which case the employer may, at his option, add one further day in lieu of Australia Day (26th January). Where it is the intention of the employer to adopt this method he shall notify the employee of such intention.

(b) By agreement between the employer and the employee, but not otherwise, another day shall be given in lieu of each of such award holidays.

(4) If after one month's continuous service in any qualifying twelve monthly period an employee leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid 2.923 hours' at the rate of wage prescribed by Clause 8.—Wages, in respect of each completed week of service.

(5) 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.

(6) In the event of an employee 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 annual 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 of such employer, he shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(7) (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 in lieu of that leave or, in a case to which subclauses (7)(b) or (8) 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.

(8) Notwithstanding anything else herein contained an employer who observes a Christmas closedown for the purpose of granting leave may require an employee to take his annual leave in not more than two periods.

(9) Provided that an employee may, at his or her own election and with the consent of the employer, take short-term annual leave, not exceeding four days in any calendar year, at a time or times separate to those determined elsewhere by this clause.

19.—AWAY FROM HOME AND TRAVELLING TIME

(1) Where an employee is sent by his employer to a job at such distance that he cannot return to his home each night—

(a) Suitable board and lodging shall be found at the employer's expense.

(b) All fares in connection with such travelling shall be paid together with a reasonable allowance for each ordinary meal actually and reasonably incurred.

(c) When any employee is required to travel at night, sleeping berth accommodation shall be provided by the employer.

(2) An employee who on any day or from day to day is required to work at a job away from his accustomed workshop shall at the direction of his employer present himself for work at such job at the usual starting time, but for all time reasonably spent in reaching and returning from such job (in excess of the time normally spent in travelling from his home to such workshop and returning) he shall be paid travelling time, and also fares in kilometrage (in accordance with the provisions of paragraph (4) of this clause) incurred in excess of those normally incurred in travelling between his home and such workshop. The employer shall reimburse any employee for costs incurred for parking on any job away from the employee's accustomed work place provided that wherever reasonable or practicable receipts are kept indicating any expenses incurred. Further, the employee shall ensure that parking is in accordance with the relevant Council by-laws and that reasonable efforts are made to find parking at minimal costs.

(3) Travelling time outside the ordinary working hours shall be paid for at ordinary rates up to a maximum of twelve hours in any twenty four hour period from the time of starting of the journey, provided that, when travelling is by boat, not more than eight hours shall be paid for in any twenty four hour period.

19A.—CAR ALLOWANCE

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of the employee's duties the employee 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 no 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 the 1st day of July and end on the 30th day of June next following.

Rates of Hire for Use of Employee's Own Vehicle on Employer's Business

Area and Details	Rate Per Kilometre (cents)		
	Over	Over 2600 cc -2600 cc	1600 cc & Under
Metropolitan Area	54.2	48.5	42.2
South West Land Division	55.5	49.8	43.3
North of 23.5 South Latitude	60.9	54.8	47.7
Rest of the State	57.3	51.4	44.6
Motor Cycle (in all areas)	18.7¢ 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.

20.—CONTRACT OF SERVICE

(1) Except as provided in Clause 12.—Casual Employees of this award, employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week.

(2) In order to terminate the employment of an employee, the employer shall give to the employee one week's notice of the intention to terminate.

Provided that employees over 45 years of age at the time of the giving of notice with not less than two years' continuous service, shall be entitled to an additional week's notice.

(3) 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 required on the age of the employee concerned.

(4) Payment in lieu of the notice prescribed in subclauses (2) and (3) hereof shall be made where the appropriate notice is not given.

Provided that the contract of employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(5) Notwithstanding the provisions of subclause (2) hereof, the employer shall have the right to dismiss an employee without notice for misconduct justifying instant dismissal, and in such case wages may be paid up to the time of dismissal only.

20A.—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 the union.

(b) The discussions shall take place as soon as is practicable after the employer has made a definite decision that would invoke the provisions of paragraph (1)(a) hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse affect of any terminations on the employees concerned.

(c) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the union, 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 (1)(a) hereof the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had 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 time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(3) Severance Pay

(a) In addition to the period of notice prescribed for ordinary termination in Clause 20.—Contract of Service subclause (2), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph (1)(a) hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service.

PERIOD OF CONTINUOUS SERVICE	SEVERANCE PAY
1 year or less	Nil
1 year and up to the completion of 2 years	4 weeks
2 years and up to the completion of 3 years	6 weeks
3 years and up to the completion of 4 years	7 weeks
4 years and over	8 weeks

"Week's Pay" means the ordinary time rate of pay for the employee concerned. Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1)(a) hereof, may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she 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 given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(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 he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

(7) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in paragraph (1)(a) hereof, 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 Benefit

Subject to an order of the Commission, where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause (3) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he or she receives, that is attributable to employer contributions only.

If the superannuation benefit is equal to, or greater than the amount due under subclause (3) hereof then he or she shall receive no payment under that subclause.

"Superannuation Scheme" in this subclause, shall mean a scheme other than one implemented solely for purposes of compliance with Clause 49.—Superannuation of this award, or an Order of the Western Australian Industrial Relations Commission.

(9) Transmission of Business

(a) Where, before or after the date of this award, a business is transmitted from an employer (in this subclause called "the transmittor") to another employer (in this subclause called "the transmittee"), an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:

(i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and

(ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

(b) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

(10) 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 em-

ployers 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.

(11) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of misconduct justifying instant dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.

(12) Employers Exempted

Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than 15 employees.

(13) 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.

21.—GRINDING TIME

The employer shall provide adequate facilities for the employees to grind tools and employees shall be allowed time to use same whenever reasonably necessary.

22.—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.

23.—PIECEWORK

An employee employed on piecework shall be paid not less than the minimum rate herein prescribed for an employee employed on the same class of work plus ten per cent. A pieceworker under the provisions of this award shall mean any employee who repairs, manufactures, or finishes articles made from materials supplied by the persons for whom the work is being performed.

24.—INTERVIEWING EMPLOYEES AND INSPECTION OF PREMISES

(1) On notifying the employer or his representative the secretary or any duly authorised representative of the union shall be permitted to interview an employee on the business premises of his employer during the recognised meal break or outside ordinary working hours 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 the secretary or any duly authorised 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 unduly interfere with work in progress.

(3) The employer shall provided all necessary facilities to assist the secretary or the duly authorised representative of the union in exercising the permission allowed by this clause.

25.—POSTING OF UNION NOTICES

The accredited union representative shall not be prevented from posting a copy of this award, or any notice of the union not exceeding thirty five centimetres by twenty three centimetres, in a suitable place agreed upon between the employer and the union. Failing agreement in this connection the Board of Reference shall decide where the copy of the award, or the said notices, shall be posted. Any such notice shall be submitted to the employer for approval before being posted.

26.—JUNIOR EMPLOYEES

(1) Junior employees may be employed on all work for which an apprenticeship is not provided.

(2) One junior employee shall be allowed to each five adult employees or fraction thereof, provided that at least three adults shall be employed before a junior can be employed. Provided further that in the case of wire mattress making, bedding, soft furnishing and glass sections, the proportion shall be one to two or fraction thereof.

(3) Junior employees shall not be employed cutting and/or matching veneers.

(4) Upholsterers shall not be counted for the purpose of calculating the foregoing proportion which, in upholstering establishments shall be one junior to every five or fraction of five adults, provided that the work of such juniors shall be confined to labouring work only.

27.—JUNIOR EMPLOYEES CERTIFICATE

(1) When requested junior employees shall furnish the employer with a certificate showing the following particulars—

(a) Name in full

(b) Age and date of birth

(2) The certificate shall be signed by the employee.

(3) No employee shall have any claim upon the employer for additional pay in the event of his age being wrongly stated on this certificate.

If any employee shall wilfully mis-state his age in the above certificate, he alone shall be guilty of a breach of this award.

28.—CLEANING OF HANDS

Polishers and Metal Furniture Makers shall be allowed ten minutes per day for the purpose of cleaning their hands five minutes before the mid-day meal and five minutes before finishing time.

29.—RECORD

(1) Each employer shall keep a time and wages record wherein shall be entered—

(a) the name and address of each employee;

(b) The nature of his employment;

(c) The time he commences and finishes work each day;

(d) The total hours worked each day and each week;

(e) The wages (and overtime if any) received therefor;

(f) The ages of junior employees.

(2) Any system of automatic recording by means of machines shall be deemed a compliance with this clause, to the extent of the information recorded.

(3) Such record shall be entered up each day in legible English characters, and shall be signed weekly only if correct by each employee.

(4) The record shall be open for inspection by a duly accredited official of the union during the ordinary office hours, at the employer's office or other convenient place and he shall be allowed to take extracts therefrom.

(5) Each employer shall keep an accurate record of all contributions made to an approved superannuation fund as provided by Clause 49.—Superannuation.

30.—CLOCK

(1) One reliable clock shall be installed in each factory and the starting and finishing time of employees shall be taken from that clock.

(2) Where an employer requires, all employees shall clock on and off work.

31.—BREAKDOWN

The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union, or the unions affiliated with it, or because of any stoppage of work by any cause when the employer cannot reasonably prevent.

32.—BOARD OF REFERENCE

The Board of Reference referred to in this award is the Board of Reference established by section 48 of the Industrial Arbitration Act, 1979.

33.—DEFINITIONS

(1) A "Wicker employee" shall mean an employee in cane, pith, seagrass, bamboo, rush or any other material used in the manufacture or repair or wicker furniture, go-carts, baskets, or any article of which wicker forms a part.

(2) "Cabinetmaking" shall mean the manufacture, assembling, repair or fitting up of new or second-hand furniture, including the woodwork or wood substitutes of the following—pianos, billiard tables (including wooden accessories), musical, wireless and television cabinets, sewing machine stands, refrigerator cabinets, built in furniture, shop, office, church and bar furniture and fittings including wall panels and partitions.

(3) "Chairmaking" shall mean the manufacture, assembling, repair or fitting up of the woodwork of chairs, settees, lounges or other similar articles of furniture.

(4) "French Polishing" shall mean the process of polishing articles of wood prepared by cabinetmakers, joiners, chairmakers and veneer makers, by means of—

(a) shellac, spirits and oil, or other preparations used in place of shellac, spirits and oil, or

(b) the application of paint, cellulose, lacquers, enamel or similar preparations by means of spray or brush.

(5) "Veneering" shall mean the cutting, matching, taping, glueing and laying of veneers. It shall be competent for an employer to use the services of a chairmaker or cabinetmaker or an apprentice in chairmaking or cabinetmaking on this work.

(6) "Drawer and Designer" shall mean an employee substantially engaged in the preparation in any manner of—

(a) designs for leadlight and/or zinc light and/or copper light panels, windows or other glass work, or

(b) design for panels, windows or other glass work (including any of its kindred products) which is to be sandblasted

and who may be called upon to prepare masks and sandblast with any of the foregoing, but shall not apply to any work performed by a signwriter as defined by the Building Trades Award No. 14 of 1978.

(7) "Glass Bevelling" shall mean and include all processes of glass grinding and/or polishing, including brilliant cutting but shall not include sandblasting.

(8) "Glass Silvering" shall mean the preparing of glass for silvering, silvering and application of protective coating.

(9) "Leadlight Glazier" shall mean an employee engaged in the making of lead or zinc or copper light panels and windows and shall include the cutting of all glass or kindred products for such work.

(10) "Glass Sandblaster' shall mean an employee engaged in the making and/or cutting of masks or stencils for glass (or any of its kindred products) which is to be sandblasted and sandblasts same, but does not include an employee engaged as a "Drawer and Designer" who also performs the work hereinbefore referred to in this paragraph.

(11) "Upholstering" shall mean and include all processes involving the covering of all types of furniture: New or second hand, with leather, vinyl, fabric or any kindred material. The attaching of conical springs. The application of hessian and similar material on first and second stuff work. The cutting and/or planning and/or matching of materials for final cover work.

(12) "Floor Covering" shall mean the planning or measuring or cutting or laying of all floor covering materials.

(13) "Installer" shall mean an employee engaged in the fitting, fixing and installing of blinds of all types including venetian blinds, and awnings,

(14) "Blind Maker" shall mean an employee engaged in the making of blinds plain and fancy and including the making and finishing of venetian blinds and awnings.

(15) "Metal Furniture Making" shall mean the using of any type of welding equipment other than welding with the aid of a jig; and/or the setting up of automatic welding machines; and/or the designing of metal furniture; and/or the reading of drawings; and/or the final inspection of completed articles of furniture.

"Metal (Assembling)" shall mean the using of any type of welding equipment with the aid of a jig; and/or the operation of an automatic welding machine; and/or the assembling of wooden (or wood substitutes) parts of metal furniture by nailing, screwing, glueing, including cramping; and/or the attachment of edging; and/or any other process used in the manufacture of metal furniture (other than bedding) not mentioned in this subclause.

(16) "Sewing Machinist" shall mean the using of an industrial, commercial or domestic sewing machine for machining of any fabric for any purpose of this award.

(17) "Packer" shall mean an employee who is engaged in the packing of furniture including pictures, carpets, drapings, plate and sheetglass in factories for transport by road and/or rail and/or ship and/or air.

(18) "Computer Programmer" shall mean a wood machining employee, employed to develop programmes for use in computerised machines. Such programming shall include basic programming as well as drawing, construction of jigs and tape preparation, but shall not include a person solely employed operating any computerised machine.

(19) "Employee/Worker" In this award, words importing the masculine gender include the feminine and the words importing the feminine gender include the masculine.

(20) "Wood Machining" shall mean working with a shaper, router, double-ended tenoner, four sider where the employee also grinds cutters and/or sets up and/or a router and/or a shaper hand who works freehand.

(21) "Timber (Assembling)" shall mean work down by an employee in fitting together by nailing, screwing, glueing or fixing in any manner jointed, moulded or finished parts of wooden furniture and may include trimming of edges and minor adjustments and includes assembling of chairs by means of machine press or machine cramp only and the attaching of panel backs to such assembled chairs, and shall also include the fixing of hinges of pre-fitted rebated doors.

(22) "Sub Assembling" shall mean the attachment of finished parts of any description other than those referred to in subclause (21) hereof to otherwise completed furniture, the attachment of such parts requiring the use only of a hammer, screw-driver, pincer, bradawl, pliers, spanner, wire cutter, punch and drill.

(23) "Frame Making" shall mean the making of frames on which upholsterers cover all the woodwork except the legs and/or feet, of which the woodwork is prepared by machines and including such frames to which the arms and/or legs and/or trays and/or ornaments and/or fittings are to be attached.

(24) "Upholstering (Pre-Planned)" shall mean the preparing and attaching of springs (other than the conical type), preparing rubber, foam, felt, hessian or similar material and attaching same where such materials and the methods of operation have been previously planned (provided that this shall not apply to the application of hessian and similar materials on first and second stuff work) the insertion of rubber or foam into cushion cover, attaching spring units to frames, the attaching of covers on kitchen dining room and office chairs and the like where such attachment involves a repetitive process. Provided that any dispute that may arise in relation to the foregoing may be referred to a Board of Reference for determination.

(25) "Spuhl Automatic Spring Maker" means an employee who, in addition to operation of the machine, works with minimal supervision, employs fault finding and rectification skills and works from detailed instructions and procedures.

34.—APPRENTICES

(1) The maximum number of apprentices allowed to be employed by an employer shall be in the proportion of one apprentice to every two or fraction of two journeymen employed in that branch. Provided that the fraction shall not be less than one.

(2) The following tool allowance shall be payable to chairmaking and wood turning apprentices per week—

Four-Year Term	$
First year	Nil
Second, Third and Fourth year	0.30

Three-Year Term	$
First, Second and Third year	0.30

(3) The following tool allowances shall be payable to cabinetmaking apprentices per week—

Four-Year Term

First Year—one-third of cabinetmaker's tool allowance.

Second, Third and Fourth year—same amount as payable to tradesmen cabinetmakers.

Three-Year Term

First, Second and Third year—same amount as payable to tradesmen cabinetmakers.

(4) Provision of Tools

(a) An employer may, by agreement with the apprentice'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.

(b) 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 moneys owing the apprentice, the amount then owing; or

(ii) by agreement retain tools at the originally nominated value to the amount still owing.

35.—SICK LEAVE

(1) (a) An employee 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 an employee 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 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) (a) To be entitled to payment in accordance with this clause, an employee shall as soon as reasonably practicable advise the employer of his or her inability to attend for work, the nature of their 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.

(b) Where practicable, notification of absence is to be given no later than two (2) hours after the normal starting time. In the case of shift workers, where practicable, the notification is to be given prior to the start of normal shift hours.

(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 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 be 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 18.—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 18.—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 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor 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 and Assistance Act 1981 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.

(9) Sick leave accumulated prior to the coming into operation of this award shall be brought forward pursuant to the provisions under which it accrued.

36.—REST PERIOD AND MEAL BREAK

(1) 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.

(2) The rest period shall be granted 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.

(3) Refreshments may be taken by employees during the rest period but the period of seven minutes shall not be exceeded under any circumstances.

(4) An employee who has worked continuously (except for meal or crib times allowed by this award) for twenty hours shall not be required to continue at or recommence work for at least twelve hours.

(5) Should the overtime continue beyond three hours a paid meal break of twenty minutes at the ordinary rate of pay shall be allowed immediately on completion of the three hour period.

(6) When overtime is worked on a Saturday or Sunday or public holiday for a half day, full day or more, tea breaks and meal breaks shall be allowed in accordance with award provisions for a normal working day.

37.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 59 of the Western Australian Industrial Gazette, 1979, pages 1 to 6 both inclusive, are hereby incorporated in and shall be deemed to be part of this award.

38.—PART-TIME EMPLOYEES

(1) "Part-time Employee" means an employee employed for less than 38 hours each week.

(2) When an employee is employed under the provisions of this clause, he shall receive payment for wages, for annual leave, for holidays and for sick leave on a pro rata basis in the same proportion as the number of hours regularly worked each week bears to thirty-eight hours.

(3) An employee working irregular hours shall receive payment subject to the provisions of subclause (2) of this clause calculated on the average hours worked weekly during the qualifying period.

39.—PROTECTIVE CLOTHING

Where wet processes are employed protective aprons and footwear shall if necessary be provided by the employer. Any dispute on this provision shall be referred to the Board of Reference.

The provisions of this clause shall apply only to employees employed in Section II Glass of Clause 8.—Wages.

40.—DIRT OR DUST MONEY

(1) All mattresses to be reconditioned shall be fumigated before reconditioning is commenced.

(2) Where adequate dust extraction systems are not in use employees engaged in garnetting or fibre teasing or needling or filling soft filled mattresses, pillows, etc., shall be paid at the rate of 85 cents per day in addition to the prescribed rate.

(3) An employee working on second-hand floor coverings and/or soft furnishings shall for the time so engaged, be paid twenty-five per cent in addition to the ordinary rates prescribed elsewhere in this award.

(4) All work on floor coverings once they have been laid, shall be classed as second-hand unless such floor coverings have been thoroughly cleansed by a shampooing process involving lifting. Provided that however, the second-hand rate shall at all times apply to sewers of second-hand floor coverings.

(5) This provision shall not apply to alteration on new work.

41.—COMPASSIONATE LEAVE

An 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.

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 this roster, or on long service leave, annual leave, sick leave, workers' 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 defacto wife or husband.

42.—SPECIAL RATES AND CONDITIONS

(1) (a) Employees, other than apprentices, required to perform the duties of a cabinetmaker, a french polisher or a floor coverer on "construction work" away from the employer's business premises shall be paid $7.53 per day extra whilst so employed.

(b) "Construction Work" shall mean work that the employer and the Union agree is construction work, or in default of agreement, that which is so declared by a Board of Reference.

(c) Where apprentices in trades mentioned in paragraph (a) of subclause (1) of this clause work in circumstances which would entitle cabinetmakers, french polishers or floor coverers to the rate referred to in paragraph (a) of this subclause, the following extra rate shall be paid to apprentices—

Four Year Term—(per cent of allowance per day)

	%
First Year	40
Second Year	72
Third Year	95
Fourth Year	100

Three Year Term—(per cent of allowance per day)

	%
First Year	58
Second Year	95
Third Year	100

(2) Employees required to perform work in multi-storeyed buildings above the fourth storey during the course of construction shall be paid an additional 33 cents per hour whilst so employed. Provided that such extra rate shall not be payable when the exterior walls have been erected and the windows completed and fixed in position, and a lift has been made available to carry the employee to and from the floor upon which he is required to work.

For the purposes of this subclause the number of storeys shall be calculated from the street level and includes the ground floor.

(3) Employees using Ramset guns or other explosive tools shall, while using such tools, be paid an additional 59 cents per day.

(4) An employee required to perform the duties of a computer programmer shall be paid an allowance of $8.65 per day.

43.—PROVISION OF APPLIANCES

(1) The employer shall provide the following tools or articles when they are required on the jobs—

(a) Employees employed in classification referred to in section I of Clause 8.—wages:—Dogs and cramps of all descriptions, hand and thumb screws, gluepots and brushes, bits not ordinarily used in a brace, oil-stone, and files required by machinists, and spanners from two centimetres and upwards, sewing machines, grind-stones, and/or emery wheels not less than three centimetres in width, and spraying machines. All appliances shall be maintained in a reasonable working condition.

(b) Employees employed in classifications referred to in section II of Clause 8.—Wages:— Soldering irons, glass cutters and any machines required for the purpose of carrying out the work covered by this section.

(c) Employees employed in classifications referred to in sections III and IV of Clause 8.—Wages:—The employer shall provide all tools (hand and/or machine) which are required for the purpose of carrying out his work covered by these sections.

(2) All rags and brushes necessary for the use of polishers shall be supplied by the employer.

(3) The employer shall provide boiling water for all tea and meal breaks prescribed by this award.

44.—JURY SERVICE

Provided that an employee attempts to gain the maximum amount allowable from the Crown Law Department, an employee required to attend for jury service shall be entitled to have his pay made up by the employer to equal his ordinary pay as for seven hours and thirty-six minutes per day whilst meeting this requirement. The employee shall give his employer proof of such attendance and the amount received in respect of such jury service. The provisions of this clause shall be limited to five days for any one period of service.

45.—FIRST AID EQUIPMENT

(1) (a) An employer shall endeavour to have at least one employee trained to render first aid in attendance when work is performed at any establishment or location.

(b) (i) At the places of work where not more than six persons are employed the first aid outfit shall be equipped and maintained to contain at least the following—

Dustproof Container
Antiseptic Solution—125 mls
Sal Volatile—30 mls
Burn Cream—1 tube
Rubber Haemorrhage Arrester—1
Triangular Bandage—1
Plain Gauze—1 mm x 90 cm
Cotton Wool—50 gms
Lint—25 gms
Small bowl for bathing minor wounds—1
Drinking Utensil—1
Roller Bandages—3 x 2.5 cm, 1x 7.5 cm
Prepared Adhesive Dressings—1 dozen
Tweezers—1 pair
Scissors, 10 cm—1 pair
Safety Pins—1 dozen
Medicine Glass, 40 mls—1
Eye Bath—1
First Aid Pamphlet—1
Castor Oil—100 mls
Bicarbonate of Soda—30 gms
Boracic Acid—30 gms

(ii) At places of work where more than six persons are employed the first aid outfit shall be equipped and maintained to contain at least the following—

Dustproof Container
Antiseptic Solution—125 mls
Sal Volatile—60 mls
Burn Cream—1 Tube
Rubber Haemorrhage Arrester—1
Triangular Bandage—3
Plain Gauze—5 mm x 90 cm
Cotton Wool—200 gms
Lint—100 gms
Finger Dressings—1 dozen
Roller Bandages—3 x 2.5 cm, 1 x 7.5 cm
Prepared Adhesive Dressings—1 dozen
Splinter Forceps, 9 cm—1 pair
Scissors, 12.5 cm—1 pair
Safety Pins—1 dozen
Medicine Glass, 40 mls—1
Eye Bath—1
First Aid Pamphlet—1
Bicarbonate of Soda—60 gms
Boracic Acid—60 gms
Towel—1
Enamel Drinking Mug—1

(2) An employee who has been trained to render first aid and who is the current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body, shall be paid a weekly allowance of $6.35 if he/she is appointed by his/her employer to perform first aid duty.

46.—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
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.

47.—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 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) 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 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 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 (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 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 a 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 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.

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.

(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 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.

48.—GRIEVANCE/DISPUTE SETTLING PROCEDURE

The parties agree that management, shop stewards and union officials will exhaust the negotiating process before time is lost by employees.

(i) Where any dispute or grievance arises the problem should first be discussed between the employee and his or her supervisor and if requested by the employee, a shop steward may be present.

(ii) If the dispute or grievance is unresolved the employee may then discuss the matter with his or her manager.

(iii) If the dispute or grievance is unresolved then the employee and his union representative shall confer with the manager.

(iv) If the dispute or grievance is still unresolved the matter should be referred to the union official for discussion with management.

(v) Until the dispute or grievance is determined in accordance with the above procedure normal work shall continue, without prejudice.

(vi) If the matter is still not resolved it shall be referred to the Industrial Relations Commission for decision.

(vii) Before the taking of any industrial action, the Company will be given 24 hours notice of a dispute to resolve the matter.

This procedure does not prevent the Company from instantly dismissing an employee for proven gross misconduct after notifying the Shop Steward.

49.—SUPERANNUATION

(1) Application

(a) Subject to the provisions of subclause (3)—Exemptions hereof, each employer bound by the provisions of this award shall execute an agreement to become a participating employer in the preferred or an approved Occupational Superannuation Scheme.

(b) For the purpose of this award the preferred Occupational Superannuation Scheme is the Furniture and Allied Industries Superannuation Scheme.

(c) For the purpose of this award an approved Occupational Superannuation Scheme is one established in accordance with the operational standards for occupational superannuation schemes and has received preliminary listing from the Office of the Occupational Superannuation Commission—Interim Group.

(d) (i) An employer who participates in an approved Occupational Superannuation Scheme in accordance with this clause who intends to cease that participation and execute an agreement to become a participating employer in an alternative such scheme shall give at least 30 days' notice of that intention to the Union.

(ii) Where the Union objects to the proposed new scheme it shall refer the issue to the Western Australian Industrial Relations Commission for determination within the above 30 days' notice period, and the employer shall not implement the proposed change until the issue is determined by the Commission.

(2) Contributions

(a) The Minimum Levels of contributions to be paid by employers, based on three (3) percent of ordinary time earnings, are as follows:

(i) For full time employees, except apprentices, a payment of $52.50 per calendar month for each complete month employed.

(ii) For part time and casual employees, a payment of $36.00 per calendar month for each complete month worked.

(iii) For junior employees and apprentices, a payment of $36.00 per calendar month for each complete month worked.

(b) For the purpose of this clause a part time employee shall mean an employee employed for less than 19 hours per week.

(c) An employer shall not be required to contribute during any periods of unpaid leave or unauthorised absences of 38 ordinary hours or more. Further, an employer shall not be required to make additional contributions in respect of annual leave paid out on termination.

(d) Contributions shall be made for each calendar month an employee is a member of the scheme.

Contributions shall include periods during which the employee is in receipt of payments under the Workers' Compensation and Assistance Act, and all periods of paid leave under the terms of this Award.

(e) No contributions shall be payable for an employee during the first month of their employment with their employer.

(f) Where an employee does not work a complete month and is therefore not eligible for the set level of contributions the employer shall only be required to contribute a pro rata proportion of the contributions as prescribed by subclause (2)(a) hereof. Such pro rata contributions shall be calculated on the basis of the number of completed weeks of service during that month. For each uncompleted week of service during the month the employer may deduct one quarter of the due contributions.

(g) The payments prescribed by this subclause shall, subject to the making of an Order of the Commis-

sion, be increased on and from the 1st day of June in each year in accordance with the following:

The amount in placitum (a)(i) hereof shall equal the sum of the rates prescribed in subclauses (2), (3) and (4) of Clause 8.—Wages for classification Furniture Making Employee, Groups 3 and 5, multiplied by 0.065.

The amount in placita (a)(ii) and (iii) hereof shall equal the sum of the rates prescribed in subclause (5) of Clause 8.—Wages for classification of apprentices First Year and Fourth Year multiplied by 0.065.

(h) Contributions in accordance with paragraph (a) hereof shall be calculated by the employer on behalf of each employee from a date one month after 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:

(i) The employer shall provide the employee with an application to join the Scheme and documentation explaining the Scheme within one week of employment commencing.

(ii) If the employee fails to return to the employer a completed application to join the Scheme within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant superannuation information, the letter of denial set out in paragraph (vi) hereof and application to join the Scheme.

(iii) Where the employee completes and returns the letter of denial, no contributions need be made on that employee's behalf.

(iv) Where the employee completes and returns neither the application to join the Scheme nor the letter of denial within one week of postage, the employer shall advise either the union or the Scheme Administrator in writing of the employee's failure to return the completed form.

(v) From two weeks following the employer's advice pursuant to paragraph (iv) should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

Provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form or the return of a letter of denial, the employer shall make contributions on behalf of that employee from the date of return of the signed application form.

(vi) Letter of Denial: The letter of denial shall be in the following form:

To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand:

(1) that should I sign such form you will make contributions on my behalf; and

(2) that I am not required to make contributions on my own; and

(3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Fund or have contributions made on my behalf.

Signature: _____

Name: _____

Address: _____

_____

Classification: _____

Date: _____

(3) Exemptions

(a) Employers of employees who are covered by an approved superannuation award, order or agreement made pursuant to the Industrial Relations Act, 1979 or the Conciliation and Arbitration Act, 1904 (Commonwealth) shall be exempted from the provisions of this clause.

(b) 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.

(c) This clause shall not apply to the following employers:

(i) Geraldton Building Co.

(ii) Deleted

(iii) B. & G. Raffaele

(iv) J. Gadsen Pty Ltd

(v) William Geoffreys Pty Ltd

(vi) Jason Industries

50.—NOTIFICATION OF CHANGE

(1) Employer's 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.

(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 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, 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 union 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 union, 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 an employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

51.—ENTERPRISE FLEXIBILITY

(1) Arising out of the decision of 8 September 1989 in the State Wage Case and in consideration of the wage increases resulting from structural efficiency adjustments, employees are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

(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) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided 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) of this subclause shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

(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. Measures raised by the employer, employees or union or unions for consideration consistent with the objectives of subclause (1) hereof shall be processed through that consultative mechanism and procedure.

(3) Measures raised for consideration consistent with subclause (2) hereof shall be related to implementation of any new classification structure, and facilitative provisions contained in this award and, matters concerning training and, subject to subclause (4) hereof, any other measures consistent with the objectives of subclause (1) of this clause.

(4) 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 where such measures are not consistent with the provisions of this award, and by agreement of the parties involved shall be subject to the following requirements:

(a) the changes sought shall not affect provisions reflecting national standards recognised by the Western Australian Industrial Relations Commission;

(b) the majority of employees affected by the changes at the plant or enterprise must genuinely agree to the change;

(c) no employee shall lose income as a result of the change;

(d) the relevant union shall be entitled to be a party to the agreement where the union has members at the enterprise;

(e) the relevant union shall not unreasonably oppose any agreement;

(f) any agreement, the terms of which are inconsistent with the provisions of this award, shall be subject to approval by the Western Australian Industrial Relations Commission and, if approved, may operate as a schedule to this award and take precedence over any provision of this award to the extent of any inconsistency, or alternatively, may be registered as an agreement pursuant to the Act.

(5) Any disputes arising in relation to the implementation of subclauses (3) and (4) hereof shall be subject to the provisions of Clause 48.—Grievance/Dispute Settlement Procedure of this award.

52.—TRAINING

(1) The parties to this award recognise that in order to increase efficiency, productivity and international 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.

(c) Removing barriers to the utilisation of skills acquired.

(2) Following proper consultation in accordance with Clause 51.—Structural Efficiency, 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 furniture 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, 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 re-classification.

(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 Clause 51.—Structural Efficiency of this award, 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) of this clause, 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) of this clause 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) of this clause. In this connection, the union reserves 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 furniture industry.

(6) Any disputes arising in relation to subclauses (2) and (3) of this clause shall be subject to the provisions of Clause 48.—Grievance/Dispute Settling Procedure, of this award.

"SCHEDULE A"—INDUSTRIES AND LIST OF RESPONDENTS

Cabinetmaking and Repairing—

Lexcraft Furniture Manufacturers
M. & P. Built-In Robes
Geraldton Building Company Pty Ltd
Atelier Pty Ltd
Peter J. Warr Furniture
Stylewoods W.A. Pty Ltd
Elka Furnishing Company
Newcastle Industries
Lawson Furnishers
Ace Cabinets
B.J. Furnishings Pty Ltd
Freiberg International Pty Ltd
International Cabinets Pty Ltd
Westgate Kitchens
Associated Shopfitters Pty Ltd
Focus Shopfitters Pty Ltd
Concept Contract Interiors
Royles Partitioning and Relocating

Austral Insulation (WA) Pty Ltd
A.J. Baker and Sons
Benjamin's Furniture
Arcus Shopfitters Pty Ltd
P.S. Chester and Son
Casa Billiards WA
Fullin Furniture
Arcus Australia
Willisford (Cabinets) Pty Ltd
Pindan Constructions
Para-Quad Industries
Brown Bros Furniture
Davro Foster Furniture Manufacturers Pty Ltd
W.A. Furniture Trades Group Apprenticeship Association
DeVaugh Building Co Pty Ltd
South West Group Apprenticeship Association Inc.
Action Shopfitters
Alternative Cabinets
Artek
Artifex Furniture
Artline Holdings P/L
Braze Furniture
Moderntone Furniture Manufacturers P/L
Top Hat Furniture
Total Jarrah
Better Design Kitchens
Budget Partitioning
Burgtec Australasia P/L
Camboon Cabinets
Canning Joinery and Park Cabinetmakers
Challenge Cabinets
Citadel Products
Clarecraft Industries
Co Design
Concept Products
Condor Furnishing Co
Coniglio Joinery and Cabinet Works
Coniglio N & L Furniture
D I M Furniture
Delphine Design
Ferguson's Custom Made Furniture
Finer Pine Furniture
Fremantle Furniture Factory
Gatsby Furniture Designs
Giltedge Cabinet Makers
Group 7 Industries
Hicraft Cabinets
Histonium Furniture
Issa Furniture
Just Jarrah
M. A. Jensen Timber Products
K C Furniture
K D Woodcraft
Kent Furnishings
Marema Furniture
McFarlane's Joinery and Cabinet Works
Moscarda (J & Sons) Cabinets
Myaree Cabinet Works
Neoform
New Age Industries
Pinecraft
Pine Productions
Premier Cabinets
Premium Cabinet Makers
Q V S Shopfitters
R & R Cabinets
RTL Woodcraft
Ross's Cabinets
Scott Bros
Silvestri Cabinet Works
Status West Industries
Stirling Furniture
Supreme Kitchens
Sympari Furniture
Timms Furniture
Uzit Products
Valley Furniture
Vista Furniture
WA Glass & Aluminimum
Woodfurn Design

Chairmaking and Repairing—
Elka Furnishing Co
West Australian Fittings & Furniture Pty Ltd (W.A.F.F.)
Miss Moneypenny's (Australia) P/L
B V R Furniture
Hatakusi
Just Jarrah
Gatsby Furniture Designs
Elko Interiors Pty Ltd
Pay-Co Products Ltd
Scott Bros

Wood Carving—
T. Bezic

Wood Turning—
Western Woodturners Pty Ltd
Classic Woodturners
Western Master Furniture
Ross's Cabinets

Upholstering—
Farmer Furniture Pty Ltd
W.E. Young & Co. Pty Ltd
Torrence & McKenna Pty Ltd
Lincoln Furniture Manufacturers
T.J. Booton Upholsterers
Vita Pacific Ltd
Scalisi Fine Upholstery
Gascoigne Furniture
Dankz Furniture Co Pty Ltd
C.A. Phillips Upholsterers
Jason Industries Ltd
Burgtec Australasia P/L
I F S Designs
Long Life Furniture
Lynton Furniture
Summerbank Designs
Stylex Furniture Designs
Oshtons
M.T. Joinery P/L (Chesterfield House)
Anksla Upholsterers
All Class Upholsters
Aaron Upholsters
Focus Design
Condor Furnishing Co
Degree Upholstery
Biltfirm
Carleton Custom Upholstery
Nathan's Furniture and Floorcovering
Ramada Furniture
Redfurn Commercial Furniture
Le Rob Furnishers
Swan Valley Furniture Co
Fremantle Upholstery
Chesterfield Manufacturing Co

Wood Machining—
Joyce Corporation Pty Ltd (t/a Joyce Australia)
Geraldton Building Company Pty Ltd
Manley Furniture Co
Inglewood Products Group
Wolfenden Furniture
Peter J. Warr Furniture
Bunnings Timbacraft
M.A. Jensen Timber Products
Elka Furnishing Co
Stylwoods W.A. Pty Ltd
Associated Shopfitters Pty Ltd
Artline Holdings P/L
Atelier Furniture P/L
Just Jarrah
Jason Industries Ltd
Concept Products
Clarecraft Industries
Ferguson's Custom Made Furniture
Fremantle Furniture Factory
Furniture by Carter
Furntech Interiors
Giltedge Cabinet Makers
Total Jarrah
Hicraft Cabinets

K C Furniture
K D Woodcraft
McFarlane's Joinery & Cabinet Works
Moderntone Furniture Manufacturers P/L
Moscarda (J & Sons) Cabinets
Pinecraft
Pine Productions
Premium Cabinet Makers
Ross's Cabinets
Scott Bros
Silvestri Cabinet Works
Supreme Kitchens
Vista Furniture

Wire Mattress Making—
Joyce Corporation Ltd (t/a Joyce Australia)
Dunlop Bedding
Peacock Manufacturing Co P/L (Silent Night)

Mattress Making—
Joyce Corporation Ltd (t/a Joyce Australia)
Dunlop Bedding
Sealy of Australia (W.A.)
Peacock Manufacturing Co

French Polishing—
George's Cabinet Works (1980) Pty Ltd
Wolfenden Furniture
Carleton Custom Upholstery
Gatsby Furniture Designs
Stylewoods W.A. Pty Ltd
Finer Pine Furniture
Freiberg International Pty Ltd
Elka Furnishing Co
Pine Productions
Just Jarrah
Terry Byrne French Polisher
The Polisher's
Total Jarrah
Mick's Furniture Polishing

Veneering—
Freiberg International Pty Ltd
Atelier Furniture Pty Ltd
Concept Consolidated Industries
Elka Furnishing Company
Issa Furniture Industries

Metal Furniture Making—
Joyce Corporation Ltd (t/a Joyce Australia)
Jason Industries Ltd
Pay-Co Products Ltd
Arteil (W.A.) Pty Ltd
Redfurn Commercial Furniture
Ricmin Pty Ltd
Allbend Engineering
K.D.B. Engineering
Associated Shopfitters Pty Ltd
Century Engineering
Tubend Industries

Glass Trades—
Bunnings Glass
Cooling Bros. (1980) Pty Ltd
Pilkington (Aust.) Ltd
Osborne Glass and Hardware Pty Ltd
Zebra Stained Glass
Artcraft Picture Framing & Leadlighting

Floor Coverings—
Barrett Carpet Co. Pty Ltd
Oeding Floorcoverings
Northam Carpets
Bernie Uyens Carpet Service
Malco Floorcoverings Pty Ltd
Masterfloors
Fremantle Commercial Flooring
Ken Marshall Floorcoverings
Decor Interior Carpets
Integrity Carpets
Nathan's Furniture and Floorcovering

Blinds and Awnings—
Australian Window Furnishings (Welshpool) Pty Ltd
Westral
Swan Blinds
Victory Blinds
Wylde's Vertical Drapes
Verosol (Australia) Pty Ltd
Curtain Decor
A.B.C. Blinds
Vista Blinds
Ausblinds
Kresta
Prima Vera
Bayliss Blinds
Smith Copeland
Allianz Manufacturing Industries
Eagle Blinds

Picture Framing—
R. White and Sons
Accent Framers
Willeton Picture Framers
Pictures Plus
Quarrells Picture Framing
Langham Picture Framers
Framecor
West Coast Picture Framers & Gallery
Gallery 350
Apple Picture Framers
Wendy's Framing Centre
Artcraft Picture Framing and Leadlighting
Proforma Art Shop
Art Framers
Artifax Gallery
Art Heritage
Ausframe Picture Framing and Gallery
Artworks
Prestige Art
Omega-Select Picture Framers
Novel Art

Wicker Work—
The Royal Western Australian Institute for the Blind

Iron Work for Wicker Work—
The Royal Western Australian Institute for the Blind.

LIST OF RESPONDENTS

Aaron Upholsterers
2 Cressall Road, BALCATTA 6021

ABC Blinds
139 Winton Road, JOONDALUP 6027

Accent Framers
32 Railway Parade, SUBIACO 6008

Ace Cabinets
22 Mooney Road, BAYSWATER 6053

Action Shopfitters
3/79 Crocker Dve, MALAGA 6062

A.J. Baker and Sons
209-215 Stirling Hwy, CLAREMONT 6010

Allbend Engineering
6 Burgay Court, OSBORNE PARK 6017

All Class Upholstery
8 Boag Road, MORLEY 6062

Allianz Manufacturing Industries
57 Robinson St, BELMONT 6104

Alternative Cabinets
5/99 Catherine St, MORLEY 6062

Anksla Upholsterers
6/86 Collingwood St, OSBORNE PARK 6017

Apple Picture Framers
80 Scarborough Bch Road, SCARBOROUGH 6019

Arcus Australia
P.O. Box 83, WEMBLEY 6014

Artcraft Picture Framing & Leadlighting
37 Belmont Ave, BELMONT 6104

Arteil (WA) Pty Ltd
138 Garling St, O'CONNOR 6163

Artek
35 McCoy St, MYAREE 6154

Art Framers
1 Leura Ave, CLAREMONT 6010

Art Heritage
611 Hay St, JOLIMONT 6014

Artifax Gallery
8 Yampi Way, WILLETON 6155

Artifex Furniture
177 Bannister Road, CANNING VALE 6155

Artline Holdings P/L
303 Selby St, OSBORNE PARK 6017

Artra
20 Abrams St, BALCATTA 6021

Artworks
87 High St, FREMANTLE 6160

Associated Shopfitters Pty Ltd
Victoria Road, MALAGA 6062

Atelier Pty Ltd,
11 Whyalla Street, WILLETON 6155

Ausblinds
Seabrook Way, MEDINA 6167

Ausframe Picture Framing
291 Great Eastern Hwy, MIDLAND 6056

Australian Window Furnishings (Welshpool) Pty Ltd
46 Felspar Road, WELSHPOOL 6106

Austral Insulation (W.A.) Pty Ltd
1 Denninup Way, MALAGA 6062

Barrett Carpet Co. Pty Ltd
1 Neil Street, OSBORNE PARK 6017

Bayliss Blinds
93 York Street, SUBIACO 6008

Benjamin's Furniture,
2 Hayley Road, MADDINGTON 6107

Bernie Uyen's Carpet Service
135 Landsdale Road, LANDSDALE 6065

Better Design Kitchens
27 Westchester Road, MALAGA 6062

Biltfirm
34 Hutton Street, OSBORNE PARK 6017

B.J. Furnishings Pty Ltd
Unit 3/75 Crocker Drive, MALAGA 6062

Braze Furniture
Werribee Road (Cnr McMullan St), WUNDOWIE 6560

Brown Bros. Furniture
25 Sparks Road, HENDERSON 6166

Budget Partitioning
80 Goodwood Road, RIVERVALE 6103

Bunnings Glass
14 Ballantyne Road, WELSHPOOL 6106

Bunnings Timbacraft
100 Pilbara Road, WELSHPOOL 6106

Burgtec Australasia P/L
3 Kirke St, BALCATTA 6021

B V R Furniture
4 Hines Road, O'CONNOR 6163

Camboon Cabinets
16 Mooney St, BAYSWATER 6053

Canning Joinery & Park Cabinetmakers
206 Star St, WELSHPOOL 6106

C.A. Phillips Upholsterers
10 Gympie Way, WILLETON 6155

Carleton Custom Upholstery
9 Foundry St, MAYLANDS 6051

Casa Billiards W.A.
386 Scarborough Beach Road, OSBORNE PARK 6017

Century Engineering
322 Camboon Road, MALAGA 6062

Challenge Cabinets
74 Kent Way, MALAGA 6062

Chesterfield Manufacturing Co
8 Victoria Road, MALAGA 6062

Citadel Products
3/267 Victoria Road, MALAGA 6062

Clarecraft Industries
16 Davison Road, MADDINGTON 6109

Classic Woodturners
77 Bickley Road, BECKENHAM 6107

Co Design
680 Murray St, WEST PERTH 6005

Concept Consolidated Industries
55 Hector Street, OSBORNE PARK 6017

Concept Products
26 Catalano Road, CANNING VALE 6155

Condor Furnishing Co
72 Collingwood St, OSBORNE PARK 6017

Coniglio Joinery & Cabinet Works
13 Wildon St, BELLEVUE 6056

Coniglio N & L Furniture
6 James St, BELLEVUE 6056

Cooling Bros Glass
177 Oxford Street, LEEDERVILLE 6007

Curtain Decor
Building 6, Midland Enterprise Building, MIDLAND 6065

Dankz Furniture Co Pty Ltd
McDonald St, OSBORNE PARK 6017

Davro Foster Furniture Manufacturers Pty Ltd
44 Ledgar Road, BALCATTA 6021

Decor Interior Carpets
131 Summers St, EAST PERTH 6004

Degree Upholstery
2/8 Halley Road, BALCATTA 6021

Delphine Design
1/5 Harold St, DIANELLA 6061

De Vaugh Pty Ltd
Lot 12 Hayles St, BUNBURY 6230

D I M Furniture
4 Whyalla Way, WILLETON 6155

Dunlop Bedding
Stockdale Road, O'CONNOR 6163

Eagle Blinds
12/51 Prindiville Dve, WANGARA 6065

Elka Furnishing Company,
58 Dellamarta Road, WANNEROO 6065

Elko Interiors Pty Ltd
28 McCoy St, MELVILLE 6156

Farmer Furniture
Gympie Way, WILLETON 6155

Ferguson's Custom Made Furniture
8 Malland Road, MYAREE 6155

Finer Pine Furniture
2/35 Berriman Dve, WANGARA 6065

Focus Design
12 Carbon Court, OSBORNE PARK 6017

Focus Shopfitters Pty Ltd
139 Winton Road, JOONDALUP 6027

Framecor
4 Vale Court, MALAGA 6062

Freiberg International Pty Ltd
91-97 Kensington St, EAST PERTH 6004

Fremantle Commercial Flooring
2/32 Crompton Road, ROCKINGHAM 6068

Fremantle Furniture Factory
38 Henry St, FREMANTLE 6160

Fremantle Upholstery
North Lake Road, (Cnr Leach Hwy), MYAREE 6154

Fullin Furniture
2 Muriel Road, BAYSWATER 6053

Furniture By Carter
25 Laurence Road, WALLISTON 6076

Furntech Interiors
123 Dowd St, WELSHPOOL 6106

Gallery 350
360 Hay St, SUBIACO 6008

Gascoigne Furniture
7 Elliott Road, MIDVALE 6056

Gatsby Furniture Designs
North Lake Road, (Cnr Leach Hwy), MYAREE 6154

George's Cabinet Works (1980) Pty Ltd,
76 Albert Street, OSBORNE PARK 6017

Geraldton Building Company Pty Ltd,
Ocean Street, GERALDTON 6530

Giltedge Cabinet Makers
89 Dixon Road, ROCKINGHAM 6168

Group 7 Industries
26 Wells St, BELLEVUE 6056

Hatakusi
38 Welshpool Road, WELSHPOOL 6106

Hicraft Cabinets
290 Scarborough Bch Road, OSBORNE PARK 6017

Histonium Furniture
41 Sarich Crt, OSBORNE PARK 6017

I F S Designs
52 Rogers Way, LANDSDALE 6065

Inglewood Products Group,
Victoria Road, MALAGA 6062

Integrity Carpets
6 Dayana Cl, MIDVALE 6056

International Cabinets Pty Ltd
12 Stretton Place, BALCATTA 6021

Issa Furniture
15 River Road, BAYSWATER 6053

Jason Industries
Pilbara Street, WELSHPOOL 6106

Joyce Corporation Ltd t/a Joyce Australia
68 Forsyth Street, O'CONNOR 6163

Just Jarrah
285 Sth Western Hwy, ARMADALE 6112

K C Furniture
15 Whyally Way, WILLETTON 6155

K D B Engineering
1 Booth Place, BALCATTA 6021

K D Woodcraft
16 Ruse St, OSBORNE PARK 6017

Ken Marshall Floorcovering
4 Randell St, WEST PERTH 6005

Kent Furnishings
3 Munt St, BAYSWATER 6053

Kresta Blinds Ltd
Unit 6, 505 Scarborough Bch Road, OSBORNE PARK 6017

Langham Picture Framers,
657 Beaufort Street, MT LAWLEY 6050

Le Rob Furnishers
20 King Edward Road, OSBORNE PARK 6017

Lexcraft Furniture Manufacturers
69 Collingwood St, OSBORNE PARK 6017

Lincoln Furniture Manufacturers,
85 Stirling Highway, NEDLANDS

Long Life Furniture
116 Beechboro Road, BAYSWATER 6053

Lynton Furniture
4 Macadam Pl, BALCATTA 6021

M & P Built-In Robes,
40 Banksia Street, WELSHPOOL 6106

M.A. Jensen Timber Products
P.O. Box 406, BUSSELTON 6280

Malco Floorcoverings Pty Ltd
6 Finlay Place, WANGARA 6065

Marema Furniture
35 Clayton St, BELLEVUE 6056

Masterfloors
567 Newcastle St, PERTH 6000

Manley Furniture,
189 Sussex Street, MAYLANDS 6051

McFarlane's Joinery & Cabinets Works
32 King Edward Road, OSBORNE PARK 6017

Mick's Furniture Polishing
4/21 Denninup Way, MALAGA 6062

Miss Moneypenny's (Aust) P/L
10 Crocker, Dve, MALAGA 6062

Moderntone Furniture Manufacturing P/L
Winchester Road, BIBRA LAKE 6163

Moscarda (J & Co) Cabinets
8 Delawney St, BALCATTA 6021

M.T. Joinery P/L
14 Stanhope Gdns, MIDVALE 6056

Myaree Cabinet Works
5 Malland Way, MYAREE 6154

Nathan's Furniture and Floorcovering
1851 Albany Highway, MADDINGTON 6109

Neoform
26 Clavering Road, BAYSWATER 6053

New Age Industries
2/211 Balcatta Road, BALCATTA 6021

Newcastle Industries
9 Roberts Street, OSBORNE PARK 6017

Northam Carpets,
149 Fitzgerald St, NORTHAM 6401

Novel Art
7/48 Prindiville Drv, WANGARA 6065

Oeding Floorcoverings
9 Marryat Crt, HAMILTON HILL 6163

Omega-Select Picture Framers
4/1 Winton Road, JOONDALUP 6027

Osborne Glass and Hardware Pty Ltd
30 Walters Drive, OSBORNE PARK 6017

Oshtons
510 Guildford Road, BAYSWATER 6053

Para-Quad Industries
10 Selby St, SHENTON PARK 6008

Pay-Co Products
15 Malcolm Road, MADDINGTON 6107

Peacock Manufacturing Co (Silent Night)
22 Hazlehurst Road, KEWDALE 6105

Peter J. Warr Furniture,
125 Dowd Street, WELSHPOOL 6106

Pictures Pluss
95 Erindale Road, BALCATTA 6021

Pilgrim Furniture
6 Powell St, OSBORNE PARK 6017

Pilkington (Aust) Pty Ltd
79 McCoy St, MYAREE 6154

Pindan Constructions
P.O. Box 93, BELMONT 6104

Pinecraft
4 Winchester Road, BIBRA LAKE 6164

Pine Productions
6 Artello Bay Road, MIDVALE 6056

Premier Cabinets
49 Champion Drive, KELMSCOTT 6111

Prestige Arts & Crafts
rear 555 Murray St, PERTH 6000

Prima Vera Vertical Blinds
26 Gribble Road, GWELUP 6018

Proforma Art Shop
160 Rokeby Road, SUBIACO 6008

P.S. Chester and Son
P.O. Box 65, GERALDTON 6530

Quarrells Picture Framing
642 Newcastle Street, LEEDERVILLE 6007

Q V S Shopfitters
39 Berriman Drive, WANGARA 6065

Ramada Furniture
40 Coulson Way, CANNING VALE 6155

R & R Cabinets
4/15 Ryelane Road, MADDINGTON 6109

Redfurn Commercial Furniture
104 Goodwood Pde, RIVERVALE 6103

Ricmin Pty Ltd
16 Lower Park Road, MADDINGTON 6107

Ross's Cabinets
57 James St, GUILDFORD 6055

Royal West Australian Institute for the Blind
134 Whatley Crescent, MAYLANDS 6055

Royle's Partitioning and Relocating
5 Stretton Place, BALCATTA 6021

R T L Woodcraft
14 Bishop St, JOLIMONT 6014

R. White and Sons
514 Guildford Road, BAYSWATER 6053

Scalisi Fine Upholstery
5 Marchant Way, MORLEY 6062

Scott Bros
26 Knutsford St, FREMANTLE 6160

Sealy of Australia (WA)
4 Hubert St, BELMONT 6104

Smith Copeland
46 Felspar Road, KEWDALE 6106

South West Group Apprenticeship Association Inc.
Unit 4, 101 Spencer St, BUNBURY 6230

Status West Industries
9 Moojebing St, BAYSWATER 6053

Stirling Furniture
60 MacDonald St, OSBORNE PARK 6017

Stylewoods WA Pty Ltd,
43 McDonald Street, OSBORNE PARK 6017

Stylex Furniture Designs
25 Dellamarta Road, WANGARA 6065

Summerbank Designs
36 Bannick Crt, CANNING VALE 6155

Supreme Kitchens
2 Cullen St, BAYSWATER 6053

Swan Blinds
32 Ewing St, BENTLEY 6102

Swan Valley Furniture Co
28 Morgan Road, ROCKINGHAM 6168

Sympari Furniture
8 Bassendean Road, BAYSWATER 6053

T. Bezic,
67 Gordon Street, OSBORNE PARK 6017

Terry Byrne French Polisher
8 Macadam Place, BALCATTA 6021

The Polisher's
11 Vulcan Road, CANNING VALE 6155

Timms Furniture
12 Malland St, MYAREE 6154

T.J. Booton Upholsterers
34 Drake Street, OSBORNE PARK 6017

Torrence & McKenna Pty Ltd
211 Plain Street, EAST PERTH 6004

Total Jarrah
13 Zeta Crescent, O'CONNOR 6163

Tubend Industries
5 Vivian Road, RIVERVALE 6103

Uzit Products
24 Denninup Way, MALAGA 6062

Valley Furniture
50 Owen Road, KELMSCOTT 6111

Verosol (Australia) Pty Ltd
194 Campbell St, BELMONT 6104

Victory Blinds
3/9 Prindiville Drive, WANGARA 6065

Vista Blinds
40 Prindiville Drive, WANGARA 6065

Vista Furniture
6 Davison St, MADDINGTON 6109

Vita Pacific Ltd
36 Magnet Road, CANNING VALE 6155

W.A. Furniture Trades' Group Apprenticeship Association
1st Floor, 211 Balcatta Road, BALCATTA 6021

W.A. Glass & Aluminium
104 Belmont Ave, BELMONT 6104

W.E. Young & Co. Pty Ltd,
19 River Road, BAYSWATER 6053

Wendy's Framing Centre
87 Catalano Road, CANNING VALE 6155

West Australian Fitting & Furniture Pty Ltd (WAFF)
99 Frobisher Road, OSBORNE PARK 6017

West Coast Picture Framers & Gallery
69 Hector St (West), OSBORNE PARK 6017

Western Master Furniture
18/22 Albany Highway, MADDINGTON 6109

Western Woodturners Pty Ltd,
71 Gordon Street, OSBORNE PARK 6017

Westgate Kitchens
125 Barrington St, BIBRA LAKE 6163

Westral
Cnr Bannister Road & Sherman St, CANNING VALE 6155

Willisford Interiors Pty Ltd
P.O. Box 78, BENTLEY 6102

Wolfenden Furniture,
Victoria Road, MALAGA 6066

Woodfurn Design
22 Stanhope Gardens, MIDVALE 6056

Wylde's Vertical Drapes
19 Rudloc Road, MORLEY 6062

Zebra Stained Glass
Unit 3/89 Norma Road, MYAREE 6154

SCHEDULE "B"—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, W.A.

DATED at Perth this 1st day of February 1985.

GOLF LINK AND BOWLING GREEN EMPLOYEES' AWARD, 1993
No. 16 of 1967.

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 February, 1996

J. CARRIGG,
Registrar.

"Golf Link and Bowling Green Employees' Award, 1993"

1—TITLE

This Award shall be known as the "Golf Link and Bowling Green Employees' Award, 1993" as amended and consolidated and replaces Award No. 12 of 1961.

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

3.—AREA AND SCOPE

This award shall operate over the whole of the State of Western Australia and shall apply to employees eligible for membership in the applicant union and who are engaged in the formations and maintenance of Golf Links and Bowling Greens and of all gardens and lawns in connection therewith; provided that this award shall not apply to employees employed by Municipalities or Local Governing Authorities.

4.—TERM

The term of this award shall be for a period of three years from the beginning of the first pay period commencing after the date hereof. (The date of this award is 22nd of December, 1967).

5.—HOURS

(1) (a) Subject to this clause and except as provided elsewhere in this award, the ordinary hours of work shall be 76 per fortnight;

(b) The ordinary hours of work shall be exclusive of meal breaks and be so rostered that an employee shall not be required to commence work on more than 10 days in each fortnight;

(c) Each ordinary hours work period shall not be less than four nor more than 10 ordinary hours, and shall be worked within a spread of shift not exceeding 12 hours. Provided that no employee shall be rostered to work less than three hours consecutively exclusive of meals breaks.

(2) (a) The employer shall have the right to roster the ordinary hours of work for each employee according to the needs of the business, but the employer shall, in the following circumstances, seek the agreement of each employee:

(i) where the work is to be rostered over more than seven consecutive work period; or

(ii) where the proposed rostered hours of work include work periods exceeding eight ordinary hours work.

(b) Rostered Days Off shall be so arranged that, in circumstances where an employee's work roster includes work period where more than eight ordinary hours are regularly worked, two of such days shall be consecutive.

6.—MEAL PERIOD

(1) Every employee shall be entitled to a meal break of not more than one hour after not more than six hours of work.

Where it is not possible for the employer to grant a meal break on any day, the said meal break shall be treated as time worked and the employee shall be paid at the rate applicable to the employee at the time such meal break is due, plus fifty percent of the prescribed ordinary hourly rate applicable to such employee, until such time as the employee is released for a meal.

(2) An employee required to work overtime for more than two hours, without being notified on the previous day or earlier, that he/she will be so required to work, shall be supplied with a meal by the employer or be paid $6.30 in lieu thereof.

7.—ADDITIONAL RATES FOR ORDINARY HOURS

(1) All time worked during the ordinary hours of work on Saturdays and Sundays shall be paid for at the rate of time and a half.

(2) The provisions of subclause (1) of this clause shall not apply to any work performed on a holiday and which the provisions of subclause (2) of Clause 17.—Holidays of this award are applicable.

8.—OVERTIME

(1) Overtime shall mean all work performed outside of the rostered ordinary hours of work or outside the daily spread of shift.

(2) All overtime worked between Monday to Friday, both inclusive, shall be paid for at the rate of time and a half for the first two hours and double time thereafter. All overtime worked on a Saturday or Sunday shall be paid for at the rate of double time.

(3) An employee recalled to work overtime after leaving the employer's work establishment shall be paid for at least three hours at the appropriate rate, and time reasonably spent in getting to and from work shall be counted as time worked.

(4) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least eight consecutive hours off duty between successive work periods. An employee (other than a casual) who works so much overtime between the termination of one ordinary hours, work period and the commencement of the next ordinary hours work period that he/she has not had a least eight consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instructions of the employer, the employee resumes or continues work without having had such eight consecutive hours off duty he/she shall be paid at double tates until he is released from duty for such period and he/she shall then be entitled to be absent until he/she has eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(5) In computing overtime each day shall stand alone but:

(a) 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 clause; or

(b) when an employee works overtime continuous with an ordinary hour's work period to which the provisions of subclause (1)(d) of Clause 5.—Hours of this award applies, such overtime work shall be paid for at the overtime rate appropriate for the day upon which the overtime work is actually performed.

(6) (a) By agreement between the employer and an employee, time off during ordinary hours shall be granted instead of payment of overtime pursuant to the provisions of this clause. Such time off shall be calculated in accordance with subclause (2) of this clause;

(b) Subject to paragraph (c) of this subclause all time accrued in accordance with paragraph (a) of this subclause shall be taken within eight weeks of it being accrued at a time agreed between the employer and the employee when the agreement is made;

(c) Where such time off in lieu is not taken in accordance with paragraph (b) of this subclause it shall, by agreement between the employer and the employee, be taken in conjunction with a future period of annual leave or the employer shall discharge his/her obligation to provide time off in lieu by making payment for the accrued time off when the employee's wages are paid at the end of the next pay period;

(d) Upon termination of an employee's service with an employer, the employee shall be paid for all accrued time off which remains owing to the employee at the date of termination.

(7) Notwithstanding anything contained in this award:

(a) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements;

(b) No organisation, 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 clause.

9.—CONTRACT OF SERVICE

(1) Except for casual employees, the contract of service shall be terminable in accordance with the following provisions:

(a) In the first and second years of continuous service—by the giving of one week's notice on either side or the payment or forfeiture, as the case may be, of one day's pay;

(b) In the third and succeeding years of continuous service—by the giving of two weeks' notice on either side or the payment or forfeiture, as the case may be, of two week's pay. Provided that an employer and an employee may agree to reduce the notice period to no less than one week.

(2) In the case of subclause (1)(a) and (b) of this clause the notice period shall commence to operate on and from the date it is given provided the notice is given prior to the commencement of the ordinary hours work period on that day.

(3) Notwithstanding the provisions of this clause, an employer may dismiss an employee for misconduct, in which case, the employee shall be paid all wages due up to the time of dismissal.

(4) An employee may be engaged on a probationary period of not longer than three months, during which time it will be possible for either the employer or employee to terminate the contract of service with one day's written notice.

(5) (a) The employer is entitled to deduct payment for any day or part of a day upon which an employee cannot be usefully employed because of a strike by the union party of 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 employee'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.

(6) It shall be a term of employment that the employer may direct an employee to carry out such duties as are within the limits of the employees skill, competence and training.

10.—CASUAL EMPLOYEES

(1) (a) A casual employee is an employee engaged and paid as such and shall be paid at the rates prescribed herein for the work upon which he/she is engaged, with the addition of 20 percent;

(b) Casual employees working on public holidays shall be paid at double time and a half.

(2) The services of a casual employee may be terminated by one hour's notice, given by either side, on any day.

(3) Casual employees shall not be engaged for less than two consecutive hours per time.

(4) A casual employee shall not receive any of the entitlements prescribed in Clauses 15.—Absence Through Sickness, 16.—Annual Leave and 29.—Bereavement Leave of this award.

11.—PART-TIME EMPLOYEES

Notwithstanding anything contained elsewhere in this award employees may be employed on a part-time basis and the following conditions shall apply:

(1) A part-time employee shall mean an employee who, subject to the provisions of Clause 5.—Hours of this award regularly works no less than 20 ordinary hours per fortnight nor less than three hours per work period.

(2) Part-time employees shall be entitled to payment for annual leave, holidays, bereavement leave and sick leave on a pro-rata basis in the same proportion as the number of ordinary hours worked per fortnight bears to 76 hours.

(3) A part-time employee may work additional hours to his/her fortnightly contract of service at ordinary rates, subject only to the normal provisions applying to a full-time employee, where the employee has previously indicated a willingness to work extra hours or where the extra hours were arranged prior to the completion of the employee's previous contracted working day. Provided that a part-time employee shall not be required to work an extra day/part day over and above his/her fortnightly contract of service.

12.—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.

13.—JUNIOR EMPLOYEES

(1) Junior Employees shall not be employed in any occupation to which apprentices may be taken pursuant to the Industrial Training Act 1975.

(2) The minimum fortnightly rates of wages for work in ordinary time to be paid to junior employees shall be as follows:

	Percentage of the appropriate Adult total rate:
Under 16 years of age	50
At 16 years of age	60
At 17 years of age	70
At 18 years of age	80
At 19 years of age	Full Adult Rate

14.—APPRENTICES

(1) Subject to the provisions of this clause the Apprenticeship Regulations, 1972, are incorporated in and form part of this award.

(2) Apprentices may be taken to the Green Keeping Branch of the Horticulture Trade.

(3) Every Agreement of Apprenticeship shall be for a period of four years unless, with the approval of the Western Australian Industrial Relations Commission, that period is reduced or deemed to have commenced prior to the date of the agreement.

(4) Where classes are provided by the Technical Education Division of the Education Department in the locality in which the apprentice is employed, the hours of attendance at such classes shall be eight hours per week for the first, second and third year of the Apprenticeship.

(5) Apprentices may be taken in the ratio of one apprentice for every two or fraction of two (the fraction being not less than one) journeyman and shall not be taken in excess of that ratio unless:

(a) The union concerned so agree; or

(b) the Commission so determines.

(6) Apprentices shall be paid in accordance with subclause (3) of Clause 27.—Wages of this award.

15.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at his/her 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 6 1/3 hours pay for each completed month of 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 his/her 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 10 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 his/her inability to attend for work, the nature of his/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 two 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 an absence of two days or less up to maximum of two such days absence in any year of service.

(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/she 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 only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she 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/she is unable to attend for work on the working day next following his/her 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/she 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 the Long Service Leave provisions published in Volume 62 of the Western Australian Industrial Gazette at pages 1-6, 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 shall not apply to a casual employee.

16.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided a period of four consecutive weeks' leave with payment as prescribed in paragraph (b) of this clause shall be allowed annually to an employee by his/her employer after a period of 12 months' continuous service with such employer.

(b) (i) During a period of annual leave an employee shall receive a loading of 17.5 percent calculated on the ordinary rate of wage prescribed in Clause 27.—Wages of this award.

(ii) The annual leave loading provided by this subclause, shall not be payable when annual leave is taken in advance of the entitlement prescribed in subclause (1)(a) of this clause. 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)(a) of this clause.

(iii) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(2) 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 7.6 hour day, being an ordinary working day, for each such holiday observed as aforesaid.

(3) If, after one month's continuous service in any qualifying 12 monthly period, an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid 12 2/3 hours' pay at his/her ordinary rate of wage in respect of each completed month of continuous service.

(4) Any time in respect of which an employee is absent from work, except time for which he/she is entitled to claim sick pay 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/her right to annual leave.

(5) In the event of an employee being employed by an employer for portion only of a year, he/she shall only be entitled, subject to subclause (3) of this clause, to such leave on full pay as is proportionate to his/her 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/she shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(6) (a) An employee whose employment terminates after he/she has completed a 12 month qualifying period and who has not been allowed the leave prescribed under the clause in respect of that qualifying period shall be given payment in lieu of that leave, or in a case to which subclause (7) 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 the qualifying period.

(7) With the consent of the employer and the employee annual leave may be taken in more than one period provided that one of these periods shall not be less than two weeks.

(8) By arrangement between the employer and the employee annual leave may be allowed to accumulate from year to year but where the leave to which an employee is entitled or any portion thereof is allowed to accumulate to meet the convenience of the employee the ordinary wage applicable to the employee at the date at which he/she became entitled to the leave unless the employer agrees in writing that the wage be that applicable at the date the leave commences.

(9) (a) At the request of an employee and with the consent of the employer, annual leave prescribed by this clause may be given and taken before the completion of 12 months' continuous service as prescribed in 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 (5) 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 (1) 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.

(10) The provisions of this clause shall not apply to casual employees.

17.—HOLIDAYS

(1) (a) Subject to any other provision of this award, the following days or the days observed in lieu shall be observed as a holiday without deduction of pay: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, State 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) of this subclause falls on an employee's rostered day off the holiday shall be observed on the next rostered working day. In this case the substituted holiday shall be the holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) (a) All work done on a holiday shall be paid at the rate of double time and a half, with a minimum payment as for four hours work;

(b) The minimum payment of four hours provided by paragraph (a) of this subclause, shall not apply in the case of an employee who, having commenced an ordinary hours work period on the day preceding the holiday, works less than four hours on that holiday;

(c) The employer may discharge the obligation to make payment, in accordance with paragraph (a) of this subclause, by paying the employee at the rate of ordinary time for each hour worked and allowing the employee to be rostered off duty in ordinary hours without deduction of pay, for a period equal to the number of hours worked on the holiday multiplied by time and a half. Subject to paragraph (d) of this subclause such rostered time shall be taken within eight weeks of the date of accrual at a time agreed between the employee and employer;

(d) Where such time off in lieu is not taken in accordance with paragraph (c) of this subclause it shall, by agreement between the employer and the employee, be taken in conjunction with a future period of annual leave or the employer discharges his/her obligations to provide time off in lieu by making payment for the accrued time off when the employee's wages are paid at the end of the next pay period;

(e) Upon termination of an employee's service with an employer, the employee shall be paid for all time off which remains owing to the employee at the time of termination.

(3) The provisions of this clause may be altered by agreement in writing between the union and the employer concerned.

(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 purpose of this award within the district or locality specified in the proclamation.

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

18.—RECORD

(1) Each employer shall keep a record at each establishment containing the following information relating to each employee:

(a) The names and address given by the employee;

(b) the class of work performed;

(c) the commencing and finishing times of each period of work each day;

(d) the number of ordinary hours and the number of overtime hours worked each day and the totals for each pay period; and

(e) the wages and any allowances paid to each employee each pay period and any deductions made therefrom.

(2) (a) At the time of payment of wages the employee may be given a pay slip showing that part of the record specified in paragraphs (d) and (e) of subclause (1) of this clause with respect to the pay period for which payment is made;

(b) If a pay slip is not given to the employee as prescribed in paragraph (a) of this subclause the employee shall be required to inspect the record and to sign it, if correct, at the time of payment. The employer shall not unreasonably withhold the record from inspection by the employee.

(3) (a) The record may be maintained in one or more parts depending on the system of recording used by the employer provided that if the record is maintained in more than one part, those parts shall be kept in such a manner as will enable the inspection referred to in subclause (2) and (4) of this clause to be conducted at the one establishment;

(b) The employer may, if it is part of normal business practice, periodically send the record or any part of the record to another person, provided that the provision of this paragraph shall not relieve the employer from the obligations with respect to provisions contained elsewhere in this clause;

(c) Subject to this clause the record shall be available for inspection by a duly authorised official of the union on the employers premises from Monday to Friday between the hours of 9.00am and 5.00pm (excepting the period of 1.00pm and 2.00pm). In the case of any establishment which is only open for business after 5.00pm on a Saturday or Sunday the record shall be open for inspection during all business hours of that establishment;

(d) The union official shall be permitted reasonable time to inspect the record, and if he/she requires take an extract or copy of any of the information contained therein.

(4) (a) If for any reason, the record is not available for inspection by the union official when the request is made, the union official and the employer or his/her agent may fix a mutually convenient time for the inspection to take place;

(b) If a mutually convenient time cannot be fixed, the union official may advise the employer in writing that he/she requires to inspect the record in accordance with the provisions of this award and shall specify the period contained in the record which the union official requires to inspect;

(c) Within 10 days of receipt of such advice:

(i) employers who normally keep the record at a place more than 40 kms from GPO Perth shall send a copy of the record specified to the office of the union; and

(ii) employers who normally keep the record at a place less than 40 kms from GPO Perth shall make the record available to the union official at the time specified by that official. If the record is not then made

available to the union official the employer shall within three days send a copy of that part of the record specified to the office of the union.

(d) In the event of a demand made by the union which the employer considers unreasonable the employer may apply to the Western Australian Industrial Relations Commission for direction. An application to the Western Australian Industrial Relations Commission by an employer for direction will, subject to that direction, stay the requirements contained elsewhere in this subclause.

19.—REPRESENTATIVE INTERVIEWING EMPLOYEES

An accredited representative of the union shall, with the consent of the employer, be permitted to inspect the working place of the employer at all reasonable times and interview the employees covered by this award.

20.—BOARD OF REFERENCE

(1) The Western Australian Industrial Relations 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 Relations 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.

21.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 72 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.

22.—HIGHER DUTIES

An employee who is capable of performing and does perform all duties of a position which carries a higher rate of pay than that which he or she usually performs for a period of two hours or more in any one shift shall be entitled to the higher rate whilst so engaged.

23.—GENERAL CONDITIONS

(1) An employee, whilst using fumigants, fertilisers, hormones and/or other chemicals, shall be supplied with suitable protective clothing by the employer. Such clothing shall remain the property of the employer.

(2) Each employee shall have access to adequate washing and toilet facilities.

(3) The employer shall provide each employee with one pair of work shoes and/or work boots, suitable for the requirements of the job, upon the completion of three months' service. Such footwear shall be renewed as and when required but no employee shall be entitled to more than one pair of work shoes and/or work boots in each year of service. Such footwear shall remain the property of the employer.

(4) Each employee, called upon to work in the rain, shall be supplied by the employer with oilskins, gumboots and/or other protective clothing. Such clothing shall remain the property of the employer.

(5) An adequate first aid kit shall be provided by the employer at a place readily accessible to employees.

(6) If any disputes arise in respect of any of the provisions in this clause the matter shall be referred to the Board of Reference for determination.

24.—MOTOR VEHICLE ALLOWANCE

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties, he/she shall be paid an allowance not less than that provided for in the table set out hereunder. Notwithstanding anything contained in the 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 separable 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 the 1st day of July and end on the 30th day of June next following.

Rate of hire for use of employee's own vehicle on employer's business

(cents per kilometre)

Area and Details	Engine Displacement (in Cubic Centimetres) Over 2600cc ¢/km	1600cc 2600cc ¢/km	1600cc & under ¢/km
Rate Per Kilometre			
Metropolitan Area:	47.2	42.2	36.7
South West Land Division:	48.3	43.3	37.7
North of 23.5° South Latitude:	53.0	47.7	41.5
Rest of the State:	49.9	44.7	38.8

Schedule 2—Motor Cycle Allowance

Distance Travelled During Year on Official Business	Rate ¢/km
Rate Per Kilometre	16.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

25.—FARES AND TRAVELLING TIME

(1) An employee who, on any day or from day to day, is required to work at different clubs or away from his/her usual place of employment shall, at the direction of his/her employer, present himself/herself for work at such place as required by his/her employer at the usual starting time.

(2) For all employees required on any day to report direct to the job, the following allowance shall be paid to compensate for excess fares and travelling time from the employee's home to his/her place of work and return.

(a) On places within a radius of 27 kilometres from the GPO, Perth—95 cents a day;

(b) For each additional kilometre up to 48 kilometres 39 cents per kilometre;

(c) Subject to the provisions of paragraph (d) of this subclause work performed at places beyond 48 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 six cents per kilometre shall be paid for each kilometre in excess of 48 kilometres;

(d) In respect of work carried out from an employer's depot situated more than 48 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 Office—Nil.

(ii) On places of work beyond a radius of three kilometres but within a radius of 20 kilometres from such Post Office—95 cents per day.

(iii) For each additional kilometre up to 48 kilometres—39 cents per kilometre.

(e) Where transport to and from the job is provided by the employer from and to his/her depot or such other place more convenient to the employee as is mutually agreed upon between the employer and the employee, half the above rates shall be paid: Provided that the conveyance used for such transport is provided with suitable seating and weatherproof covering.

(3) Where an employee is required to attend a job at such distance that he/she cannot return to his/her home each night, the employer shall reimburse the employee for all reasonable expenses incurred. All travelling time, up to a maximum of eight hours in any one day, shall be paid for at ordinary rates of pay.

26.—PAYMENT OF WAGES

(1) (a) The employer may elect to pay employees in cash, by cheque or by means of a credit transfer to a bank, building society or credit union account in the name of the employee. The day that the credit transfer is credited to the employee's account shall be deemed to be the date of payment;

(b) Payment shall be made within three trading days from the last day of the pay period and if in cash or by cheque shall be made during the employee's ordinary working hours;

(c) No employer shall change its method of payment to employees without first giving them at least four weeks' notice of such change.

(2) (a) The employer shall pay employees weekly or fortnightly in accordance with subclause (1) of this clause;

(b) The method of introducing a fortnightly pay system shall be by the payment of an additional week's wages in the last weekly pay before the change to fortnightly pays to be repaid by equal fortnightly deductions made from the next and subsequent pays provided the period for repayment shall not be less than 20 weeks or some other method agreed upon by the employer and the employee.

(3) Employees, who are paid by cash or cheque, whose day off falls on a pay day shall be paid their wages upon request from the employee to the employer, prior to the employee taking the day off.

(4) An employee who lawfully terminates his/her employment, or is dismissed for reasons other than misconduct, shall be paid all wages due to him/her by the employer on the day of termination of his/her employment or as soon as practicable after the date of termination of his/her employment.

27.—WAGES

The following shall be the minimum rates of wages payable to employees covered by this award:

CLASSIFICATION	Rate Per Fortnight $
(1) Adult Employees	
Trainee (90% of Groundsperson Grade 1 rate)	561.40
Groundsperson Grade 1	623.80
Groundsperson Grade 2	630.80
Assistant Greenkeeper	675.40
Greenkeeper Tradesperson Grade 1	795.40
Greenkeeper Tradesperson Grade 2	814.00
(2) Apprentices (Percentage of Greenkeeper Tradesperson Grade 1)	%
First Year	42
Second Year	55
Third Year	75
Fourth Year	88
(3) Leading Hands (Greenkeeper Tradesperson) In addition to the appropriate rate prescribed in subclause (1) of this clause a Leading Hand shall be paid:	Extra Per Fortnight $
(a) If placed in charge of up to three other employees including at least one other Greenkeeper;	14.60
(b) If placed in charge of more than three other employees including at least one other Greenkeeper	32.20

28.—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
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.

29.—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/her employer.

(2) 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 any shift roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

30.—DEFINITIONS

"Trainee" shall mean an employee who has had no previous experience in the industry and is appointed as such for a maximum period of three months. Following the satisfactory completion of three months service, or lesser period as agreed, the employee shall be paid in accordance with the wage rate specified for a Groundsperson Grade 1.

"Groundsperson Grade 1" shall mean an employee able to perform all labouring and gardening duties required and in addition is able to operate plant and equipment excluding green cutting equipment.

"Groundsperson Grade 2" shall mean an employee with at least 12 months experience in the industry and is able to perform all labouring, gardening and plant duties. In addition the employee may have some basic servicing knowledge of plant and is able to assist the Greenkeeper in his/her duties.

"Assistant Greenkeeper" shall mean an employee who has had three years experience in the industry and is an understudy to the Greenkeeper and is capable of performing all tasks required of him/her by the Greenkeeper including the operation of all plant and equipment. In addition the employee will possess a sound knowledge of the use of chemicals.

"Greenkeeper Tradesperson Grade 1" shall mean an employee who has successfully completed a recognised Apprenticeship in the Turf Management branch of the Horticultural Trade, and who produces proof satisfactory to the employer of such qualification or who has by other means achieved a standard of knowledge equivalent thereto and is appointed, in writing, as such by the employer.

"Greenkeeper Tradesperson Grade 2" shall mean an employee who has successfully completed a recognised Apprenticeship in the Turf Management branch of the Horticultural Trade, and who produces proof satisfactory to the employer of such qualification and who has had at least three years post-apprenticeship experience and demonstrated higher skills in turf management relevant to the employer's business.

"Spread of Shift" shall mean the time which lapses from the employee's actual starting time to the employee's actual finishing time on each work period.

"Non-working Day" shall mean any day upon which an employee, pursuant to the terms of the contract of employment, is not available to the employer for the purposes of rostering the ordinary hours of work.

"Rostered Day Off" shall mean any day (other than a "Non-Working Day" as defined) upon which an employee is not rostered to work any ordinary hours of work; provided that an employee's rostered day off shall be a period of 24 hours commencing from the completion of an ordinary hours work period.

31.—SUPERANNUATION

(1) Employer Contributions:

(a) An employer shall contribute three percent of ordinary time earnings per eligible employee into one of the following Approved Superannuation Funds:

(i) Westscheme; or

(ii) an exempted Fund allowed by subclause (4) of this clause.

(b) Employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer;

(c) 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. No contributions shall be made in respect of annual leave paid out on termination or any other payments on termination.

(2) Fund Membership:

(a) Contributions in accordance with subclause (1)—Employer Contributions of this clause shall be calculated by the employer on behalf of each employee from the date one month after the employee commenced employment, unless the employee fails to return a completed application to join the Fund and the employer has complied with the following:

(i) the employer shall provide the employee with an application to join the Fund and documentation explaining the Fund within one week of employment commencing.

(ii) If the employee fails to return to the employer a completed application to join the Fund within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant superannuation information, the letter of denial set out in subclause (6) of this clause and an application to join the Fund.

(iii) Where the employee completes and returns the letter of denial, no contributions need to be made on that employee's behalf.

(iv) Where the employee neither completes and returns the application to join the Fund nor the letter of denial within one week of postage the employer shall advise either the union or the Fund Administrator in writing of the employee's failure to return the completed form.

(v) From two weeks following the employer's advice pursuant to subparagraph (iv) of this paragraph should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

(b) Part-time and casual employees shall not be entitled to receive the employer contribution mentioned in subclause (1) Employer Contributions of this clause unless they work a minimum average of 12 hours per week;

(c) Casual employees who are employed for 32 consecutive working days or less shall not be entitled to the benefits of this clause.

(3) Definitions:

"Approved Fund" shall mean any fund which complies with Australian Government's Operational Standards for Occupational Superannuation.

"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 bonus.

(4) Exemptions:

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Order:

(a) Was contributing to a Superannuation Fund, in accordance with an Order of an industrial tribunal; OR

(b) was contributing to a Superannuation 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) subject to notification to the union, was contributing to a Superannuation Fund for employees covered by this Award where such payments are not made pursuant to an Order of an industrial tribunal; OR

(d) was not contributing to a Superannuation Fund for employees covered by this Award AND

(i) written notice of the proposed alternative Superannuation Fund is given to the union; AND

(ii) contributions and benefits of the proposed alternative Superannuation Fund are no less than those provided by this clause; AND

(iii) within one month of the notice prescribed in subparagraph (i) of this paragraph being given, the union has not challenged the suitability of the proposed Fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(5) Operative Date:

This clause shall operate from the beginning of the first full calendar month following Western Australian Industrial Relations Commission approval of this clause. The approved date is the 2nd of October, 1989.

(6) Letter of Denial:

The letter of denial shall be in the following form:

"To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand:

(a) That should I sign such form you will make contributions on my behalf; AND

(b) that I am not required to make contributions of my own; AND

(c) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Fund or have any contributions made on my behalf.

.....

(Signature)

.....

(Name)

.....

(Address)

.....

(Classification)

.....

(Date)"

32.—ROSTER

(1) A roster of the working hours shall be exhibited in each establishment in such places as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show:

(a) The name of each employee;

(b) the hours to be worked by each employee each day and the breaks in shift to be taken.

(3) The roster shall be open for inspection to a duly accredited representative of the union at such times as the "Record" is so open for inspection.

(4) The roster shall be drawn up in such a manner as to show the ordinary working hours of each employee (other than a casual employee) for at least a fortnight in advance of the date of the roster and may only be altered on account of the sickness of an employee, or by mutual consent between the employee and the employer, or by the employer giving at least three days notice of such alteration to the employee.

33.—TRAINING

(1) The parties to this award recognise that in order to increase the 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;

(c) Removing barriers to the utilisation of skills required.

(2) After the insertion of the new classification structure the employer shall review the existing training programme consistent with:

(a) The current and future skill needs of the enterprise or industry;

(b) The size, structure and nature of the operations of the enterprise;

(c) The need to develop vocational skills relevant to the enterprise or industry through courses conducted on-the-job or by accredited institutions and providers.

(3) (a) Where, arising from the training programme developed in accordance with subclause (1) of this clause the employer determines that an employee should undertake additional training, that training may be undertaken 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 ordinary pay;

(b) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employers 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 also be on annual basis subject to the presentation of reports of satisfactory progress. Provided further that where an employer reimburses an employee for the cost of textbooks, those textbooks shall be retained in the employers technical library.

34.—AWARD MODERNISATION/ENTERPRISE AGREEMENTS

(1) The parties are committed to modernising the terms of the award to show 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) In conjunction with testing the new award structure the union is prepared to discuss all matters raised by the employers for increased flexibility. As such any discussion with that union must be premised on the understanding that:

(a) The majority of employees at each enterprise must genuinely agree;

(b) No employee will suffer a reduction in earnings in respect of their ordinary hours of work;

(c) The union must be party to the agreement;

(d) Where the agreement represents the consent of the employer and the majority of the employees concerned, the union will not unreasonably oppose any agreement;

(e) Agreements will be ratified by the Western Australian Industrial Relations Commission.

(3) Should an agreement be reached pursuant to this clause at a particular enterprise and that agreement required award variation, the parties will not oppose that award for that particular provision for that particular enterprise.

(4) The parties agree that under this heading any award matter can be raised for discussion.

(5) Employees within each grade are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

GOVERNMENT RAILWAYS LOCOMOTIVE ENGINEMEN'S AWARD 1973-1990
No. 13 of 1973.

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 9th day of February, 1996

J. CARRIGG,
Registrar.

"Government Railways Locomotive Enginemen's Award 1973-1990"

1.—TITLE

This Award shall be known as the "Government Railways Locomotive Enginemen's Award 1973-1990".

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

2A.—STATE WAGE PRINCIPLES—SEPTEMBER 1989

It is a term of this Award that the Union undertakes for the duration of the Principles determined by the 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.

2B.—STRUCTURAL EFFICIENCY

(1) The employer and the union shall establish an appropriate consultative mechanism for consultation and negotiation on matters affecting Westrail's efficiency and productivity.

(2) (a) Without limiting the right of either the employer or union to arbitration, any agreement (not being an enterprise bargaining agreement for the purpose of the Enterprise Bargaining Principle) agreed to by the parties through the structural efficiency process, to increase efficiency and productivity at the enterprise level, shall be subject to ratification by the Western Australian Industrial Relations Commission.

(b) Any disputed areas in the agreement may be subject to conciliation and/or arbitration. If the agreement is approved, the agreement shall operate as a Schedule to this award and take precedence over other provisions of this award to the extent of any inconsistency.

(3) Where new work arrangements have been established in accordance with the processes outlined in this clause, the employer may direct a worker to carry out such duties as are within the limits of the worker's skill, competence and training.

3.—TERM OF AWARD

This Award shall operate for a period of one month commencing from and including the date hereof.

4.—AREA AND SCOPE OF AWARD

(1) This Award shall apply only to workers employed by the employer in and about the workings of the State Railways and, subject to necessary adjustments to be agreed upon between the employer and the union, in and about the workings of any other railway over which the employer may work traffic under an agreement giving it running powers; provided that in the event of the parties being unable to arrive at such an agreement, the matter may be referred to the Western Australian Industrial Commission for decision.

(2) If electric or other power is installed by the employer as a substitute for steam haulage, workers eligible for membership of the union shall be employed to operate under the new power.

5.—INTERPRETATION

(1) "Attended barracks" means any building (including a van used to supplement the building accommodation) attended to by a whole or part-time caretaker appointed for that purpose and which is provided with bed, clean bedding, refrigerator, cooking utensils, light and lighting facilities, water and fuel; provided that if on a complaint being made it appears to a station officer that any barracks has not been properly attended, such barracks shall for that period be classed as unattended.

(2) "Dependant" means—

(a) a spouse; and/or

(b) a child or children, who relies/rely on the worker for support.

(3) "Driver's Assistant" means a worker certified as competent in accordance with Clause 6.—Qualifications, and who is required to work as the second person on a locomotive and includes locomotive trainee so qualified and fireman.

(4) "Driver's Assistant (Qualified)" means a worker qualified in driver's duties but not appointed as a driver.

(5) "Employer" means the Western Australian Government Railways Commission.

(6) "Foreign Station" means a station other than the worker's home station.

(7) "Head of the Branch" means the head of the branch of the Western Australian Government Railways Commission which has, for the time being, responsibility for locomotive operations.

(8) "Home Station" means that station pertaining to or connected with the worker's home town or centre of operation.

(9) "Locomotive Trainee" means a person undergoing training for certification as a driver and includes trainees certified as competent to work as a driver's assistant.

(10) "Main depot" means a depot where six or more locomotives are stationed.

(11) Officer in Charge" means the officer who for the time being has the care, control or oversight of the working of any section, place or part of the Railways.

(12) "Spouse" means husband or wife and includes a person of the opposite sex living in a bona fide de facto relationship with the worker.

(13) "Suburban area" means Kwinana to Midland via Fremantle or via Canning Vale, and Joondalup to Armadale via Claisebrook.

(14) "Temporary Transfer" means a transfer, for the purpose of meeting seasonal, exceptional or temporary traffic or for relief, at the expiration of which the worker will transfer to the worker's former home station.

(15) "Transfer" means a worker taking up a new home station or depot.

(16) "Unattended barracks" means any building or van used as barracks which is provided with bed, clean bedding, refrigerator, cooking utensils, light and lighting facilities, water and fuel which is wholly unattended by a caretaker.

(17) "Union" means The West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers.

(18) "Worker" means a person employed as a driver, driver's assistant, fireman, locomotive trainee or permanent cleaner.

6.—QUALIFICATIONS

(1) Engine Drivers:

No person shall be employed as a driver on the State Railways without the approval of the head of the Branch. Such driver shall pass a satisfactory examination and hold a certificate from the head of the Branch that the worker is competent. The person must also have served as a driver's assistant on the State Railways, or have been employed as a driver or acting driver on other railways either within or outside Western Australia provided that no driver or driver's assistant shall be engaged from outside a public railways service operating in the State of Western Australia unless in the opinion of the head of the Branch there is no fully qualified worker available in the employ of the State Railways. In that case the head of the Branch shall report to the employer who may thereupon authorise the appointment of such person or persons, as may be deemed necessary; provided that the Union shall receive due notice of any such proposed appointments.

(2) Driver's Assistant:

(a) No person shall be employed as a driver's assistant on the State Railways without the approval of the head of the branch. Such driver's assistant must pass a satisfactory examination and hold a certificate from the head of the branch that the worker is competent. The person must also have served as a locomotive trainee on the State Railways or have been employed as a driver, driver's assistant or trainee engineman on the other railways within or outside the State of Western Australia, provided that no person from outside a public railway service operating in the State of Western Australia shall be employed as a driver's assistant unless, in the opinion of the head of the branch, there is no worker, in the employ of the State Railways fully qualified and available. In that case the head of the branch shall report to the employer who may thereupon authorise the appointment of such person or persons as may be deemed necessary; provided that the Union shall receive due notice of any such proposed appointments.

(b) No worker shall be permitted to act as a driver's assistant before attaining the age of eighteen years unless it is agreed by the parties that the worker is capable to so act, or in default of agreement the Board of Reference so determines.

7.—EXAMINATIONS

(1) Training and examinations shall be carried out in accordance with the Driver Training Programme agreed between the employer and the Union.

(2) The services of a locomotive trainee who fails to complete any training module in accordance with the requirements of the Driver Training Programme may be terminated.

8.—PROMOTION

(1) Promotion from locomotive trainee (unqualified) to locomotive trainee (qualified) shall be made on the trainee's successful completion of the driver's assistant's examinations and on completion of 12 weeks' service (or such other duration of service as may be agreed between the employer and the union) as a locomotive trainee.

(2) Promotion from locomotive trainee (qualified) to driver's assistant (qualified) shall be made on the trainee's successful completion of the driver's examination and on completion of 182 weeks' service (or such other duration of service as may be agreed between the employer and the union) as a locomotive trainee.

(3) Promotion from driver's assistant (qualified) to driver shall be made—

(a) by reason of acting work in accordance with Clause 9.—Acting Work, of this Award, or

(b) independently of acting work as vacancies arise.

9.—ACTING WORK

(1) The date upon which a driver's assistant completes 313 days in the capacity of driver shall be taken for the purpose of determining the date when advancement to the appropriate grade of driver becomes due. To ascertain the number of days acting work performed by a worker, all acting work heretofore or hereafter shall be counted and the total number of hours worked in the higher capacity shall be divided by eight hours.

(2) For the purpose of maintaining the present order of seniority amongst the workers, the following provisions shall apply—

(a) The employer shall, as far as practicable arrange that driver's assistants in each depot shall have the benefit of acting work, according to seniority.

(b) When a driver's assistant has acted in the higher grade for 313 days, each driver's assistant in the transfer district, above the worker on the classification shall also advance to driver as provided by subclause (1) of this clause.

(3) A driver or driver's assistant may be temporarily employed as driver's assistant or locomotive trainee respectively, but whilst acting in the lower grade shall be paid the rate which the worker was receiving as driver or driver's assistant respectively and provided further that as far as practicable where a driver or driver's assistant is so employed the junior driver or junior driver's assistant as the case may be, at the particular depot, shall be rostered to work in the lower grade.

(4) A review of the work performed in advanced capacity during the previous three months shall be made after the close of the last period in the months of March, June, September and December. All acting time performed during the quarter shall be taken into account and promotions made in accordance with subclause (5) of this clause.

(5) When the average of all the advanced capacity work performed is found to be more than equal to full-time for sixteen driver's assistants as drivers, driver's assistants equal to the number in excess of that specified shall be promoted to drivers. Provided that when in any quarter the time (exclusive of Sunday time) worked in excess of forty hours by drivers exceeds, on average, 650 hours in each week the aforementioned margins shall be ten driver's assistants as drivers.

(6) In the event of an abnormal decrease in the traffic to be handled in any one year, the margins provided for in subclause (5) may be referred to a Board of Reference for review, and the Board of Reference shall have power to amend those margins in such manner as it may deem fit.

(7) Each fortnight a return, showing all the acting work performed during the previous two weeks, shall be supplied to the Secretary of the Union.

10.—WORKERS PERFORMING HIGHER DUTIES

(1) A worker engaged for more than one-half of one day or shift on duties carrying a higher rate than the worker's ordinary classification shall be paid the higher rate for such day or shift. If employed for one-half or less than one-half of one day or shift the worker shall be paid the higher rate for the time actually worked. Provided, however, that acting time of less than twenty minutes in any one day or shift shall not be counted. Provided further, that the conditions applicable to such higher duties shall apply.

(2) Should any worker be required to perform work in a lower grade such worker's wage shall not be reduced whilst employed in such capacity.

11.—RETIREMENT AND DISMISSAL

(1) No worker after six months continuous service shall leave the service of the employer until the expiration of two weeks' written notice of his intention so to do, without the approval of the employer.

(2) Except in the case of summary dismissal for misconduct, two weeks' written notice shall be given by the employer to any such worker whose services are no longer required, and the reason for his dismissal shall be included in such notice.

(3) In the event of either the employer or the worker failing to give the prescribed notice, wages shall be paid or forfeited, as the case may be, to the extent by which the actual notice given falls short of the two weeks' notice. Wages so forfeited by the worker may be deducted from any wages dues to such worker up to the time of his leaving the service of the employer: Provided that, where both parties agree to the acceptance of notice of less than two weeks, no penalty shall be imposed.

12.—(RESERVED)

13.—NO REDUCTION

Nothing in this Award shall be construed to reduce the wage of any worker below the rate actually received on the date this Award is issued.

14.—RATES OF PAY

Item No.	Grade or Designation		Total Rate per Week $
(1)	Trainee Engineman and Locomotive Trainee (unqualified):		
(a)	A junior locomotive trainee (unqualified) shall be paid at the rate of the following percentages of the appropriate rate prescribed for item number 1(b)(i) herein.		
	(i) Under 18 years	60%	225.50
	(ii) 18 years and under 19 years	70%	263.10
	(iii) 19 years and under 20 years	80%	300.60
	(iv) 20 years and under 21 years	90%	338.20
	(v) Provided that any trainee engineman under 21 years of age qualified to act as fireman and/or driver's assistant shall be paid an additional 30 cents per week.		
(b)	21 years and over:		
	(i) 1st year of adult service		375.80
	(ii) 2nd year of adult service		382.50
	(iii) Thereafter		389.40
(c)	Qualified to act as fireman or driver's assistant:		
	(i) 1st year of adult service		385.40
	(ii) 2nd year of adult service		391.90
	(iii) Thereafter		399.10
(d)	Locomotive Trainee (qualified) and when acting as a fireman or driver's assistant:		
	(i) 1st year of adult service		390.30
	(ii) 2nd year of adult service		396.70
	(iii) Thereafter		404.20
(2)	Fireman or Driver's Assistant and Locomotive Trainee (appointed):		
(a)	First Year		
	(i) Less than 1 year adult service		401.20
	(ii) Over 1 year's adult service but less than 2 years		407.50
	(iii) Over 2 years' adult service		414.70
(b)	Second year		
	(i) Less than 2 years' adult service		418.20
	(ii) Over 2 years' adult service		425.50
(c)	Third year		435.20

(3) Fireman or Driver's Assistant qualified in driver's duties and Driver's Assistant (qualified):

(a)	(i) First year	457.80
	(ii) Second year	477.00
	(iii) Third year and thereafter	489.80
(b)	When acting as a driver	505.30

(4) Shunting Fireman:

A fireman or driver's assistant who at the worker's own request or for health or disciplinary reasons is regressed to the grade of shunting fireman and is employed full-time on shunting duties, shall be paid as follows:

(a)	First year	
	(i) Less than 1 year adult service	388.70
	(ii) Over 1 year adult service but less than 2 years	395.40
	(iii) Over 2 years' adult service	402.10
(b)	Second year	
	(i) Less than 2 years' adult service	398.90
	(ii) Over 2 years' adult service	405.80
(c)	Third year and thereafter	410.90

(5) (a) Engine Driver (including Diesel Railcar Driver and Diesel Locomotive Driver):

	(i) First year	512.10
	(ii) Thereafter	516.90
	(iii) Special Class	522.60

(b) Driver (so classified) not in receipt of the rate prescribed in (a)(iii) hereof, who in any week for the most part of the rostered week's work, drives a passenger train or freight train tabled at passenger speed 105 kilometres or more in one direction. 522.60

(c) Provided that the senior twenty-five (25) per cent of all mainline drivers employed shall be paid at the rate prescribed in (a)(iii) hereof. Advancement to the higher rate will be arranged annually and will operate from the first pay period commencing on or after July 7.

The number of drivers to be advanced each year shall be determined by calculating the total number of all mainline drivers employed at July 1 and any driver in the senior twenty-five (25) per cent not previously in receipt of the higher rate shall be advanced in accordance with the foregoing provisions.

Where the number of mainline drivers previously advanced and in receipt of the higher rate is greater than twenty-five (25) per cent of all mainline drivers employed on July 1 no variation will be made.

(6) Shunting Driver:

An engineman who, at the worker's own request or for health or disciplinary reasons is regressed to the grade of shunting driver and is employed full time on shunting duties shall be paid as follows:

(a)	First year	442.90
(b)	Second year and thereafter	469.60

(7) Driver in Charge:

A driver, while required to undertake the duties of a driver in charge of an out-depot, shall work through the roster for that depot and shall be paid the highest ordinary wage prescribed for locomotive drivers. In addition, the driver in charge shall be paid the following amounts:

(a)	at an out-depot where six or more workers are stationed	12.00
(b)	at an out-depot where fewer than six workers are stationed	10.00

Provided that on relinquishing the duties of a driver-in-charge a driver will revert to the wage he would have received had the driver not acted as driver-in-charge.

(8) No driver shall be entitled to promotion from one class to another unless the driver satisfactorily passes any examination or test required by the head of the branch.

(9) A driver whilst acting as sub-foreman shall be paid in accordance with the current award of the Railways Classification Board; provided that the driver shall not be paid a less rate than that prescribed in this award for a driver in charge.

(10) Permanent Cleaner:

(a)	First year of adult service	383.60
(b)	Second year of adult service	395.40
(c)	Thereafter	402.10

(11) Kilowatt Allowance:

(a) A locomotive driver, fireman, driver's assistant or worker acting as such, who in any shift works a train hauled by one or more operating diesel electric or diesel locomotives with a total rated kilowatt for traction specified hereunder shall, in addition to the wages prescribed in this clause, be paid an allowance as follows:

(i) For a period of four hours or more—

Up to and including 976 kilowatts	nil
Over 976 kilowatts but not exceeding 2760 kilowatts	15.60
Over 2760 kilowatts	31.20

(ii) For a period of less than four hours one eighth of the appropriate allowance prescribed in (i) hereof for each hour or part thereof worked, calculated to the nearest 10 cents, with any broken part of 10 cents not exceeding five cents being disregarded.

Provided that where a locomotive engineman commences a shift working a train entitling him to payment of a rate of allowance specified in this paragraph, the rate shall continue to apply throughout the shift irrespective of any variation in the locomotive kilowatt rating.

(b) The allowance shall stand alone and not be taken into consideration in the calculation of overtime, other penalty payments or guaranteed payment.

(c) The provisions of this subclause shall not apply to a locomotive engineman performing shunting duties at terminal depots.

(12) Suburban Electric Railcar Allowance:

(a) A worker qualified in the operation of electric suburban railcars and who, for any shift or part of a shift is rostered to work as a driver on the suburban rail system shall, for the whole of that shift, be paid the following rate of allowance in addition to the appropriate rate of pay:

Engine Driver

	(i) First year	26.20
	(ii) Thereafter	26.50
	(iii) Special Case	26.90

This allowance shall form part of the total rate of pay.

(b) For the purpose of this subclause "driver" shall include "shed driver" provided that a shed driver in receipt of the above allowance shall be available and capable of being rostered for passenger operations.

(13) (a) A fireman or driver's assistant working trains at Hampton and Redmine and being required to supervise and be responsible for the loading or unloading of a train shall be paid 80 cents per shift.

(b) A fireman or driver's assistant working trains at Western No. 2 Collie shall be paid 15 cents per hour with a minimum of two hours for each train worked.

(14) Minimum Wage

(a) Notwithstanding the provisions of Clause 14.—Rates of Pay, no adult worker shall be paid less than $275.50 per week as ordinary rates of pay in respect of the ordinary hours of work prescribed by this award.

(b) Where a minimum rate of pay as aforesaid is applicable to workers for work in ordinary hours, the same rate shall be applicable to the calculation of over-

time and all other penalty rates, payment during sick leave and annual leave and all other purposes of this award.

(15) Should the rates of pay provided in Clause 4 of part (iii) of the Locomotive Enginemen's Award 1966 issued under the authority of the Commonwealth Conciliation and Arbitration Act and to which the Commissioners of Railways, Victoria, South Australia, Tasmania are respondents be varied, any variation to the rate per week in this clause which may result therefrom shall operate from the same date as the variations made to Clause 4 of the first mentioned award.

(16) The rates prescribed in this clause for each classification of worker shall be the sum of the amount described as the Award Rate of Pay plus the amount of Service Pay payable to each worker in accordance with the Railway Incremental Payment Scheme as amended from time to time, provided that the Award Rate of Pay shall be the rate of pay for each classification of worker as at June 30, 1978 and shall include any subsequent variation thereto made in accordance with subclause (13) and (14) of this clause. Any reference to "Award Rate of Pay" shall mean the award rates prescribed in this subclause.

15.—PAYMENT OF WAGES AND DEDUCTIONS

(1) Subject to the provisions of subclause (2) of this clause, wages shall be paid fortnightly no later than each alternate Thursday.

(2) All workers' wages will be paid into accounts (nominated by each worker) with a savings bank, trading bank (cheque account), building society or credit union.

(3) A worker may request payment by cash or cheque on the grounds that payment into an account would cause undue hardship. Any dispute as to the appropriate method of payment may be referred to the Western Australian Industrial Relations Commission for determination.

(4) The employer shall provide for each worker a pay advice slip in respect of each payment of wages. Such slip shall detail the gross wages payable including the composition, deductions made and the nett wage paid. Such slip shall be provided to the worker on or before each pay day.

(5) The employer shall deduct union contributions from each wage each employee receives who has signed an authority authorising such deductions to be made.

(6) The amount of union contributions to be deducted by the employer shall be that prescribed by the rules of the union.

(7) The union shall notify the employer in writing of the amount of contributions to be deducted. Such written notification shall be provided whenever there is a change in the level of contributions.

(8) A single signed procuration order authorising the deductions of union contributions in accordance with the rules of the union shall constitute the authority of the employer to adjust contributions as from time to time required by the union rules.

(9) Union contributions deducted by the employer in accordance with this clause shall be remitted to the union office at such intervals agreed by the parties, but in any event not later than fourteen days after the deductions have been made.

(10) Accompanying each amount of money so forwarded to the union shall be a statement of deductions made on behalf of the union for the fortnight ending.

(11) From the monies deducted from workers' wages in satisfaction of union contributions, the employer will retain as commission 2 per cent of the total amount deducted.

16.—WEEK'S WORK

(1) Five shifts between Monday and Saturday inclusive shall constitute a week's work.

(2) (a) Rosters when first posted shall show one rostered day off between Monday and Saturday.

(b) A rostered day off shall be 24 hours commencing 0001 hours to 2400 hours on the day designated as the rostered day off.

(c) Where a worker is called upon to commence or works any part of a shift during such worker's rostered day off the worker shall be paid at the rate of double time for all time worked for that shift.

(3) Where a train crew work a continuous shift Sunday into Monday, such shift, unless it extends into four hours on Monday, will not be counted as one of the five week day shifts.

17.—HOURS OF DUTY AND OVERTIME PAYMENT

(1) (a) All time (exclusive of Sunday time) worked in excess of forty hours in any one week shall be paid at the rate of time and a half.

(b) All time worked in excess of eight hours in any one of the first five shifts in a week shall be paid for at the rate of time and one half for the first three hours and double time thereafter, provided that all time paid at the rate of double time shall stand alone and be paid for in addition to the week's work.

(c) Overtime provided for in paragraphs (a) and (b) of this subclause shall not be paid for twice but payment shall be calculated on the daily or weekly basis, whichever of these alternatives gives the greater amount.

(d) (i) The overtime rates shall be computed on the rate applicable to the day on which the overtime is worked provided that double time, shall be the maximum rate.

(ii) Subject to the foregoing subparagraph, all time worked on Sunday shall be paid at the rate of double time, and all ordinary time worked on Saturdays by shift workers shall be paid at time and a half. For the purpose of this subparagraph "shift workers" means workers whose usual hours of duty commence and complete other than during the period 0700 hours and 1730 hours.

(iii) All workers employed after 1230 hours on Saturdays shall be paid at the rate of time and a half for all time worked on that day prior to and after 1230 hours.

(e) No shift shall in the case of the suburban railcar passenger service be less than five hours and elsewhere be less than seven hours. The employer shall arrange as far as practicable that shifts shall not exceed eight and a half hours and, except in cases of emergency or where relief cannot be provided, a worker shall not be required to remain on duty for more than ten hours.

(2) (a) Workers other than enginemen shall not be required to work more than five hours without being booked off for a meal or allowed a crib time.

(b) In the case of enginemen working on shunting locomotives, an interval of twenty minutes for crib, without deduction of pay, shall be arranged after the completion of the third and before the completion of the fifth hours of duty on all shifts exceeding five hours.

(c) Enginemen working the Midland Workshops diesel shunting locomotive shall be booked off for a meal break not exceeding forty-five minutes to coincide with the usual workshops mid-day meal break.

(d) (i) In the case of enginemen on the road, it shall be understood that when the running of their own train is not unduly delayed, and the running of other trains which their own train may meet or cross is not interfered with, an interval, as may be directed, of not less than fifteen minutes for crib after the completion of the third and before the completion of the fifth hours of duty on all shifts exceeding five hours shall be allowed without deduction of pay. A second meal break of not less than fifteen minutes shall be allowed after a worker has been on duty nine hours, when it is reasonably expected that such duty will continue for at least a further hour. The place at which crib may be taken shall, if practicable, be indicated on suburban rosters.

(ii) The provisions of subparagraph (i) of this paragraph shall not apply to any train running on the standard gauge to which subclause (2) of Clause 27.—Distance Payments, of this Award refers or to trains referred to in Clause 10(11)—Rates of Pay, of this Award, provided such train is not required to shunt (detach or attach) more than once en route.

(e) The employer shall guarantee to each worker a full week's work of forty hours, exclusive of Sunday work, except during such period as by reason of any action on the part of any section of its workers or for any cause beyond its control, it is unable wholly or partially to carry on the running of the trains. Each week shall stand by itself.

(3) Two workers covered by this Award to be nominated by the Union, shall be permitted to attend the departmental half-yearly timetable conferences as representatives of the Union,

and may take part in any discussion as to whether any particular piece of night work involved in the proposed timetable could be avoided. Also, a representative of the Union shall be granted one day for the purpose of checking new suburban rosters after compilation but at least fourteen days before being brought into effect, so that the employer may have the opportunity of considering and if thought fit correcting, such anomalies in the proposed working as may be pointed out by the Union within ten days after being notified of the proposed new rosters. The workers so acting shall be paid by the employer ordinary wages, travelling time and expenses as provided in this Award.

17A.—SUBURBAN RAIL OPERATIONS—DISTANCE AND TRIPS

The following conditions shall apply only to electric railcar operation on the suburban rail system:

(1) (a) Except in the event of an emergency the maximum distance to be worked by a driver in any shift shall be 250 kilometres with a maximum of 1110 kilometres in any week (Monday to Saturday).

(b) A driver rostered to work in excess of 225 kilometres in any shift shall not be required to perform shunting work except in the event of an emergency when such driver may be required to move a railcar from one platform to another to facilitate normal train working, but then only when a driver who is rostered to work less than 225 kilometres is not available.

(c) A driver rostered to work in excess of 225 kilometres in any shift shall not be utilised to convey railcars between Perth and Claisebrook Depot unless such moves are scheduled and endorsed on "P workers".

(d) The stowing of railcars at outlying terminal stations shall not be included in distance calculations.

(e) Distance travelled between Perth and Claisebrook Depot shall form part of the daily distance calculations and shall be deemed for that purpose to be 2 kilometres.

(2) (a) Subject to the provisions of subclause (1) a driver shall not be rostered to work more than 25 trips per week (Monday to Saturday) with a maximum of 6 rostered trips in any shift.

(b) No shift shall contain more than three Armadale trips.

(c) The interpretation of trips shall be:

One trip:

Perth to Midland and return
Perth to Armadale and return
Perth to Fremantle and return
Perth to Whitfords and return
Perth to North Joondalup and return
Perth to Gosnells and return

Half trip:

Perth to Bassendean and return
Perth to Cannington and return
Perth to Claremont and return

(3) Where layover time exists on a roster on which a driver will not work in excess of 225 kilometres any additional work, with the exception of emergency working, shall be endorsed on the "P worker".

18.—PAYMENT WHEN BOOKED ON DUTY AND NOT REQUIRED

(1) (a) Subject to paragraph (b) any driver or driver's assistant booked on duty but informed before leaving the shed with the engine that such worker is not required for work and who is only called upon to attend to the engine, shall be paid two hours' pay at the rate applicable to that day, but may be called upon for further duty without any further prescribed period of rest as provided for in Clause 19.—Minimum Time Off Duty, of this Award. Any driver or driver's assistant who is booked on duty and is called upon to perform work other than attending to the engine, or who has to go out on traffic, shall be allowed not less than seven hours' pay at the rate applicable to that day.

(b) Any driver, driver's assistant or worker acting as such, stationed within the suburban area, who reports for duty in that area and is then advised such worker is not required, shall be paid seven hours at the rate applicable to the day, but such time shall not be counted as a shift.

(2) Any driver or driver's assistant booked up for duty shall not be entitled to any allowance when at least two hours' notice that such worker is not required has been left at the place of residence or barracks, as the case may be. Written notice left with the person in charge of the worker's place of residence will be deemed to be notice under this subclause.

(3) If a locomotive trainee is brought on duty other than as a driver's assistant and it is found necessary before that worker has worked two hours to book the worker off so that the worker may be available to take up duty as a driver's assistant, the worker shall be paid, a minimum of two hours at the rate applicable to that day, but may be called upon for duty as a driver's assistant without the period of rest prescribed in subclause (8) of Clause 19.—Minimum Time off Duty.

(4) A driver-in-charge brought on duty outside such worker's rostered hours of duty for any purpose shall be paid a minimum of two hours, or at overtime rates, whichever is the greater. Provided that a driver-in-charge shall not be obliged to work for the two hours if the work for which the driver-in-charge has been brought on has been completed in less time. In such circumstances the provisions of Clause 19.—Minimum Time off Duty, subclauses (1) and (9) shall not apply. The provisions of this subclause shall not apply to drivers-in-charge engaged in engine operating.

(5) No worker shall be brought on duty on a Sunday for less than five hours' work on the suburban railcar passenger service and for less than seven hours' work elsewhere.

(6) Any worker rostered on duty on Sunday and informed such worker is not required shall be paid two hours at ordinary rates. Provided, however, that this provision shall not apply when notice that the worker is not required has been left at the worker's place of residence or barracks at least four hours before the worker's rostered time of duty.

(7) Any worker brought on duty shall receive five hours' pay in the case of the suburban railcar passenger service and elsewhere seven hours' pay at the rate applicable to that day, except as provided for in subclauses (1), (3) and (4) hereof.

19.—MINIMUM TIME OFF DUTY

(1) Each driver and driver's assistant shall be allowed off duty at home station for a minimum of twelve hours and at foreign stations for a minimum of eight hours, except as provided hereunder.

(2) Notwithstanding the provisions of Clause 17(1)(e)—Hours of Duty and Overtime Payment, the period off duty shall be calculated from the actual time the worker is released from duty by the employer.

(3) Enginemen leaving home station for a foreign station which may entail booking off at a number of other stations before returning to home depot shall be booked off for twelve and eight hours alternately. Provided that the first booking-off may be for a minimum of eight or twelve hours as the employer may require. Provided further that unless the worker is notified to the contrary prior to leaving the home station, the first booking-off shall be for a period of twelve hours.

(4) When a worker is relieving at, or temporarily transferred to, a foreign station, that station will for the purpose of this clause be treated as the home station for the first and each subsequent booking-off by the worker.

(5) (a) A worker who for part of a shift travels passenger to a foreign station for the purposes of relief or temporary transfer may be required to work the balance of that shift at the foreign station, provided that on arrival at the foreign station the worker shall be allowed sufficient time to make personal accommodation and provisioning arrangements before being required to complete the shift.

(b) A worker returning to the worker's home station following a period of relief or temporary transfer may be required to work part of the shift at the foreign station or at the home station provided that where the journey is commenced fol-

lowing a period of work at the foreign station sufficient time shall be allowed to the worker to prepare for the journey.

(c) If the worker is required to work the remainder of the shift upon arrival at the worker's home station, sufficient time shall be allowed for the worker to make provisional arrangements before being required to complete the shift.

(6) When enginemen are required to do anything apart from their rostered run, the employer shall apply the alternating rest period as provided for in subclause (3).

(7) In the event of a crew having been booked off at a foreign station for eight hours and the employer finding it necessary to again book the same crew off on the return journey, the rest period on the second occasion shall be twelve hours, so that no crew will be booked-off eight hours twice in succession.

(8) A locomotive trainee or worker acting in that capacity who has gone off duty shall be allowed ten hours before coming on duty again. Provided that if a worker has been employed during part of the shift as a driver's assistant, such worker shall be allowed the rest period specified for a driver's assistant.

(9) When a worker is brought on duty without the prescribed period of rest, such worker shall be paid continuous duty as from the time the worker booked on the previous shift until booking off on the shift for which the worker had less than the stipulated rest period. This shall not apply where the time by which the rest period falls short of the prescribed time does not exceed sixty minutes, in which case the worker shall be paid at the rate of double time for the time between the actual rest period and the minimum period of rest prescribed in this Award. Provided that in either case, the worker shall be deemed to have been booked off duty in so far as the computation of lodging allowance is concerned.

(10) No worker shall be called or booked up for duty without having the prescribed period of rest while there is another qualified worker available who has had the prescribed rest.

(11) Drivers and driver's assistants booked off duty at a foreign station where there is an attended barracks shall be called for duty irrespective of the hour booked on. At stations where there are unattended barracks they shall be called if it can be conveniently arranged.

(12) Each driver and driver's assistant on being booked off duty on arrival at any shed shall come on duty again at such time as herein provided, and may be directed before leaving the shed, either verbally by the foreman or by the running sheet posted at the shed, except in cases of emergency when drivers and driver's assistants may be called upon to resume duty at any time.

(13) At a home station drivers and driver's assistants rostered to work between the hours of 10.00 p.m. and 6.00 a.m. shall be given four hours' notice of any alteration to their working, unless time does not permit such notice to be given.

(14) Should a driver or driver's assistant not be able to ascertain before leaving the shed at the home station either from the foreperson or from the running sheets, when next required for duty the driver or driver's assistant shall be free to assume that they will not be required for twelve hours, and may make private arrangements accordingly.

(15) Between the hours of 0700 hours and 1700 hours each driver and driver's assistant after being booked off duty for twelve hours shall make personal inquiry at the shed as to when next required for duty, except when booked for a rostered day off, in which case the worker shall be notified. Outside these hours the driver or driver's assistant shall be notified at such worker's place of residence at least two hours before being required for duty; provided that the worker shall have the specified period of rest prescribed by this clause. Written notice left with the person in charge of the worker's place of residence will be deemed to be notice for the purpose of this subclause.

20.—SHIFT WORK

(1) On an afternoon shift which commences before 1800 hours and the ordinary time of which concludes at or after 1830 hours, adults and juniors receiving the adult rate will be paid an allowance of $1.58 an hour on all time paid at ordinary rate.

(2) On a night shift which commences at or between 1800 hours and 0359 hours adults and juniors receiving the adult rate will be paid an allowance of $1.84 an hour on all time paid at ordinary rate.

(3) On an early morning shift which commences at or between 0400 hours and 0530 hours adults and juniors receiving the adult rate will be paid an allowance of $1.58 an hour on all time paid at ordinary rate.

(4) In addition to the hourly shift work allowance adults and juniors receiving the adult rate will be paid an allowance of $1.84 for any shift where the ordinary time commences or finishes at or between 0101 hours and 0359 hours.

(5) Other juniors excluded from subclause (1) to (4) will be paid half the allowance for the same time on duty.

(6) In calculating the allowances under this clause broken parts of an hour less than thirty minutes on any shift shall be disregarded and thirty minutes to fifty nine minutes paid as one hour.

21.—OVERTIME

(1) The employer may require any worker to work reasonable overtime at the overtime rates provided under this Award, and such workers shall work overtime in accordance with such requirement.

(2) No union or worker 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 subclause (1) above.

(3) A worker shall be under no obligation to sign on duty for a further shift after having completed 47 hours that week inclusive of any work done on a Sunday; provided that, on booking off from a previous shift, the worker has given notice of the worker's unwillingness to work a further shift that week.

22.—DUTY IN EXCESS OF EIGHT AND ONE HALF HOURS

Each month the head of the branch will, on receipt of a request from the General Secretary of the union, supply a statement showing all instances where workers have been kept on duty longer than eight and one half hours continuously.

23.—LODGING ALLOWANCE

(1) The following allowances shall be paid to workers covered by this Award booked off or temporarily lodging away from their home stations or on temporary transfer—

(a) For the first thirty hours or part thereof the sum of $24.74 where attended and $26.72 where unattended barracks are provided and $30.68 where there are no barracks.

(b) After the first thirty hours and up to seven days, the sum of $1.13 per hour and thereafter 96 cents per hour; provided that the reduction from $1.13 per hour to 96 cents shall be made only in cases where the worker shall be stationed for over seven days in one place.

Provided that a deduction of $8.06 per day or night, with a maximum of $40.30 per week shall be made where attended barracks are provided and a deduction of $4.03 per day or night with a maximum of $20.15 per week shall be made where unattended barracks are provided. No such deduction shall be made if the worker returns to the home station within forty four hours.

(c) The allowance shall be calculated from the time of booking on to the time of booking off at home station.

(d) In addition to the allowances provided for in paragraphs (a) and (b) a worker booked off or temporarily lodging in a district carrying an allowance shall be granted such allowance, or if already in receipt of a district allowance shall be granted the difference between such allowance and any higher allowance applicable to the district in which the worker is booked off or lodging; a day's allowance to be granted for the first thirty hours or any part thereof; and each subsequent twenty four hours or part thereof: time to be calculated from time of departure

from home station to time of departure from foreign station. The district allowance at the place booked off or temporarily lodging shall be that applicable to a worker without dependants.

(e) When a worker in the metropolitan area is required to work at a metropolitan depot other than the depot at which the worker is stationed the following will apply:

(i) When the distance the worker is required to travel from the worker's usual place of residence to the depot where the worker is temporarily working is greater than the distance the worker is required to travel from his usual place of residence to the worker's home depot, the worker shall be paid an allowance of 83 cents per kilometre in both directions for the extra distance the worker is required to travel. Such allowance as specified in this paragraph is in recognition of the cost and time taken for the extra distance to be travelled, and in addition:

(ii) When the period of relief is for one week or less an allowance of $4.20 per shift shall be paid in recognition of the disruption to the worker's normal roster.

The rates referred to in this subclause will be adjusted from time to time in accordance with the Taxi Control Board metropolitan rates.

(f) Where workers temporarily transferred are employed on a series of works up and down the line and are provided with sleeping accommodation in vans, the removal of vans from one place to another will not be deemed to have altered their headquarters.

(g) The employer may make any allowance in addition to those provided in the foregoing paragraphs and the head of the branch shall also have discretion to make any such additional allowance as may under the circumstances be justified.

(h) The foregoing allowances will not be paid—

(i) during any period of absence from duty unless such absence is due to sickness of the worker and does not exceed one week

(ii) during any period of annual leave or long service leave.

24.—HAMPER ALLOWANCE

(1) A driver or driver's assistant attending at a depot with a hamper for a trip for which the worker is booked and which is cancelled, or who shall have received less than two hours notice of the cancellation of a trip requiring a hamper, shall be allowed $6.40 in respect to such hamper.

(2) Any worker having to proceed on an "away from home" job with less than four hours notice shall be paid an amount of $6.40 in addition to ordinary expenses.

(3) Any worker notified between 1700 hours and 1000 hours of a "book off" job requiring the worker to come on duty between those hours shall receive an allowance of $6.40 in addition to ordinary expenses. This provision shall also apply to any worker notified of a "book off" job between 1700 hours on the day preceding and 1000 hours on the day following any public holiday on which grocery and butchers' shops are closed, if required to come on duty between those hours. The provision shall also apply to any worker required to come on duty on a "book off" job between 1200 hours on Saturday and 1000 hours Monday unless the worker is notified, or word left at the worker's place of residence before 1030 hours on the Saturday.

(4) Where practicable local shifts shall be rostered showing the time the worker is to book on and off duty and if such shift is extended by not less than one hour for any reason caused directly or indirectly by an authorised variation in working of either the train being worked by such worker, or any other train, unless such working is varied because of some accident, or act of God, or any circumstances for which neither the employer nor any of its servants is responsible, such worker shall be paid $6.40 for meal allowance. For the purpose of this subclause a local shift which is rostered without showing the finishing time shall be deemed to be of a duration of eight hours.

25.—HELD AWAY-FROM-HOME ALLOWANCE

(1) Any driver or driver's assistant who works and/or travels to a foreign station other than on temporary transfer and there is released from duty and who, before twelve hours shall have elapsed from such release, is not required to commence duty preparatory to departure from such foreign station for another station at which the worker is to be again released from duty, shall be paid held away-from-home allowance for all time in excess of twelve hours at ordinary time.

(2) The amounts accruing under sub para (1) hereof may be counted towards the guaranteed week's work, but shall not be included for the purpose of overtime calculation.

(3) The aforesaid allowance shall be paid for at the rate appropriate to the work performed on the forward journey provided that a worker returning as a passenger to the worker's home station shall be paid the allowance at the worker's classified rate.

(4) Any allowance under this clause shall not be payable in respect to any time during which the worker is otherwise allowed payment (except for expenses), provided that the worker shall be paid whichever amount is to the worker's greatest advantage, nor shall such allowance be payable in any case where detention is the result of any act or omission of a worker or of other circumstances for which the employer cannot reasonably be held responsible.

(5) Any dispute arising under this clause shall be determined by a Board of Reference pursuant to Clause 48.—Board of Reference, of this Award.

26.—PAYMENT FOR TRAVELLING TIME

(1) Except as provided for in Clause 34(1)(d)—Transfer Allowance and subclause (3) of this clause, a worker travelling passenger, going to work away from or returning to the home station, shall be paid for all travelling or waiting time at the rates applicable to the day and in accordance with Clause 17(1)(a), (b), (c), (d)(i), (ii), (iii)—Hours of Duty and Overtime Payment, of this Award.

(2) Any driver's assistant travelling as a passenger, going out to act as a driver or returning after having acted as a driver shall receive payment for travelling time or waiting time at the minimum rate for the higher grade.

(3) Travelling time in respect to a worker who travels passenger from the home depot to another depot or vice versa and is then booked off duty and who has not been on duty prior to travel shall be paid travelling time at ordinary rates Monday to Friday and at time and a half for Saturday and/or Sunday with a minimum payment of two hours from the time of booking on to the time of booking off duty. Where such travelling time amounts to four hours or more it will be counted as one shift for the purposes of Clause 16.—Week's Work, of this Award and the worker shall be entitled to a minimum payment of five hours in the case of the suburban rail passenger service and elsewhere seven hours.

(4) In respect to a worker who is provided with a sleeping berth on a passenger train, travelling time shall not count between 2200 hours and 0700 hours. Provided that this shall not operate to reduce the travelling time to be paid for, to less than four hours in any one day.

27.—DISTANCE PAYMENTS

(1) (a) Narrow Gauge:

Payments on the following scale shall be made in respect of trains carrying passengers or freight trains tabled at passenger speed, on distances exceeding 225 kms—

	Hours	Minutes
Over 225 kms and up to and including 250 kms	8	
Over 250 kms and up to and including 274 kms	8	45

	Hours	Minutes
Over 274 kms and up to and including 298 kms	9	30
Over 298 kms and up to and including 322 kms	10	15
Over 322 kms and up to and including 346 kms	11	15

(b) The basis for payment shall be on the distance run from starting to finishing station, excluding light engine mileage or movements in respect of shunting, or movement to or from loco. depots.

(c) The time to be credited as per above scale shall cover all work in the shift from signing on to signing off duty.

(d) Only the actual time worked in a shift shall be subject to penalty payments such as night work, overtime, Saturday and Sunday duty.

(e) The time paid under the scale shall count towards satisfaction of the guaranteed week of forty hours as per Clause 17(3)—Hours of Duty and Overtime Payment, of this Award.

(2) Standard Gauge:

(a) In respect to trains running on the standard gauge the following allowances shall be paid—

(i) On distances exceeding 225 km and up to and including 290 km—1-1/2 hours.

(ii) On distances 291 km and up to and including 355 km—2 hours.

(iii) On distances in excess of 355 km—2-1/2 hours.

(b) Only the actual time worked in a shift shall be subject to penalty payments such as night work, overtime, Saturday and Sunday duty.

(c) Any allowance paid in accordance with the provisions of this subclause shall count towards satisfaction of the guaranteed week of forty hours as per Clause 17(3).- Hours of Duty and Overtime Payment, of this Award.

28.—SUNDAY AWAY FROM HOME STATION

Workers shall not be booked away from their home station for two Sundays in succession, where it can be avoided by any reasonable arrangement.

29.—ANNUAL LEAVE AND HOLIDAYS

(1) Annual Leave

(a) (i) Except as hereinafter provided a period of four weeks' leave on full pay shall be allowed annually to a worker after a period of twelve months' continuous service with the employer.

The whole of such annual leave shall be taken at the one time each year. Provided always that with the consent of the employer leave may be allowed to accumulate for two years.

(ii) Two extra days' annual leave shall be granted to workers stationed at Leonora thereof and at Norseman and southward thereof.

(b) (i) 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 the worker is otherwise entitled under this clause. Provided that for purposes of this subclause a driver and a driver's assistant shall be deemed to be seven day shift workers.

(ii) Where a worker with twelve months' continuous service is engaged for part of a qualifying twelve monthly period as a seven day shift worker, such worker shall be entitled to have the period of annual leave to which the worker is otherwise entitled under this clause increased by one-twelfth of a week for each completed month the worker is continuously so engaged.

(c) Every worker, after one month's continuous service shall be entitled to the annual leave prescribed in paragraph (a) in proportion as each completed month of service is to the period of twelve months.

(d) (i) A worker entitled to annual leave as per paragraphs (a), (i) and (j) hereof, shall be paid for such leave at the rate of pay such worker was receiving at or immediately before the time when such annual leave was taken plus a loading calculated at 17½ per cent of the weekly rate of pay for the annual leave taken. A worker entitled to an extra week's leave as defined in paragraph (b)(i) hereof, shall be paid for the annual leave together with the extra leave at the rate of pay such worker was receiving at or immediately before the time when such annual leave was taken, plus a loading calculated as 20 per cent of the weekly rate of pay for the annual leave being taken.

A worker entitled to annual leave as per paragraph (a) but who becomes entitled to extra leave under the provisions of paragraph (b)(ii) shall be paid for the annual leave plus the extra leave at the rate of pay the worker was receiving at or immediately before the time when such annual leave was taken, plus a loading calculated at 18-3/4 per cent of the weekly rate of pay for the annual leave being taken.

(ii) If it gives a greater amount than the amount of loading calculated as per subparagraph (i), a worker shall be entitled to payment of—

(aa) Shift penalties Monday to Friday inclusive; and

(bb) Saturday penalty.

which the worker would have received for ordinary time had the worker not proceeded on annual leave, in lieu of such loadings.

(iii) The amount of loading calculated in accordance with (i) hereof shall not exceed the following percentages of the amount set out in the Commonwealth Bureau of Census and Statistics publication for "Average Weekly Earnings per Male Employed Unit" in W.A. for the September quarter immediately preceding the date on which the clearance of leave commences.

(aa) for workers entitled to 17½% loading—100%

(bb) for workers entitled to 20% loading—125%

(cc) for workers entitled to 18-3/4% loading—112½%

(iv) The loading will be paid on pro rata annual leave due to a worker on retirement.

(e) Every year, prior to 31 July, a statement shall be posted in each shed showing the date on which each worker will go on the annual leave and resume duty. The annual leave for such worker shall be calculated up to 30 June each year and only leave up to that date shall be granted each year, except in cases where leave has been allowed to accumulate.

(f) (i) Workers are not to be booked on annual leave for more than one year in succession between 30 April and 1 September, except at the request of the worker. Holiday lists are not to be departed from except for reasons of sickness, accident or traffic requirements not foreseeable at the date of preparing lists.

(ii) Unless at the own request a worker shall not be rostered to clear further annual leave within four months of resuming duty following long service leave.

(g) With the approval of the head of the branch, any worker may exchange dates with another.

(h) Unless at the own request, no worker shall be booked off for annual leave at a foreign station or at the temporary home station.

(i) No deduction shall be made from annual leave for the period a worker is off duty through sickness unless the absence exceeds three calendar months.

(j) Any worker who may resign or be dismissed from the service for any cause, other than for stealing, shall be entitled to receive payment for annual leave which may have been due up to the time of leaving the service: Provided always, that if the worker has been dismissed for stealing from the employer no claim for annual leave shall be recognised. Misconduct herein referred to shall not affect accumulated leave or payment therefor.

(2) Holidays

(a) (i) In addition to the annual leave the following days shall be observed as holidays: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day, Boxing Day, and any other day proclaimed as a general public holiday.

(ii) When any of the abovementioned days 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 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.

(b) (i) Whenever any holiday falls on a worker's ordinary working day and the worker is not required to work on such day the worker shall be paid for the ordinary hours the worker would have worked on such day if it had not been a holiday.

(ii) (aa) If a worker is required to work on a holiday the worker shall be paid for all time worked at the rate of time and one half for the first eight hours worked on any shift on that day and at the rate of double time and one half for all time worked in excess of eight hours on any shift in lieu of all other penalties which may be payable for work on that day under this Award.

(bb) In addition to payment as in subparagraph (ii)(aa) a worker required to work on a public holiday shall be paid a further eight hours, provided that the worker may elect in lieu of being paid for that eight hours, to be granted a day's holiday with pay which may be cleared with the annual leave or taken at some subsequent date when the worker so agrees.

(c) If a public holiday as defined in paragraph (a) falls within a worker's period of annual leave, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid: all holidays to be computed at eight hours per day.

(d) A worker who returns to the home station or finishes a shift at the home station not later than 4.00 a.m. on any holiday and is not again booked on duty for that day shall be treated as having had a paid holiday.

(e) Unless at the own request, no worker shall be booked off for a holiday at a foreign station or temporary home station.

(g) When a worker is off duty owing to leave without pay or sickness, including accidents on or off duty, any holiday falling during such absence shall not be treated as a paid holiday. Where the worker, however, is on or is available for duty on the working day immediately preceding a paid holiday or resumes or is available for duty on the working day immediately following a holiday, the worker shall be entitled to a paid holiday on such holiday.

30.—EXTENDED LEAVE OF ABSENCE

Any worker who has been two years or more in the service of the employer may, on application, be granted in addition to annual leave, extended leave of absence without pay for a period not exceeding twelve months.

Failure on the part of the worker to return to duty within the specified period of leave granted shall be regarded as a resignation and shall be so treated.

31.—ABSENCE THROUGH SICKNESS OR SPECIAL LEAVE

(1) Any worker, being unable to attend for duty through sickness, shall notify the officer on duty at least three hours before the time the worker is booked for duty.

(2) Any worker so absent shall not again be booked up for duty unless the worker notifies the officer on duty not later than 4.00 p.m. on any day that the worker is fit to resume and, in such case, there shall be no obligation to employ the worker until the following working day. A worker who books off duty sick on afternoon shift, who reports for duty before 10.00 a.m. on the following day shall be provided with work on that day.

(3) Any worker losing time through sickness or special leave shall be reduced in wages only to the extent of the time actually lost through sickness or actually granted as special leave.

32.—PAYMENT FOR SICKNESS

(1) (a) A worker shall be entitled to payment for non-attendance on the grounds of personal ill health at the rate of 1/6th of the guaranteed week's work for each completed month of service.

(b) The unused portion of the entitlement prescribed in subparagraph (a) hereof in any accruing year shall be allowed to accumulate and may be available of in the next or any succeeding year.

(c) Payment hereunder may be adjusted at the end of each accruing year or at the time the worker leaves the service of the employer, in the event of the worker 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) This clause shall not apply where the worker is entitled to compensation under the Workers' Compensation Act, 1912 as amended.

(3) No worker shall be entitled to the benefit of this clause unless the worker produces proof to the satisfaction of the employer or the worker's 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 in any accruing year exceeds the hours prescribed for that worker for an ordinary week's work.

(4) No payment shall be made for any absence due to the workers own fault, neglect or misconduct.

(5) (a) Subject to paragraph (b) a worker shall be paid for sick leave at the worker's graded rate of pay. In addition payment shall include—

(i) Shift penalties Monday to Friday inclusive; and

(ii) Saturday penalty

which the worker would have received for ordinary time had the worker not ceased duty on account of sickness.

(b) Provided that if the worker was engaged on duties carrying a higher rate and was entitled to payment at that higher rate for the whole of the day or shift immediately prior to ceasing duty and the worker resumed duty after the absence in the same higher position the worker shall be paid for the sick leave at that higher rate.

(6) If a worker falls sick while on annual leave and produces at the time satisfactory medical evidence that the worker is or was confined to the worker's place of residence or hospital for a period of at least one week the worker may with the approval of the employer be granted at a time convenient to the employer additional leave equivalent to the period of sickness falling within the rostered period of annual leave.

33.—BEREAVEMENT LEAVE

(1) A worker shall, on the death within Australia of a worker's spouse, 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 worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of the employer.

(2) Payment in respect of bereavement 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 worker concerned would have been off duty in accordance with the worker's roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

34.—TRANSFERS

(1) When any transfer is ordered by the employer, the worker transferred shall not lose the right of appeal against the transfer and if, on inquiry, it is found that a transfer can be arranged with another worker to suit the convenience of the employer, then the worker shall be re-transferred. A worker transferred from one station to another over 2 kms distant involving a change of residence shall—

(a) be paid not less than $24.00 for a worker with dependants and $3.00 for a worker without dependants; a worker with dependants whose family does not transfer shall be paid as if the worker had no dependants until the worker's family transfers;

(b) be paid any further out-of-pocket expenses reasonably incurred, when supported by receipts and vouchers. Any dispute which arises under this paragraph may be dealt with by the Board of Reference;

(c) be granted free passes for the worker, the worker's spouse, the worker's dependants and also the parents of the worker permanently residing with and wholly dependent on the worker, and free railway transport of the worker's furniture and effects, including, if requested, one motor car or motor cycle where the distance by road between the new and the old home station is more than 322 kms.

Where the train is provided with appropriate sleepers and the worker's journey extends through the night, the worker and the worker's family shall be supplied with sleeping berths.

The employer shall be liable for all loss or damage to furniture in transportation caused by the negligence of its officers or employees;

(d) be paid actual travelling and waiting time up to a maximum of eight hours per day; no overtime, Saturday or Sunday time rates shall apply;

(e) a worker with dependants shall be allowed one day for packing and one day for unpacking (if necessary). A worker with dependants whose family does not transfer shall be treated as a worker without dependants; provided that, where no suitable accommodation is available for the worker's family at the time of transfer and as a consequence the worker has subsequently to return to pack and arrange the removal of the worker's furniture, a worker with dependants shall then be allowed an additional day for that purpose.

(2) Any worker who is transferred from one place to another to suit the worker shall be entitled to the provisions of subclause (1)(c) only.

(3) When practicable a worker required to transfer permanently from one station to another shall, if the distance between those stations exceeds 16 kms, be given at least 28 days' notice of that transfer. Unless at least ten days' notice is given, expenses as in Clause 23(1)(a) and (b)—Lodging Allowance, shall be paid for each day by which the period of notice is less than ten days; Provided that the prescribed notice of transfer shall not be waived unless the worker concerned is agreeable. A worker required to otherwise transfer permanently from one station to another shall be given at least seven days' notice of that transfer.

(4) A worker shall not be transferred for a lesser period than three months. If required to work temporarily at another depot for relief or other purposes for a lesser period, the worker shall be paid lodging allowance as per Clause 23.—Lodging Allowance.

(5) Notwithstanding the provision of subclause (4) of this clause transfers for a period less than three months may be arranged by agreement between the parties.

(6) (a) Where a worker with dependants is transferred from one station to another to suit the convenience of the employer and at which no suitable accommodation is available the worker shall be paid the sum of $28.00 per week until such time as suitable accommodation is available or for a period of six months, whichever shall be the shorter.

(b) Any worker without dependants transferred from one station to another to suit the convenience of the employer shall be paid actual reasonable out-of-pocket expenses, but in each case details of the expense shall be submitted and all items in excess of 50 cents must be supported by receipted vouchers: provided, however, that such payment shall be limited to a period of six months and shall not exceed $6.00.

(c) Any dispute arising between the union and the employer as to the amount (if any) payable under this clause to any particular worker shall be referred for settlement to the Board of Reference constituted under Clause 48.—Board of Reference, of this Award.

(7) The provisions of this clause shall not apply to workers on temporary transfer.

35.—DISTRICT ALLOWANCE

(1) District Allowance as specified below, shall be paid to workers stationed at—

		Per Week $
(i)	Carrabin to Kalgoorlie except the following where the allowance shall be:	10.37
(ii)	Kalgoorlie	3.13
	Northwards of Kalgoorlie	20.74
(iii)	Norseman	6.25
	Salmon Gums	20.74
	Esperance	3.13
(iv)	Perenjori, Koorda, Mukinbudin and Kalannie	10.37
(v)	Amery	6.25
(vi)	Kulja and Beacon	20.74
(vii)	Mullewa and Miling	3.13
(viii)	Eneabba	10.37

(2) Workers who have members of their family solely dependent on them for support and living with them at their home station shall be paid double the rate specified in subclause (1).

(3) District allowance shall not apply where the worker is absent without pay, unless such absence is due to sickness of the worker and does not exceed three months.

(4) Workers leaving the service for any cause and due for payment in lieu of holidays shall not be paid district allowance for the period of such holiday.

(5) Adjustment of Rates

The rates expressed in subclause (1) shall be adjusted administratively on the 1st July, 1992, based on movements in the "Consumer Price Index" for Perth between December 1990 and March 1992 and thereafter on 1st July each subsequent year based on movements in the "Consumer Price Index" for Perth for the 12 months to 31st March, as published by the Australian Bureau of Statistics, and the operative date of the new rates shall be the first pay period on or after July 1st of each year.

The adjustment of allowances shall then be lodged with the Registrar of the Western Australian Industrial Relations Commission.

36.—FREE PASSES, PRIVILEGE TICKETS ETC.

(1) Free intrastate station to station passes, free privilege tickets, including free rail travel to and from work, and concessional privilege tickets shall be made available to workers and their dependants. These entitlements shall be in accordance with the conditions specified in the Westrail Pass Manual, a copy of which shall be supplied to the Union. The entitlements existing at the date of this Award shall not be reduced without agreement between the Commission and the Union.

(2) Where agreement cannot be reached between the parties any dispute arising under this clause shall be determined by a Board of Reference pursuant to Clause 48.—Board of Reference.

37.—(RESERVED)

38.—KNOWLEDGE OF ROADS

Should the requirements of the service necessitate that the driver shall run over a road with which the driver is not fully acquainted the driver shall be provided with a pilot. Such pilot shall be either a district locomotive superintendent (provided such officer has been a driver in the employer's service), a locomotive inspector, driver, or driver's assistant authorised to drive. In cases where a driver is removed from one depot to another, the driver shall be given facilities to learn the road without loss of driver's pay.

39.—PREPARING AND STABLING ENGINES

Each driver and driver's assistant shall, if required to do the work, be granted the appropriate allowance for preparing and stabling diesel locomotives and railcars, as agreed by mutual consent between the employer and the union, or failing such agreement as shall be prescribed by the Board of Reference pursuant to Clause 48.—Board of Reference, of this Award.

40.—UNIFORMS AND PROTECTIVE CLOTHING

(1) The following uniforms and protective clothing shall be supplied by the employer without cost—

(a) Initial Issue—

3 pairs long trousers

or

1 pair long trousers
2 pairs shorts and
3 pairs walk socks
3 shirts either long or short sleeves
1 pullover
1 Castro fleecy lined three quarter jacket
1 leather belt

(b) Each year thereafter—

2 pairs long trousers

or

1 pair long trousers
2 pairs shorts and
3 pairs walk socks
3 shirts either long or short sleeves

(c) In addition—

1 pullover each two years
1 Castro fleecy lined three quarter jacket each 4 years
1 leather belt on an as required basis, but not more than one every two years

(2) Workers operating steam cleaner shall be provided with suitable protective clothing, including rubber boots.

(3) Wet weather suits, head covering and safety footwear shall be supplied to all drivers, driver's assistants, locomotive trainees and permanent cleaners.

41.—SPECIAL SHED DUTY

(1) For the purpose of subclauses (2), (3), (4), (5), (6) and (7) of this clause, two diesel locomotives or four railcars shall be counted as one locomotive.

(2) At sheds where six or more locomotives are stabled, the duties of locomotive trainee shall be to clean locomotives, perform duties of calling and assisting in stores as may be directed by the officer in charge.

(3) The duties of drivers and driver's assistants where six or more locomotives are stabled, when stabling units, shall be to turn locomotives, examine locomotives and place locomotives for fuel or in the shed as the case may be, and leave in a safe condition. The driver's assistant shall keep cab and all fittings in a clean condition from the time of leaving the shed until return thereto.

(4) At sheds where less than six locomotives are stabled, the duties of locomotive trainees shall be to clean locomotives. Locomotive Trainees may also be used for fueling or other work, subject to the conditions of Clause 10.—Workers Performing Higher Duties, of this Award.

(5) (a) At sheds where less than six locomotives are stabled, the duties of the driver's assistant will be to leave the cab and cab fittings in a clean condition, assist in placing locomotive in the shed and when staff are not available, fuel and service the locomotive.

(b) After a driver's assistant has been on duty for more than eight and a half hours the worker shall be relieved of the duty of servicing such worker's locomotive unless the case is one of emergency and it is not possible, in the circumstances for other arrangements to be made to carry out such work.

(6) At sheds where less than six locomotives are stabled, the duties of the driver will be to examine locomotives, place locomotives for fuel and servicing and leave in a safe condition.

(7) In addition to the foregoing drivers and driver's assistants when stabling locomotives may, provided they have not been on duty in excess of eight and a half hours, be called upon to perform any other duty appertaining to their respective grades, and time allowance shall be made for so much work as cannot be performed in the period allowed for stabling.

(8) A locomotive trainee or a permanent cleaner, if called upon to maintain steam and water in a boiler and/or operate a steam or hot water jet while cleaning, shall be paid not less than the minimum rate for a locomotive trainee (appointed) while so employed.

42.—DISCIPLINE

The head of the branch shall have power to reprimand, fine, suspend from duty, reduce in grade, or dismiss any worker, and to remove any driver or driver's assistant from a locomotive footplate. Provided always that the notification to a worker of any such action shall be in writing, and shall state the reason for same being taken.

43.—CHARGES AGAINST WORKERS

(1) Each worker shall himself provide, when called upon, with the least possible delay, any report or statement which may be required by the officer in charge.

(2) When a worker against whom a charge is pending has made a statement to an officer in charge and which statement the officer in charge has taken down in writing, such worker shall either be furnished with a copy of such statement or be allowed to take a copy of it.

(3) If in the opinion of the foreperson or, where there is no foreperson appointed, the Area Manager, the action of any worker should be reported to the head of the branch, it shall be done—

(a) where a worker is stationed at a main depot, within seven days of the foreperson's or Area Manager's first knowledge of the occurrence; for the purpose of this clause a main depot shall be any depot where an Area Manager or locomotive shed foreperson is stationed.

(b) where the worker is stationed at a sub depot, within ten days of the first knowledge of the occurrence by the person in charge of such sub depot.

The worker shall at the same time be notified by the foreperson or Area Manager that the worker is reported, otherwise such report shall be null and void; provided that, when a worker reports on such worker's daily running sheet an irregularity or other occurrence in which the worker is concerned, to the employer, it shall not be necessary for the foreperson or Area Manager to notify such worker that such worker has been reported to the head of the branch but if the worker in such cases is to be charged the foreperson or Area Manager must so notify the worker within 21 days of the re-

ceipt of the daily running sheet. When a charge has been made against any worker such worker shall be supplied with a copy of such charge and any reports upon which it is based. No charge shall in any case be laid after the expiration of 30 days from the date of the occurrence.

(4) If a final decision in any case in which a charge has been made against a worker is not given within three calendar months of the occurrence first coming to the knowledge of the head of the branch or within fourteen days of the final determination of any charge relating to the occurrence brought against the worker by a party other than the employer (whichever is the later) the charge in question shall lapse.

(5) A worker who is suspended from duty for any reason shall not be kept under suspension in excess of six days (excluding Sundays or holidays) following the date on which the worker was suspended. Except in cases where dismissal follows suspension, a worker shall be paid for any time under suspension in excess of six days, provided the worker has not delayed the submission of the worker's explanation of the offence for which the worker was suspended.

(6) Where a worker exercises the right of appeal, no deduction shall be made from the worker's wages in respect of any fine until a final decision has been given.

(7) Where a worker has been fined an amount exceeding one day's pay, the amount to be deducted from any fortnight's pay shall not be greater than one day's pay, except with the consent of the worker concerned.

(8) Where, owing to absence from duty of a worker through leave or illness, it is not possible to notify the worker within the period prescribed in subclause (3) that the worker has been reported, the provision shall be regarded as having been complied with if the worker is so notified within seven days of resuming duty following such absence. In such cases, the period in which the final decision as per subclause (4) may be made shall be extended to three calendar months from the date of the worker's resumption of duty following absence.

44.—INTRODUCTION OF CHANGE

(1) Employer's Duty to Notify

(a) Where the 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.

(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 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.

(2) Employer's Duty to Discuss Change

(a) The employer shall discuss with the employees affected and their union, 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 their union 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 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 any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

45.—SECRETARY'S LEAVE AND PASSES

The employer will grant leave without pay for a continuous period to the secretary (should such secretary be a railways servant) to enable that secretary to attend exclusively to the union work, and a free pass will be issued to the secretary, whether a railway servant or not, but may be withdrawn at the employer's discretion. Such pass is to be used exclusively for union work and not for political purposes.

46.—UNION NOTICES

Notices relating to meetings or classes in connection with the union shall be allowed to be exhibited at such places as may be approved by the employer.

47.—SENIORITY LIST

Complete seniority lists shall be available for inspection by workers at depots where a foreman is stationed.

48.—BOARD OF REFERENCE

(1) The Western Australian Industrial Relations Commission hereby appoints for the purposes of this Award, a Board of Reference consisting of a Chairperson 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 allowing, approving, fixing, determining or dealing with any matter of difference 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.

FIRST SCHEDULE—38 HOUR WEEK PROVISIONS

1.—APPLICATION OF SECOND SCHEDULE.

(1) The provisions of this schedule apply to all employees to whom this award applies.

(2) The provisions of this schedule apply in substitution for corresponding provisions of this award or where there is no corresponding provision in addition to the provisions of this award.

2.—HOURS OF DUTY

The ordinary hours of work for all employees shall be 38 hours per week.

3.—RATES OF PAY

The hourly rate of pay for each worker shall be the total rate per week provided for in Clause 14 of the Locomotive Enginemen's Award No. 13 of 1973 —1990 (hereinafter referred to as the Award) divided by 38.

4.—IMPLEMENTATION

(1) The calendar year will be divided into thirteen 4 weekly cycles.

(2) The ordinary hours in each cycle will be 160 hours on a 40 hour week basis.

(3) Eight hours in each cycle (2 hours per week) will be accumulated for subsequent clearance as an extra day off.

5.—OVERTIME

Overtime payments will be made in accordance with Clause 17.—Hours of Duty and Overtime Payment, of the Award.

6.—CLEARANCE OF EXTRA DAY OFF

(1) (a) Subject to reasonable notice of not less than five days the accumulated extra days off are to be taken in one or two parts at the employer's discretion provided that a lesser period of notice may be given with the consent of the employee.

(b) Extra days off may be taken in anticipation of the credit time to be worked in any one leave year subject to the provisions of paragraph (a) hereof.

(2) The employer shall, upon receipt of a written request from a worker to clear extra days off in accordance with subclause (1), comply with such request subject to the exigencies of the service.

(3) Any accumulated extra days off remaining uncleared at June 30 each year shall be added to the worker's annual leave and arranged in accordance with Clause 29(1)(e)—Annual Leave and Holidays, of the Award.

(4) At the end of the leave year, or on termination of the worker's services if sooner, an adjustment to the worker's entitlements will be made for any extra days off taken during the leave year to which the worker, through subsequent service, has not become entitled.

7.—LEAVE AND PUBLIC HOLIDAYS

(1) For the purpose of Clause 24 of the Award each week's leave shall mean 38 hours at 7.6 hours per day.

(2) For the purpose of long service leave as prescribed in the Railway Wages Long Service Leave Agreement 1976 each week's leave shall mean 38 hours at 7.6 hours per day.

(3) For the purpose of Clause 29(2)(b)(ii)(bb) of the Award 8 hours means 8 hours at the 40 hour hourly rate and shall be computed as 7.6 hours at the 38 hourly rate as provided in paragraph 3.

(4) A days holiday cleared in lieu of work on a public holiday shall be computed as 7.6 hours.

(5) Extra days off accumulated in accordance with paragraph 3 will be computed at 8 hours at ordinary rates.

(6) Where because of a combination of working time and leave, less than 8 hours extra is accumulated in any cycle in accordance with Clause 3 and the aggregate of such accumulation for the year results in the accumulation of a part day of less than eight hours, the employee shall have the option when taking uncleared days with annual leave, as provided in Clause 6(3), of being paid for the accumulated part day at ordinary rates or taking an extra day off with part payment.

(7) An employee's sick leave entitlement will be debited on the basis of the ordinary rostered hours and will include an accrual towards the extra days off.

(8) A worker shall not be entitled to sick leave or bereavement leave in respect of any absence from duty whilst clearing extra days off.

(9) Any annual leave, public holidays or sick leave entitlement accumulated to an employee as at January 4 1986 shall be adjusted in hours in the ratio of 40 to 38.

8.—GUARANTEED WEEK'S WORK

Where in any week a worker is on annual leave, long service leave, workers compensation, leave without pay, or days in lieu of public holidays worked the guarantee provided in Clause 17(3)—Hours of Duty and Overtime Payment, of the Award shall be reduced by 0.4 hours in respect of each days absence.

Dated at Perth this 19th day of July 1973.

GOVERNMENT WATER SUPPLY, SEWERAGE AND DRAINAGE EMPLOYEES AWARD 1981
No. 2 of 1980.

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 February 1996

(Sgd.) J. CARRIGG,
Registrar.

Government Water Supply, Sewerage and Drainage Employees Award 1981

1.—TITLE

This Award shall be known as the Government Water Supply, Sewerage and Drainage Employees Award 1981 and replaces the following awards as they applied to the Water Authority of Western Australia, namely—

Engineering Trades (Government) Award 1967, Nos. 29, 30 and 31 of 1961 and 3 of 1962.

Government Water Supply (Kalgoorlie Pipeline) Award No. A 15 of 1981.

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

3.—AREA AND SCOPE

This Award shall apply to all employees employed by the Water Authority of Western Australia under the provisions of the Water Authority Act 1984, as amended, in the classifications mentioned in this Award.

4.—TERM

The term of this award shall be for a period of 12 months from the date of this award.

5.—CLASSIFICATION STRUCTURE AND DEFINITIONS

(1) Classification Structure—

Level	Classification Title	Minimum Training Requirement
C5	Water Industry Engineering Tradesperson	Advanced Certificate or 15 appropriate accredited modules of an Associate Diploma, or formal equivalent.
C6	Water Industry Engineering Tradesperson	12 appropriate accredited modules of an Advanced Certificate or Associate Diploma, or formal equivalent.
C7	Water Industry Engineering Tradesperson	9 appropriate training modules in addition to the training requirements for C 10.
C8	Water Industry Engineering Tradesperson	6 appropriate accredited technical modules in addition to the training requirements for C 10.
C9	Water Industry Engineering Tradesperson	3 appropriate accredited technical modules in addition to the training requirements for C 10.
C10	Water Industry Engineering Tradesperson	Trades Certificate or Tradesperson's Rights Certificate.
C11	Water Industry Engineering Employee	16 appropriate accredited modulesand relevant on the job training.
C12	Water Industry Engineering Employee	8 appropriate accredited modules and relevant on the job training.
C13	Water Industry Engineering Employee	Up to 38 hours' induction training and up to 3 months' structured training.

The definitions for levels DC10-DC5 inclusive are as for the C structure as listed above except that, in addition, employees appointed to the DC structure are required to hold the appropriate cross or dual trained instrument/electrical fitting trades certificate. Minimum training requirements for levels DC10-DC5 inclusive are described by the corresponding number of appropriate technical training modules in addition to the training requirements for DC10.

(2) Definitions—

Water Industry Engineering Employee

Level C13

(Relativity to C10—82%)

A Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, and who is—

(a) Undertaking or has undertaken up to 38 hours' training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance; and up to three months' structured training so as to enable the employee to perform work within the scope of this level;

and to the level of his/her training—

(b) Works under direct supervision either individually or in a team environment;

(c) Understands and undertakes basic quality control/assurance procedures including the ability to recognise basic deviations/faults;

(d) Understands and utilises basic statistical process control procedures;

Indicative of the tasks which an employee at this level may perform are the following—

- Repetition 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 cuts scrap with oxyacetylene blow pipe;
- Uses selected hand tools;
- Boiler cleaning;
- Maintains simple records;
- Uses hand trolleys and pallet trucks;
- Assists in the provision of on-the-job training in conjunction with tradespersons and supervisor/trainees.

Level C12

(Relativity to C10—87.4%)

A Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C13, and whose job description requires—

(a) Satisfactory completion of a minimum of eight accredited training modules and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme;

and to the level of his/her training—

(b) Is responsible for the quality of his/her own work subject to routine supervision;

(c) Works under routine supervision either individually or in a team environment;

(d) Exercises discretion within his/her level of skills and training.

Indicative of the tasks which an employee at this level may perform are the following—

- Receiving, dispatching, sorting, checking, packing, documenting and recording of goods, materials and components;
- Basic inventory control in the context of a production process;
- Basic keyboard skills;
- Advanced soldering techniques;
- Operation of mobile equipment including forklifts, overhead cranes and winch operation;
- Ability to measure accurately;
- Assist one or more tradespersons;

Level C11

(Relativity to C10—92.4%)

A Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C12, and whose job description requires—

(a) Satisfactory completion of a minimum of 16 accredited training modules and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme;

and to the level of his/her training—

(b) Works from complex instructions and procedures;

(c) Assists in the provision of on-the-job training to a limited degree;

(d) Co-ordinates work in a team environment or works individually under general supervision;

(e) Is responsible for assuring the quality of his/her own work.

Indicative of the tasks which an employee at this level may perform are the following—

- Uses 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 (basic non-trades) maintenance;

Computer operation at a level higher than that of an employee at C12 level;

- Intermediate keyboard skills;
- Basic engineering and fault finding skills;
- Performs basic quality checks on the work of others;
- Licensed and certified for forklift, engine driving and crane driving operations to a level higher than C12.
- Has a knowledge of the employer's operation as it relates to production process;
- Lubrication of production machinery equipment.

Water Industry Engineering Tradesperson

Level C10

(Relativity 100%)

An employee who is employed as a Water Industry Engineering Tradesperson and holds a Trade Certificate or Tradesperson's Rights Certificate in a relevant trade stream as a—

(a) Water Industry Engineering Tradesperson (electrical/electronic); or

(b) Water Industry Engineering Tradesperson (mechanical); or

(c) Water Industry Engineering Tradesperson (fabrication);

and is able to exercise competently the skills and knowledge of that trade using any non-trade skills which facilitates the completion of the whole task whilst not promoting deskilling.

A Water Industry Engineering Tradesperson exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of an employee at C11, and to the level of his/her training—

(a) Understands and applies quality control techniques;

(b) Exercises good interpersonal and communications skills;

(c) Exercises keyboard skills at a level higher than C11;

(d) Exercises discretion within the scope of this grade;

(e) Performs work under limited supervision either individually or in a team environment;

(f) Operates all lifting equipment incidental to his/her work;

(g) Performs non-trade tasks incidental to his/her work;

(h) Able to inspect products and/or materials for conformity with established operational standards.

Level C9

(Relativity to C10—105%)

A Water Industry Engineering Tradesperson is a—

(a) Water Industry Engineering Tradesperson (electrical/electronic); or

(b) Water Industry Engineering Tradesperson (mechanical); or

(c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C10 tradesperson, and whose job description requires—

(a) Satisfactory completion of a minimum of three accredited technical training modules in addition to the training requirements of C10, and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme;

and to the level of his/her training—

(b) Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards which will apply to this Award;

(c) Exercises discretion within the scope of this grade;

(d) Works under general supervision either individually or in a team environment;

(e) Understands and implements quality control techniques;

(f) Provide trade guidance and assistance as part of a work team;

(g) Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Water Industry Metal Tradesperson C10.

Tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular tasks.

Level C8

(Relativity to C10—110%)

A Water Industry Engineering Tradesperson is a—

(a) Water Industry Engineering Tradesperson (electrical/electronic); or

(b) Water Industry Engineering Tradesperson (mechanical); or

(c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C9 tradesperson, and whose job description requires—

(a) Satisfactory completion of a minimum of six accredited technical training modules in addition to the training requirements of C10, and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme;

and to the level of his/her training—

(b) Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards which will apply to this Award;

(c) Provides trade guidance and assistance as part of a work team;

(d) Assists in the provision of training in conjunction with supervisors and trainers;

(e) Understands and implements quality control techniques;

(f) Works under limited supervision either individually or in a team environment;

(g) Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Water Industry Metal Tradesperson C9.

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform particular tasks.

- Exercises high precision trade skills using various materials and/or specialised techniques;
- Performs operations on a CAD/CAM terminal in the performance of routine modifications to NC/CNC programs;
- Installs, repairs and maintains, tests, modifies, commissions and/or fault finds on complex machinery and equipment which utilises hydraulic and/or pneumatic principles and in the course of such work, is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems;
- Works on complex or intricate circuitry which involves examining, diagnosing and modifying systems comprising inter-connected circuits.

Level C7

(Relativity to C10—115%)

A Water Industry Engineering Tradesperson is a—

(a) Water Industry Engineering Tradesperson (electrical/electronic); or

(b) Water Industry Engineering Tradesperson (mechanical); or

(c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C8 tradesperson, and whose job description requires—

(a) Satisfactory completion of a minimum of three appropriate training modules in addition to the requirements of C8; or

(b) Satisfactory completion of nine appropriate modules towards an Advanced Certificate; or

(c) Satisfactory completion of nine appropriate modules towards an Associate Diploma;

and to the level of his/her training—

(d) Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards which will apply to this Award;

(e) Provides trade guidance and assistance as part of a work team;

(f) Provides training in conjunction with supervisors and trainers;

(g) Understands and implements quality control techniques;

(h) Works under limited supervision either individually or in a team environment;

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform particular tasks.

- 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 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 programs;
- Works on complex or intricate interconnected electrical circuits at a level above C8.
- Works on complex radio/communication equipment.

Level C6

(Relativity to C10—125%)

A Water Industry Engineering Tradesperson is a—

(a) Water Industry Engineering Tradesperson (electrical/electronic); or

(b) Water Industry Engineering Tradesperson (mechanical); or

(c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C7 tradesperson, and whose job description requires—

(a) Satisfactory completion of a minimum of—

- 12 appropriate modules of an Advanced Certificate (yet to be determined); or
- 12 appropriate modules of an Associate Diploma (yet to be determined); or
- Equivalent accredited training;

and to the level of his/her training—

(b) Undertakes quality control and work organisation at a level higher than for C7;

(c) Provides trade guidance and assistance as part of a work team;

(d) Provides training in conjunction with supervisors and trainers;

(e) Performs maintenance planning and predictive maintenance work not in technical fields;

(f) Works under limited supervision either individually or in a team environment;

(g) Prepares reports of a technical nature on specific tasks or assignments as directed;

(h) Exercises broad discretion within the scope of this level.

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform particular tasks.

- Works on combinations of machines or equipment which utilise complex electronic, mechanical and fluid power principles;
- Works on instruments which make up a complex control system which utilise some combination of electrical, electronic, mechanical, fluid power principles and electronic circuitry containing complex analogue and/or digital control systems utilising integrated circuitry;
- Applies computer integrated manufacturing techniques involving a higher level of computer operating and programming skills than for C7;
- Works on various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control systems using integrated circuitry.

Level C5

(Relativity to C10—130%)

A Water Industry Engineering Tradesperson is a—

(a) Water Industry Engineering Tradesperson (electrical/electronic); or

(b) Water Industry Engineering Tradesperson (mechanical); or

(c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C6 tradesperson, and whose job description requires—

(a) Satisfactory completion of a minimum of—

- An Advanced Certificate; or
- 15 appropriate modules of an Associate Diploma (yet to be determined); or
- Equivalent accredited training;

and to the level of his/her training—

(b) Provides technical guidance or advice within the scope of this level;

(c) Prepares reports of a technical nature on specific tasks or assignment as directed or within the scope of discretion at this level;

(d) 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;

(e) Assists in the provision of on-the-job training in conjunction with supervisors and trainers.

The following indicative tasks which an employee at this level may perform are subject to the employee having appropriate trade and post-trade training to enable the employee to perform particular tasks.

- Through a systems approach 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;

- Set up, commission, maintain and operate sophisticated maintenance, production and test equipment and/or systems involving the application of computer operating skills at a higher level than a C6;
- Working on various forms of machinery and equipment electronically controlled by complex digital and/or analogue control systems using integrated circuitry;
- Working 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.

"Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch; the Metal and Engineering Workers' Union—Western Australia; the Australian Electrical, Electronics, Foundry and Engineering Union (Western Australian Branch); or The Operative Painters' and Decorators' Union of Australia, W.A. Branch, Union of Workers.

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 wages in lieu of notice.

Notice from the employer shall be in writing.

(2) The employer shall be under no obligation to pay for any day not worked on which an employee is required to present himself for duty, except when such absence is:

(a) due to illness and comes within the provisions of Clause 23.—Sick Leave of this award; or

(b) on account of holidays to which the employee is entitled under the provisions of Clause 21.—Public Holidays of this award; or

(c) special leave referred to in Clause 22.—Special Leave of this award; or

(d) annual leave in accordance with Clause 20.—Annual Leave of this award; or

(e) long service leave in accordance with Clause 24.—Long Service Leave of this award.

(3) This clause does not affect the employer's right to dismiss an employee for misconduct and an employee so dismissed shall be paid wages up to the time of dismissal.

(4) (a) All employees shall be guaranteed a full week's work, however 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, with the exception of wet weather, in which case the decision as to whether it is too wet shall rest with the Officer in Charge.

(b) Provided that an employer shall be entitled to employ only such employees (if any) it considers can be usefully employed and for such hours as it considers necessary, and during such period no employee shall be entitled to payment except for work actually performed provided that employees who are required to attend for work and do so attend as required on any day, shall be paid a minimum of one day's pay at ordinary rates.

(c) Any employee stood down in accordance with the foregoing provision shall not lose any sick leave credit or other rights or privileges to which such employee would ordinarily be entitled under this Award, provided such employee resumes work as required after such standdown and provided that this provision does not entitle an employee to payment for any holiday occurring during such period of standdown if that period of standdown is due to industrial action as outlined in paragraph (a) above.

(5) (a) An employer may direct an employee to carry out such duties which are within the limits of the employee's skill, competence and training, including work which is incidental or peripheral to the employee's main tasks or functions, provided that such duties are not designed to promote de-skilling.

(b) An employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided 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) of this subclause shall be consistent with the provisions of the Occupational Health, Safety and Welfare Act, 1984-1987, as amended.

(6) By agreement between the employer and the employee concerned, the notice or payment prescribed herein may be varied either in whole or in part.

7.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

PART A.—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions

For the purposes of Part A.—Maternity Leave—

(a) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

(b) "Paternity leave" means leave of the type provided for in Part B.—Paternity Leave of this clause whether prescribed in an award or otherwise.

(c) "Child" means a child of the employee under the age of one year.

(d) "Spouse" includes a de facto or a former spouse.

(e) "Continuous service" means service under an unbroken contract of employment and includes—

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the Award.

(3) Eligibility for Maternity Leave

(a) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (4) hereof, shall be entitled to a period of up to 52 weeks' maternity leave provided that such leave shall not extend beyond the child's first birthday.

(b) This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

(c) Subject to subclauses (6) and (9) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks' compulsory leave.

(d) The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) the employee must produce to her employer—

(a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

(b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(5) Notice Requirements

(a) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in paragraph (4)(a) hereof.

(b) 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 and shall, at the same time, produce to her employer the statutory declaration referred to in paragraph (4)(b) hereof.

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

(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 (b) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

(6) Transfer to a Safe Job

Where, in the opinion of a registered 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 registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) hereof.

(7) Variation of Period of Maternity Leave

(a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (3) hereof—

(i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and employee.

(b) The period of maternity 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.

(8) 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.

(9) 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 registered 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 registered 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 registered 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 the period to which the employee is entitled under subclause (3) hereof.

(c) For the purposes of subclauses (10), (11) and (12) 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 (6) hereof, to the position she held immediately before such transfer.

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

(10) Maternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under this Part A.—Maternity Leave, of this clause, does not exceed the period to which the employee is entitled under subclause (3) hereof, 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 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.

(11) Effect of Maternity Leave on Employment

Subject to this Part A.—Maternity Leave, of this clause, 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.

(12) 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 of termination of employment are not hereby affected.

(13) 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 returning to work after maternity leave or 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 an employee who was transferred to a safe job pursuant to subclause (6) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

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

(14) 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 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 Part A.—Maternity Leave of 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) Nothing in Part A.—Maternity Leave, of this clause shall be construed as requiring an employer to engage a replacement employee.

PART B.—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions

For the purposes of this subclause—

(a) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

(b) "Maternity leave" means leave of the type provided for in Part A.—Maternity Leave of this clause (and includes special maternity leave) whether prescribed in an award or otherwise.

(c) "Child" means a child of the employee or the employee's spouse under the age of one year.

(d) "Spouse" includes a de facto or a former spouse.

(e) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(f) "Continuous service" means service under an unbroken contract of employment and includes—

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the Award.

(3) Eligibility for Paternity Leave

A male employee, upon production to his employer of the certificate required by subclause (4) hereof, shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

(a) an unbroken period of up to one week at the time of confinement of his spouse;

(b) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave.

(c) The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

(4) Certification

At the time specified in subclause (5) hereof the employee must produce to his employer—

(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;

(b) in relation to any period to be taken under paragraph (3)(b) hereof, a statutory declaration stating—

(i) he will take that period of paternity leave to become the primary care-giver of a child;

(ii) particulars of any period of maternity leave sought or taken by his spouse; and

(iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

(a) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) hereof.

(b) The employee shall not be in breach of this clause as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to—

(i) the birth occurring earlier than the expected date; or

(ii) the death of the mother of the child; or

(iii) other compelling circumstances.

(c) The employee shall immediately notify his employer of any change in the information provided pursuant to paragraph (4) hereof.

(6) Variation of Period of Paternity Leave

(a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause (3) hereof—

(i) the period of paternity leave provided by paragraph (3)(b) hereof may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and the employee.

(b) The period of paternity leave taken under paragraph (3)(b) hereof 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.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (3)(b) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Leave Entitlements

(a) Provided the aggregate of any leave, including leave taken under Part B.—Paternity Leave, of this clause, does not exceed the period to which the employee is entitled under subclause (3) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is 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 his absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to Part B.—Paternity Leave, of this clause, notwithstanding any award or other provision to the contrary, absence on paternity 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.

(10) Termination of Employment

(a) An employee on paternity leave may terminate his 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 his absence on

paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

(a) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (3)(b) hereof.

(b) An employee, upon returning to work after paternity leave or the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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

(12) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(b) Before an employer engages a replacement employee 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 his rights under Part B.—Paternity Leave, of 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) Nothing in Part B.—Paternity Leave, of this clause shall be construed as requiring an employer to engage a replacement employee.

PART C.—ADOPTION LEAVE

(1) Nature of Leave

Adoption leave is unpaid leave.

(2) Definitions

For the purposes of Part C.—Adoption Leave—

(a) "Employee" includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

(b) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

(c) "Relative Adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).

(d) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(e) "Spouse" includes a de facto spouse.

(f) "Continuous service" means service under an unbroken contract of employment and includes—

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the Award.

(3) Eligibility

An employee, upon production to the employer of the documentation required by subclause (4) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

(a) an unbroken period of up to three weeks at the time of the placement of the child;

(b) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by—

(i) any period of leave taken pursuant to paragraph (a) hereof; and

(ii) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

(c) The employee must have had at least 12 months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

(4) Certification

Before taking adoption leave the employee must produce to the employer—

(a) (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

(ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

(b) In relation to any period to be taken under paragraph (3)(b) hereof, a statutory declaration stating—

(i) the employee is seeking adoption leave to become the primary care-giver of the child;

(ii) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(iii) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(5) Notice Requirements

(a) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

(b) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

(c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under paragraph (3)(a) hereof.

(d) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under paragraph (3)(b) hereof give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

(e) 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 paragraphs (c) and

(d) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(6) Variation of Period of Adoption Leave

(a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause (3) hereof—

(i) the period of leave taken under paragraph (3)(b) hereof may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;

(ii) the period may be further lengthened by agreement between the employer and employee.

(b) The period of adoption leave taken under paragraph (3)(b) hereof 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.

(7) Cancellation of Adoption Leave

(a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

(b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(8) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(9) Adoption Leave and Other Entitlements

(a) Provided the aggregate of any leave, including leave taken under Part C.—Adoption Leave, of this clause, does not exceed the period to which the employee is entitled under subclause (3) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any accumulated annual leave or long service leave or any part thereof to which he or she is 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 absence on adoption leave.

(10) Effect of Adoption Leave on Employment

Subject to Part C.—Adoption Leave, of this clause, notwithstanding any award or other provision to the contrary, absence on adoption 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.

(11) Termination of Employment

(a) An employee on adoption leave may terminate the 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 grounds of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(12) Return to Work After Adoption Leave

(a) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (3)(b) hereof.

(b) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

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

(13) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.

(b) Before an employer engages a replacement employee 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 rights under Part C.—Adoption Leave, of 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) Nothing in Part C.—Adoption Leave, of this clause, shall be construed as requiring an employer to engage a replacement employee.

PART D.—PART-TIME WORK

(1) Definitions

For the purposes of Part D.—Part-Time Work—

(a) "Male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.

(b) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.

(c) "Spouse" includes a de facto spouse.

(d) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this clause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

(e) "Continuous service" means service under an unbroken contract of employment and includes—

(i) any period of leave taken in accordance with this clause;

(ii) any period of part-time employment worked in accordance with this clause; or

(iii) any period of leave or absence authorised by the employer or by the Award.

(2) Entitlement

With the agreement of the employer—

(a) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.

(b) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(c) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.

(d) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(3) Return to Former Position

(a) An employee who has had at least 12 months' continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

(b) Nothing in paragraph (a) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(4) Effect of Part-Time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service employment.

(5) Pro Rata Entitlements

Subject to the provisions of Part D.—Part-Time Work, of this clause and the matters agreed to in accordance with subclause (8) hereof, part-time employment shall be in accordance with the provisions of this Award which shall apply pro rata.

(6) Transitional Arrangements—Annual Leave

(a) An employee working part-time under Part D.—Part-Time Work, of this clause, shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this Award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this clause.

(b) (i) A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this clause, in such periods and manner as specified in this Award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

(ii) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(7) Transitional Arrangements—Sick Leave

An employee working part-time under this clause shall have sick leave entitlements which have accrued under this Award (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(8) Part-Time Work Agreement

(a) Before commencing a period of part-time employment under this clause the employee and the employer shall agree—

(i) that the employee may work part-time;

(ii) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

(iii) upon the classification applying to the work to be performed; and

(iv) upon the period of part-time employment.

(b) The terms of this agreement may be varied by consent.

(c) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

(d) The terms of this agreement shall apply to the part-time employment.

(9) Termination of Employment

(a) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this Award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposed to enjoy any benefits arising under this clause.

(b) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(10) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with subclause (8) hereof.

(11) Nature of Part-Time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this Award.

(12) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provision of this Award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions—

(a) limiting the number of employees who may work part-time;

(b) establishing quotas as to the ratio of part-time to full-time employees;

(c) prescribing a minimum or maximum number of hours a part-time employee may work; or

(d) requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

(13) Replacement Employees

(a) A replacement employee is an employee specifically engaged as a result of an employee working part-time under Part D.—Part-Time Work, of this clause.

(b) A replacement employee may be employed part-time. Subject to this subclause, subclauses (5), (6), (7), (8), (9) and (12) of Part D.—Part-Time Work, of this clause apply to the part-time employment of a replacement employee.

(c) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(d) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of paragraph (1)(e) hereof.

(e) Nothing in Part D.—Part-Time Work, of this clause shall be construed as requiring an employer to engage a replacement employee.

The union has liberty to apply to vary the provisions of paragraph (5)(c) in Part A.—Maternity Leave, of this clause.

8.—PAYMENT OF WAGES

(1) 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 theday after by registered post, at the employer's risk, unless the employee desires to collect at the office.

(2) Alteration of Plod Cards or Time Dockets:

Each employee shall be responsible for the filling in of his plod cards or time dockets.

Alterations will be permitted provided the original entry is not rendered illegible and the reasons is explained to the employee who shall initial the alterations. All dockets and plod cards to be completed in the employer's time.

(3) Subject to the provisions of this clause, no deduction shall be made from an employees wages unless the employee has authorised such deduction in writing.

(4) Subject to the provisions of subclause (5) of this clause wages shall be paid fortnightly no later than each alternate Thursday.

(5) The wages shall be paid into a Bank Account, Building Society or approved Credit Union; and the receipt of such Bank, Building Society or Credit Union shall be a full and sufficient discharge for the amount paid thereto.

(6) An employee may request payment by cash or cheque on the grounds that payment into an account would cause hardship. Any dispute as to the appropriate method of payment may be referred to the Western Australian Industrial Commission for determination.

(7) The employer shall provide for each employee a pay advice slip in respect of each payment of wages. Such slip shall detail the gross wages payable including its composition, deductions made and the net wage paid. Such slip shall be provided to the employee on or before each pay day.

9.—HIGHER DUTIES

(1) 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 2 hours on any day or shift he shall be paid the higher rate for the whole day or shift.

(2) Any employee carrying out work classified at a higher minimum than his ordinary rate for a period of 4 weeks or more continuously in a particular classification shall in the event of a change to a lower classification be given 1 week's notice of such proposed change.

(3) Should any employee be required to perform work in a lower grade, his wages shall not be reduced whilst employed in such capacity.

10.—SPECIAL RATES AND PROVISIONS

(1) Meter Fitters' Vehicle Allowance

A Meter Fitter who in the course of his/her duties has to ride a motor cycle or drive a motor vehicle shall receive $7.18 per week extra.

(2) An employee who regulates and controls vehicular traffic in thoroughfares shall receive an allowance of $1.45 per shift above his/her usual rate.

(3) Offensive Allowance

(a) An allowance of $3.01 per day shall be paid to each employee who comes into contact with filth during the operation of cleaning out septic tanks, sand pits, ripple chambers, suction chambers of sewerage pumping stations or in de-ragging of sewerage pumps.

(b) An employee (other than a sewerage maintenance employee) employed on offensive work in connection with working in or about old sewers or working in ground where fumes arise from decomposed material or from any other cause shall be paid an allowance of 25 per cent of his/her ordinary time rate.

(4) Dirt Money

33 cents per hour extra shall be paid to an employee when engaged on work which is agreed to be of an unusually dirty nature.

(5) Confined Spaces

An employee working in a compartment, space or place the dimensions of which necessitate working in a unusually stooped or otherwise cramped position, or without proper ventilation, shall be paid an allowance of 41 cents per hour whilst so engaged.

(6) Underground Allowance

An employee required to work underground on tunnelling or shaft sinking shall be paid an amount of $1.45 per day or shift, in addition to any other amount prescribed for such employee elsewhere in this Award. Where a shaft is to be sunk to a depth greater than six metres the payment of the underground allowance shall commence from the surface. The allowance shall not be payable to employees engaged upon "cut and cover" work at a depth of 3.5 metres or less or to employees in trenches or excavations.

"Shaft" means an excavation over 1.8 metres deep with a cross sectional area of less than 13.4 square metres.

"Tunnelling" shall include all work performed in a tunnel until it is commissioned.

(7) Well Work

An employee required to enter a well nine metres or more in depth for the purpose, in the first instance, of examining the pump, or any other work connected therewith, shall receive an amount of $1.85 for such examination and 71 cents per hour extra thereafter for fixing, renewing or repairing such work.

(8) Hot Work

An employee who works in a place where the temperature has been raised by artificial means to between 46°C and 54°C shall be paid 33 cents per hour or part thereof, and to more than 54°C—39 cents per hour or part thereof, in addition to any other amount prescribed for such employee elsewhere in this Award. Where such work continues for more than two hours the employee shall be entitled to 20 minutes' rest after every two hours' work without loss of pay, not including the special rate provided by this subclause.

(9) Height Money

An employee shall be paid an allowance of 30 cents per hour, in addition to the ordinary rate, on which the employee works at a height of nine metres or more above the nearest horizontal plane.

(10) Drivers' Licences

Initial issue or additional classifications of drivers' licences required by the employer shall be paid for by the employer. In addition the employer shall allow the employee sufficient time off with pay to take the requisite test.

(11) Explosive Powered Tools Allowance

An employee qualified in accordance with the laws and regulations of the State to operate explosive powered tools shall be paid an allowance of 76 cents per day on which such tools are used.

(12) Any employee actually working a pneumatic tool of the percussion type shall be paid 27 cents per hour extra whilst so engaged.

(13) Fumes

An employee required to work in a place where fumes of sulphur or acid or other offensive fumes are present shall be paid an allowance of 30 cents for each hour worked.

(14) An employee using a steam or water cleaning unit shall be paid an allowance of 33 cents per hour whilst so engaged.

(15) Wet Places

(a) An employee required to work in a wet place or during wet weather shall be provided with rubber boots and adequate waterproof clothing, including waterproof head covering so as to protect the employee from getting wet. Such waterproof clothing and rubber boots shall be replaced as required, subject to fair wear and tear in the service of the employer.

(b) Any employee working in a wet place shall be paid an allowance of $1.54 per day in addition to the ordinary rate, irrespective of the time worked unless his/her classification expressly includes an allowance for wet pay.

(c) A place shall be deemed to be wet when it is agreed that water (other than rain) is continually dropping from overhead to such an extent that it would saturate the clothing of an employee if waterproof clothing was not provided or when the water in the place where the employee is standing is over 2.5 centimetres deep.

(d) Where the employer directs work to continue during rain, the employer may, if adequate protective clothing is supplied the employee, require the

employee to continue working. For such work the employee shall be paid an allowance of 25% of the ordinary rate.

(16) Handling Lime Cement or Flyash

Any employees involved in the handling of dry cement, lime or flyash shall be paid $1.74 per day.

(17) Hot Bitumen

An employee handling hot bitumen or asphalt or dipping materials in creosote, shall be paid 41 cents per hour extra.

An employee shall be provided with gloves and overalls and with oil or other solvents suitable for the removal of the above materials.

(18) Pesticides and Toxic Substances

(a) An employer who requires an employee to use a pesticide or toxic substance shall—

(i) inform the employee of any known health hazards involved; and

(ii) pursuant to the relevant Acts and Regulations, ascertain whether and, if so, what protective clothing and/or equipment should be worn during its use.

(b) Pending advice obtained pursuant to the relevant Acts and Regulations, the employer may require the pesticide or toxic substance to be used, if the employee is informed of any safety precautions specified by the manufacturer of the pesticide and instructs the employee to follow those precautions.

(c) The employer shall supply the employee with any protective clothing or equipment required pursuant to paragraph (a) or (b) hereof and, where necessary, instruct him/her in its use.

(d) An employee required to wear protective clothing or equipment for the purposes of this subclause shall be paid 41 cents per hour or part thereof while doing so unless the union and the employer agree that by reason of the nature of the protective clothing or equipment the employee does not suffer discomfort or inconvenience while wearing it, or in the event of disagreement, the Board of Reference so determines.

(e) An allowance is not payable under this subclause if the advice obtained pursuant to subparagraph (a)(ii) hereof in writing indicates that protective clothing or equipment is not necessary.

(19) Asbestos

An employee using materials containing asbestos or working in close proximity to any employee using such material shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority.

Where such safeguards include the mandatory wearing of protective equipment, i.e. combination overalls and breathing equipment or similar apparatus, any such employee shall be paid 42 cents per hour extra whilst so engaged.

(20) Shotfirers Allowance

An employee being a permit holder, responsible for the proper handling of explosives and the conducting of firing shall be paid an allowance of $3.54 per shift.

(21) The work of an electrical fitter shall not be tested by an employee of a lower grade.

(22) An Electronic Tradesperson, an Electrician—Special Class, an Electrical Fitter and/or an Armature Winder or an Electrical Installer who holds and in the course of 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, 1948 shall be paid an allowance of $13.20 per week. Provided that an employee appointed to the DC classification structure as contained in Clause 38.—Wages, of this Award shall not receive this allowance as the wage rate contained in the DC classification structure includes a component for licence allowance.

(23) 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 further that this subclause shall not apply to confined space, dirt money, height money, hot work or wet work the rates for which are cumulative.

(24) Special Disability Not Otherwise Provided For in This Award

Where a union representing a particular group of employees claims the existence of special disability not otherwise provided for in this Award, representatives of the employer and the union shall confer with a view to agreeing upon an appropriate special rate. In the event of agreement not being reached, the matter may be referred to the Western Australian Industrial Relations Commission.

(25)(a) All employees called upon to clean closets, connected with septic tanks or sewerage shall receive an allowance of 41 cents per closet per week.

(b) For the purposes of this subclause, one metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

(c) All such employees shall be supplied with rubber gloves on request.

(26) Polychlorinated Biphenyls

Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs) for which protective clothing must be worn shall, in addition to the rates and provisions contained in this clause, be paid an allowance of $1.33 per hour whilst so engaged.

(27) Spray Application Painters

A painter engaged on any spray applications carried out in other than a properly constructed booth approved by the Department of Occupational Health, Safety and Welfare shall be paid 33 cents per hour or part thereof in addition to the rates otherwise prescribed in this Award.

(28) Fuel, Kerosene and Water

Electric pump attendants and pumping station assistants shall be supplied with free water and in lieu of fuel and kerosene be paid $4.28 per week or such other amount as may be agreed between the parties or determined by the Board of Reference.

(29)(a) Subject to the provisions of this clause, an employee whilst employed on foundry work shall be paid a disability allowance of 22 cents for each hour worked to compensate for all disagreeable features associated with foundry work including heat, fumes, atmospheric conditions, sparks, dampness, confined spaces and noise.

(b) The foundry allowance herein prescribed shall also apply to apprentices and unapprenticed juniors employed in foundries; provided that where an apprentice is, for a period of half a day or longer, away from the foundry for the purpose of receiving tuition, the amount of foundry allowance paid to him/her shall be decreased proportionately.

(c) The foundry allowance herein prescribed shall be in lieu of any payment otherwise due under this clause and does not in any way limit any employer's obligations to comply with all relevant requirements of Acts and Regulations relative to conditions in foundries.

(d) For the purpose of this subclause foundry work shall mean—

(i) Any operation in the production of castings by casting metal in moulds made of sand, loam, metal, moulding composition or other material or mixture of materials or by shell moulding, centrifugal casting or continuous casting; and

(ii) where carried on as an incidental process in connection with and in the course of production to which subparagraph (i) of this definition applies, the preparation of moulds and cores (but not in the making of patterns and dies in a separate room), knock out processes and dressing operations, but shall not include any operation performed in connection with—

(aa) non-ferrous die casting (including gravity and pressure);

(bb) casting of billets and/or ingots in metal moulds;

(cc) continuous casting for metal into billets;

(dd) melting of metal for use in printing;

(ee) refining of metal.

(30) Flouride Allowance

An employee who is required to handle flouride shall be paid an allowance of $3.13 per week. This allowance shall only be payable to an employee who was formerly covered by the Government Water Supply (Kalgoorlie Pipeline) Award No. 15 of 1981.

11.—PROTECTIVE EQUIPMENT

(1) The employer shall have a sufficient supply of protective equipment (as for example, goggles, including anti-flash goggles, glasses, gloves, mitts, aprons, sleeves, gumboots, leggings, ear protectors, helmets or other efficient substitutes thereof) for use by employees when engaged on work for which some protective equipment is reasonably necessary.

(2) Water Proof Clothing and Rubber Boots

(a) A suitable water proof overcoat, together with a pair of rubber boots shall be supplied and replaced on the basis of fair wear and tear to any such cases and circumstances that are agreed between the union and the employer.

(b) A separate issue shall be made to each employee who shall acknowledge receipt in writing and be responsible for the safekeeping and condition thereof, reasonable wear and tear excepted. When the employee leaves, or is terminated, the issue shall be returned in a condition consistent with an observance of this paragraph.

(c) Employees shall not lend the issue or any part of the issue made to them to another employee or operator, or borrow the issue made to another employee.

(d) An employee shall not be called upon to wear boots formerly issued to another employee.

(3) Overalls and Gloves

(a) Upon application in writing by an employee the employer shall supply two pairs of overalls or two sets of such other alternative clothing which is more appropriate to the work performed per annum. Should the employee leave employment within six months of engagement the cost price of the supplied clothing may be deducted from any payments due to the employee at the date of termination.

(b) Where, by custom and practice, an employee has been provided with clothing on a more regular basis than provided in paragraph (a) hereof or where, in the opinion of a union and the employer the nature of the work warrants a greater or more regular issue, the provisions of paragraph (a) hereof shall not apply.

(c) Suitable gloves shall be provided by the employer to concrete mixer employees and, where and when considered necessary, by a union and the employer to other employees.

(4) Protective Footwear

Where the wearing of protective footwear is reasonably necessary it shall be supplied by the employer free of charge and shall be replaced as and when required through fair wear and tear attributable to ordinary use in the service of the employer.

(5) Safety Helmets

(a) The employer shall supply a safety helmet for each employee who pursuant to the Regulations made under the Occupational Health, Safety and Welfare Act 1984, is required to wear such helmet.

(b) Any helmet so supplied shall remain the property of the employer and during the time that it is on issue the employee shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(6) Respirators

A respirator shall be supplied to any employee where the nature of the work renders it necessary. Any such employees shall be instructed by the employer in the correct use of the respirators.

An employee using a respirator shall be allowed a five minute rest period in each working hour.

(7) Electric Torches

An electric torch shall be made available to all employees required to work at night or in dark places. The torches remain the property of the employer and shall be returned after each shift.

(8) Where electric arc operators are working, screens or such other equipment that is suitable and sufficient for the purpose, shall be provided by the employer for protection of the employees from flash.

(9) Any dispute under this clause may be determined by the Western Australian Industrial Relations Commission.

12.—FIRST AID ATTENDANT

(1) One employee in each gang exceeding ten shall be qualified in first aid.

(2) An adequate first aid outfit shall be provided and maintained by the employer on each job to which this award applies.

(3) An employee who is a qualified first aid attendant and is appointed by the employer to carry out first aid duties in addition to normal duties, shall be paid an additional rate of $1.28 per day.

(4) The name and where practicable the location of the appointed first aid attendant shall be made known to the employees concerned.

13.—AMENITIES

(1) On each construction site upon which employees covered by this award are employed, the employer, at the commencement of the work on site and until the said work is completed shall be responsible for the provisions of adequate amenities.

(2) The parties shall confer regarding the provision of adequate amenities and in the event of a disagreement the matter shall be referred to the Western Australian Industrial Commission.

14.—TRAVELLING TIME AND ALLOWANCES

(1) Starting and Finishing Arrangements

An employee may be required to—

(a) start and finish on the job at construction sites on a "follow the job" basis. Such an employee shall be compensated in accordance with subclause (3) hereof; or

(b) start and finish at any depot, centre or workshop. If such an employee is required to travel to and from the job site away from the depot, centre or workshop outside normal hours to enable a full day's work at the job site, such an employee shall be compensated for such additional travelling time at ordinary rates. Such an employee may for convenience start on the job in which circumstances such an employee shall not be eligible for payment for travelling time.

(2) As required by the employer in paragraph (1)(a) hereof, an employee shall start and cease work on the job at the usual commencing and finishing times within which ordinary hours may be worked and shall transfer from site to site as directed by the employer.

(3) An employee required to "follow the job" as in paragraph (1)(a) hereof shall be compensated for fares and travelling time to and from the job incurred by the employee, by—

(a) for travelling daily to and from the job within a radius of 50 kilometres of the G.P.O., Perth; an allowance of $10.70 per day.

(b) for travelling daily to and from the job outside the radial area mentioned in paragraphs (a) and (c) of this subclause; an employee shall be paid at the ordinary hourly "on site" rate calculated to the next quarter of an hour, with a minimum payment as for

one-half hour for each return journey for any time outside ordinary working hours reasonably spent in travelling daily from the designated kilometre radius to a job and returning to that radius in addition to the allowance prescribed in paragraph (a) of this subclause, plus any expenses necessarily and reasonably incurred in so travelling outside such radius.

(c) In respect of work carried out from an employer's depot situated more than 50 kilometres from the G.P.O. Perth, the main Post Office in the town in which such depot is situated shall be substituted as the centre and the allowance referred to in paragraph (a) hereof shall apply to all work located within a radius of 50 kilometres of such centre.

(d) Provision of transport—

(i) The allowances prescribed in this clause, except the additional payment prescribed in paragraph (3)(b) hereof shall not be payable on any day on which the employer provides, or offers to provide transport free of charge from the employee's home to the place of work and return; provided that any transport supplied is equipped with suitable and safe seating accommodation covered where necessary so as to be weatherproof.

(ii) Where an employee who is required to start and finish on the job, uses transport provided by the employer from an agreed pick up point other than the employee's home, to the job and return, the employee shall be paid 50% of the allowance prescribed in this clause.

(5) An employee who temporarily starts and finishes work at a depot other than the usual depot shall be compensated for excess travelling time at ordinary rates.

For the purposes of this subclause—

(a) "excess travelling time" means the additional time taken in travelling from home to the temporary depot and return, over the time taken to travel from home to the usual depot and return;

(b) "temporary" means relieving at another depot for a defined period of days or weeks, after which the employee resumes at his/her usual depot.

(6) Daily Entitlement

The travelling allowances prescribed in this clause shall not be taken into account in calculating overtime, penalty rates, annual or sick leave, but shall be payable for any day upon which the employee in accordance with the employer's requirements works or reports for work or allocation of work.

(7) An employee currently in receipt of a fares and travelling time allowance which is excess of that prescribed by this clause shall not have the current allowance reduced until the job is completed or the employee is transferred to another site.

15.—CAR ALLOWANCE

When an employee, at the employer's direction, uses any kind of conveyance of his own in travelling in the employer's service the Public Service mileage rate shall apply.

16.—HOURS

(1) The ordinary hours of work shall be an average of 38 hours per week. Except where provided elsewhere 76 hours, to be worked over nine days per fortnight exclusive of Saturdays and Sundays, shall constitute a fortnight's work.

(a) Eight and a-half hours shall constitute the ordinary working hours on any day, Monday to Thursday inclusive.

(b) Eight hours shall constitute the ordinary working hours on any Friday.

(2)(a) The ordinary hours of work shall be consecutive, except for an unpaid meal break of 30 minutes.

(b) The ordinary hours of employees working continuously underground in tunnels or shafts shall include crib time not exceeding 30 minutes in each shift.

(3) The ordinary hours of work for employees other than shift workers, shall be between the hours of 6.00 a.m. and 6.00 p.m. Provided that the actual ordinary hours of work shall be determined by agreement between the employer and the majority of employees in the work section concerned.

Provided further that work done prior to the spread of hours fixed in accordance with this subclause, for which overtime rates are payable, shall be deemed, for the purpose of this subclause, to be part of the ordinary hours of work.

(4) The ordinary hours of work prescribed herein shall not exceed 10 any day. Provided that—

(a) In any arrangement of ordinary working hours on any day the arrangement between the employer and the majority of employees in the plant, section or sections concerned; and

(b) By arrangement between the employer, the union or unions and the majority of employees in the plant, section or sections concerned, ordinary hours, not exceeding 12 on any day, may be worked subject to—

(i) the employer and the employees concerned being guided by the Occupational Health and Safety Provisions of the A.C.T.U. Code of Conduct on 12-Hour Shifts;

(ii) proper health monitoring procedures being introduced;

(iii) suitable roster arrangements being made; and

(iv) proper supervision being provided.

17.—TEA BREAKS, MEAL HOURS, REFRESHMENTS

(1) Where an employee is required to continue working beyond the customary commencing time of the meal interval he/she shall, until he/she commences a meal interval of the customary duration, be paid at the rate of time and one half for the first 30 minutes and at the rate of double time thereafter but if the continuance of work was reasonably necessary and could not reasonably have been avoided by the employer the period to be paid at time and one half shall not commence to run 20 minutes after the customary commencing time of the meal interval.

(2)(a) An employee shall not be required to work for more than five hours or more without a break for a meal, provided that by agreement between the employer and the majority of employees in the section or sections concerned, employees may be required to work in excess of five hours, but not more than six hours, at ordinary rates of pay, without a meal break.

(b) The time of taking a scheduled meal or rest break by one or more employees may be altered by the employer if it is necessary in order to meet a requirement for continuity of operations.

(c) The employer may stagger the time of taking a meal or rest break to meet operational requirements or to coincide with the availability of canteen or other facilities.

(d) Subject to the provisions of paragraph (a) hereof, an employee engaged as a regular maintenance person shall work during meal breaks at ordinary rates of pay whenever instructed so to do for the purpose of rectifying a breakdown of plant, or for routine maintenance of plant which can only be done while such plant is idle.

(3) Except as otherwise prescribed in subclauses (1) and (2) hereof, an employee who works for five hours or more without a meal break shall be paid at the rate of double time from the end of five hours until allowed a meal interval of customary duration.

(4)(a) An employee working overtime shall be allowed a crib time of 20 minutes after each four hours of overtime worked if the employee continues work after such crib time. This crib time shall be paid for at ordinary rates if it is the first one to be paid for on a Saturday and occurs between 10.00 a.m. and 1.00 p.m. but in all other cases shall be without deduction of pay.

(b) An employee required to continue working after the completion of his/her ordinary hours of work on any day shall, before commencing the overtime work, be allowed a meal break of 20 minutes which shall

be paid for at ordinary rates, but this provision does not apply if the period of overtime is less than one and a half hours.

(c) The employer and the employee may agree to any variation of these provisions to meet the circumstances of the work in hand provided that the employer shall not be required to make payment in respect of any time allowed in excess of 20 minutes.

(5) An employee shall be allowed a tea break of 15 minutes' duration each day. The break 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.

(6)(a) An employee required to work overtime for more than 1.5 hours without being notified on the previous day or earlier that he/she will be so required to work shall either be supplied with a meal by the employer or paid $7.00 but payment need not be made to employees residing in the locality of the work who can reasonably return home for meals.

(b) An employee who, pursuant to notice, has provided a meal or meals and who is not required to work overtime or is required to work less than the amount of overtime advised, shall be paid the amount prescribed in the preceding paragraph for each meal which he/she has provided but which is surplus.

(c) Where more than one meal is required owing to the amount of overtime worked the employer shall provide it if the employee has not been advised in advance of the overtime.

18.—SHIFT WORK

(1) The provisions of this clause apply to shift work, continuous or otherwise.

(2) The employer may work any employee on shifts, but before so doing shall give 48 hours' notice to each employee concerned informing the intended starting and finishing times of ordinary working hours of the shifts.

(3) Except as prescribed in subclause (4) of Clause 16.—Hours, of this Award, the ordinary hours of an employee on shift work shall not exceed an average of 38 per week, to be worked in shifts of eight hours per day, inclusive of a paid meal break of 30 minutes, in accordance with a recognised shift roster cycle.

(4) A shift worker shall be paid 15% more than the ordinary rate for each afternoon and night shift worked on any day other than a Saturday, Sunday or holiday.

(5) A shift worker who is not allowed to rotate day shift with afternoon and/or night shift shall in lieu of the loading prescribed in subclause (4) hereof be paid 30% more than the ordinary rate for each afternoon and night shift worked, but this provision shall not apply in cases where the employee works afternoon and/or night shift for two weeks or less.

(6) Work shall not be recognised as shift work but shall be regarded as overtime unless at least five consecutive afternoon or five consecutive night shifts are worked but this shall not apply where an employee fails to present him/herself for duty for a reason other than one provided elsewhere in this Award.

(7) The sequence of shifts shall not be deemed to be broken by a holiday or a Rostered Day Off.

(8) A shift starting before 6.00 a.m. or after 10.00 a.m. shall be deemed to be a night or afternoon shift.

(9) Subject to the provisions of this award all work performed on a rostered shift when the major portion of such shift falls on a Saturday, Sunday or holiday shall be paid for as follows—

Saturday—at the rate of time and a half.

Sunday — at the rate of double time.

Holiday— at the rate of double time and a half.

19.—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 2 hours and double time thereafter.

(c) Work done on Saturday prior to 12.00 noon shall be paid for at the rate of time and one half for the first 2 hours and double time thereafter.

(d) Work done on Saturday after 12.00 noon or on Sunday shall be paid for at the rate of double time.

(e) An employee required to work on a day observed as a holiday pursuant to Clause 21.—Public Holidays, of this Award outside the ordinary hours of work shall be paid for the time so worked at the rate of double time and a half except on Christmas Day or Labour Day when the rate shall be treble time. Provided that any work inside ordinary hours shall be paid for in accordance with subclause (3) of Clause 21.—Public Holidays, of this Award.

(f) An employee required to work on a day observed as a Rostered Day Off pursuant to Clause 16.—Hours of this award shall be allowed another mutually convenient day off within a period of one month in lieu of overtime rates prescribed in this clause. Where the operational requirements of the employer are such that a day in lieu of the Rostered Day Off cannot be reasonably taken, overtime payment may be made.

(2) Call-Out

(a) Monday to Friday—An employee called out to work after the expiration of his/her normal working time and having left work for the day shall for each time being called out be paid for a minimum of four hours which shall be calculated at time and one half unless required to work for two hours or more in which case it shall be calculated at time and one half for the first two hours and at double time for the other two but employees rostered on standby shall not be paid more than once for any period of time.

Provided that for employees formerly covered by the Government Water Supply (Kalgoorlie Pipeline) Award No. 15 of 1981, the calculation shall be a minimum of four hours' work calculated at time and one half for the first two hours and at double time thereafter.

(b) (i) Subject to the provisions of paragraph (c) hereof an employee who is called out to work on a Saturday, Sunday, rostered day off or public holiday shall be deemed to have worked for a minimum of three hours on each occasion but shall not be paid more than once for any period of time.

(ii) Where it is customary for particular work to be carried out on Saturdays, Sundays, rostered days off or public holidays either in respect of a particular job or kind of job or in respect of the industry as a whole and the work is completed within one hour, a minimum of two hours shall be substituted for the three hours prescribed in subparagraph (i) hereof.

(c) An employee shall not be obliged to work for longer than it takes to complete the work for which the employee has been brought on duty.

(3) An employee required to stand-by shall be rostered on a system to be mutually agreed for each depot, and shall be paid 3 hours at ordinary rates for such stand-by on any day from Monday to Friday inclusive or on a holiday or Rostered Day Off prescribed in this award and 4 hours on a Saturday or Sunday in addition to any overtime to which he is entitled under this award. An employee required to stand-by on a holiday shall also receive a day in lieu of that day.

(4)(a) When overtime is necessary it shall, wherever reasonably practicable, be so arranged that each employee has at least 10 consecutive hours off duty between the work of successive days.

(b) An 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 at least, 10 consecutive hours off duty between these times shall, subject to 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 instruction of his employer, such an employee resumes or continues work without having 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 be then 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 (other than one engaged on continuous shift work) called in to work on a Sunday or Public Holiday preceding an ordinary working day, shall, wherever reasonably practicable, be given 10 consecutive hours off duty before his usual starting time on the next day. If this is not practicable then the provisions of paragraphs (b) and (c) of this subclause shall apply mutatus mutandis.

(e) The amount due under this subclause in respect of any day shall be reduced by any amount due under subclause (2) of this clause for the time not worked (or counted as being worked) within 10 hours prior to the employee's ordinary commencing time on that day.

(f) The period of 10 hours off duty referred to in the foregoing provisions of this subclause shall be reduced to 8 hours when overtime is worked—

(i) for the purpose of changing shift rosters; or

(ii) where a shift worker does not report for duty; or

(iii) where a shift is worked by arrangement between the employees themselves.

but not where a shift worker does not report for duty and an employee is required to be on duty for 16 consecutive hours.

(g) Notwithstanding the foregoing provisions of this subclause, paragraphs (a), (b), (c), (d) and (e) shall not apply to employees referred to in subclause (3) hereof. In lieu of those provisions all time worked after midnight and prior to the commencement of the ordinary work of that day shall be added to the commencing time of that day for such employee and in any event any call-out after midnight shall entitle the employee to a minimum late start of 2 hours. The employee shall be paid at ordinary rates for the time not worked due to the late start for which he is due.

(5)(a) The provisions of this subclause apply only to continuous shift workers.

(b) Subject as hereinafter provided all time worked in excess of or outside the ordinary working hours shall be paid for at the rate of double time except where an employee is called upon to work a 6th shift in not more than 1 week in any 4 weeks when he shall be paid for such shift at the rate of time and one half for the first 2 hours and double time thereafter.

(6) Time worked in excess of ordinary working hours shall be paid for at ordinary rates—

(a) if it is due to private arrangements between the employees themselves; or

(b) if it does not exceed 2 hours and is due to a relieving man not coming on duty at the proper time; or

(c) if it is for the purpose of effecting the customary rotation of shifts.

(7) Overtime rates shall be computed on the rate applicable to the day on which the time is worked each day standing 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.

20.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of 152 hours' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his employer after a period of 12 months' continuous service with such employer.

(2)(a) "Ordinary wages" for an employee other than a shift worker shall mean the rate of wage including service pay, the employee has received for the greatest proportion of the calendar month prior to his taking the leave.

(b) "Ordinary wage" for a shift worker shall mean the wage he would receive under Clause 18—Shift Work of this award according to his 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 38 hours' 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 12 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 0.7308 hours for each week he is continuously so engaged, up to a maximum of 38 hours' additional leave entitlement.

(4) If any award holiday falls within an employees' 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.

(5) If after 1 month's continuous service in any qualifying 12 monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, he 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 that rate in respect of each completed week of continuous service.

(6) An employee who may resign or be dismissed from the service for any cause, other than peculation or theft, shall be entitled to receive payment for any annual leave which may have been due up to the time of leaving the service; provided always that if the employee has been dismissed for peculation or theft, no claim for annual leave shall be recognised. Misconduct herein referred to shall not affect accumulated annual leave or payment thereof.

(7)(a) Annual leave shall be given and taken in one or two continuous periods. If given in two continuous periods, one such period must be of at least 21 consecutive days, including non-working days. Provided that if the employer and an employee so agree, annual leave may be given and taken in two separate periods, neither being of 21 consecutive days' duration including non-working days, or in three separate periods.

(b) Provided further that an employee may, with the consent of the employer, take short-term annual leave, not exceeding five days in any calendar year, at a time or times separate from any of the periods determined in accordance with this subclause.

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

(b) Provided that, by agreement between the employer and an employee, annual leave may be taken at any time within a period of 12 months from the date on which it falls due and with less than four weeks' notice to the employee.

(9)(a) The employer may close down operations for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the operations are closed in two separate periods, one of those periods shall be for a period of at least 21 consecutive days, including non-working days.

(b) Provided that where the majority of employees concerned agree, the employer may close down a work section, or sections, in accordance with this

subclause. Provided further, that if the employer closes down operations on more than one occasion, one of those periods shall be for a period of at least 14 consecutive days, including non-working days. In such cases the employer shall advise the employees concerned of the proposed date of each close-down before asking for their agreement.

(c) (i) The employer may close down operations, or a section or sections thereof, for a period of at least 21 consecutive days including non-working days and grant the balance of annual leave due to an employee in one continuous period in accordance with a roster.

(ii) Provided that, with the agreement of the majority of employees concerned, the employer may close down operations for a period of at least 14 consecutive days including non-working days and grant the balance of annual leave due by mutual arrangement with an employee.

(d) 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 the right to retain such employees during the close-down period as may be required.

(10) An employee may be rostered off and granted annual leave with payment of ordinary wages as prescribed prior to his/her having completed a period of 12 months' continuous service, in which case, should the services of such employee terminate or be terminated prior to the completion of 12 months' continuous service, the said employee shall refund to the employer the difference between the amount received by him/her of wages in respect of the period of his/her annual leave and the amount which would have accrued to him/her by reason of the length of his/her service up to the date of the termination of his/her services.

(11)(a) In 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 absent on approved leave with pay, or public holidays, or in respect of any period of absence through sickness not exceeding three calendar months.

(b) Any approved period of absence from work caused through an accident sustained in the course of employment shall not be deemed to be a break 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.

(12) During a period of annual leave an employee shall receive a loading calculated on the rate of wage prescribed by subclause (2) hereof. This loading shall be as follows:

(a) Day Employees: An employee who would have worked on day work had he/she not been on leave—a loading of 17½%.

(b) Shift Employees: An employee who would have worked on shift work had he/she not been on leave shall be paid either—

(i) the shift loadings and penalties prescribed by Clause 18.—Shift Work he/she would have received; or

(ii) a 20% loading on the rate prescribed by subclause (2)(a) of this clause,

whichever is the greater.

(c) This loading shall also be payable on that portion of annual leave taken in accordance with subclauses (9) and (10) hereof.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(13) In taking leave other than in an annual close-down, 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 taking the balance of the day as approved leave without pay.

(14) Any annual leave entitlement accumulated to an employee as at 1st January 1983 shall be adjusted in hours the ratio of 38 to 40.

21.—PUBLIC 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 named in this subclause.

(2)(a) Where any of the days mentioned in subclause (1) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday or when Boxing day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday, provided that where any day observed as a holiday under this award falls on a Rostered Day Off, the Rostered Day Off shall be observed on the next ordinary working day.

(b) When any of the days observed as a holiday under this clause falls during an employees' annual leave, the employee shall, for each such day, be allowed a day's leave with pay to be taken immediately after completion of that annual leave.

(c) When any of the days observed as a holiday under this clause falls on a day when a rostered shift worker is rostered off duty and he has not been required to work on that day he shall be paid as if the day was an ordinary working day, or, if he agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his ordinary hours of work shall be paid for the time worked at the rate of double time and one half or, if he agrees, be paid for the time worked at the rate of time and one half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

Provided that on the days observed as Christmas Day and Labour Day the rates referred to above shall be treble and double time respectively.

(4) When an employee is absent on leave without pay, sick leave without pay or worker's compensation, any day observed as a holiday on a day falling during such absence shall not be treated as a paid holiday. Where an 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 under this clause, the employee shall be entitled to be paid for such holiday.

(5) The additional payments, prescribed in subclause (3) of this clause shall be in substitution for any shift allowance that would otherwise be payable for work done on that day.

22.—SPECIAL LEAVE

(1) Compassionate Leave: An employee shall, on the death within Australia of a wife, husband, de-facto wife or de-facto husband, father, father-in-law, mother, mother-in-law, sister, brother, child or step-child 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 2 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 shall be made only where the employee otherwise would have been on duty.

(2) Jury Service: An employee required to attend for jury service during his ordinary working hours shall be allowed to attend without deduction of pay. The employee shall make application for such leave with pay to his employer as soon as possible supported by the Summons to Serve.

The application will be granted on the condition that the employee must return to duty as expeditiously as possible on

discharge from jury service. Further, the employee shall give his employer proof of his attendance, the duration of such attendance, and certification from the court that the employee did not receive attendance or juror's fees.

(3) Electric Pump Attendants and Pump Station Assistants normally employed at pumping stations Nos 6 to 8 who may be called upon to work a pumping shift on Sundays and paid at the rate of time and one-half shall receive an extra half day's leave for each four Sundays worked in the year on pumping duties.

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'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) hereof in any accruing year shall be allowed to accumulate and may be availed of in the next or succeeding year. Any such entitlement accumulated to an employee as at 1st January, 1983 shall be adjusted in hours in the ratio of 38 to 40.

(3) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise his 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 3 consecutive working days unless the total of such absences exceeds 5 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 7 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 7 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 20.—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.—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 Workers' Compensation Act nor to employees whose illness or injury is the result of the employee's own misconduct.

24.—LONG SERVICE LEAVE

(1) The conditions embodied in the document "Long Service Leave Conditions—State Government Wages Employees", as consolidated in June, 1980 shall apply to employees covered by this award.

(2) For the purpose of subclause (1) of this clause "13 weeks' leave" shall mean 494 hours' leave.

(3) Any long service leave entitlement accrued to an employee as at 1st January, 1983 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.

25.—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 from time to time may 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.

26.—DISTANT WORK—CONSTRUCTION

(1) Where an employee is engaged or selected or advised by an employer to proceed to construction work at such a distance that he/she cannot return to his/her 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, the employer may deduct from moneys owing or which may become owing to the employee an amount equivalent to the value of the board and lodging for the period of the 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 engaged who is directed by his/her employer to proceed to the locality of the site and who complies with such direction; and

(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/her employment, or whose employment is terminated by his/her employer, except for incompetency, within one working week of his/her 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/she first proceeded to the locality, or to a place less distant than or equidistant to the place whence he/she 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/she would have paid if the employee had returned to the locality from which he/she 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/she 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 employee 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 $22.50 and for any weekend he/she returns 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;

(b) he/she 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.

(7) Where an employee, supplied with board and lodging by the 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 $9.80 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.

(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 the employer to distant work (whether construction work or not) but the provisions of subclause (4) of this clause do not apply to such an employee.

27.—RECOGNITION OF UNION

The employer shall recognise the unions party to this award and confer with them on matters affecting their members and this award.

28.—UNION STEWARDS

Upon notification in writing by the Secretary of a union of the appointment of Union Stewards, such Union Stewards shall be recognised by the employer.

29.—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.

30.—RIGHT OF ENTRY

On notifying the employer, the Secretary or any officer of a union, party to this award, shall have the right to visit any job at any time when work is being carried out to interview employees covered by this award, provided that he does not unduly interfere with the work in progress.

31.—POSTING OF AWARD

A copy of this award, with all variations hereof, shall be kept by the employer in a place accessible to the employees.

32.—POSTING OF NOTICES

The employer shall not prevent an official of the union from posting on an employer's premises or job, a copy of any official notice of the Union if such notice is of reasonable size.

33.—INSPECTION OF WAGES SHEETS

The wages sheets of the employer shall be open for inspection at Head Office by the Secretary, or a duly authorised official of the Union upon reasonable notice being given of a desire to inspect same.

34.—APPEALS

(1) Any employee dismissed or reduced to a lower grade shall have the right of appeal to the Chief Engineer and may authorise the Secretary of his union to act as his agent.

(2) When a transfer is ordered by the employer, the employee shall have the right of appeal to the Chief Engineer and may be represented by the Secretary of his union. If after enquiry, it is found that a transfer can be arranged with another employee without inconveniencing the employer, such other transfer shall be effected.

35.—DISTRICT ALLOWANCE

(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 be as described hereunder and as delineated on the plan at subclause (15) of this clause.

District—

1. The area within a line commencing on the coast; thence east along latitude 28 to a point north of Tallering Peak, thence due south to Tallering 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 the 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 the 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) of this clause, 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) of this clause.

(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 are 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/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	55.40
		Liveringa (Camballin) Marble Bar Wittenoom	51.60
		Karratha	48.60
		Port Hedland	45.10
4	20.70	Warburton Mission	55.90
		Carnarvon	19.50
3	13.10	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	20.70
2	9.30	Kalgoorlie Boulder	3.10
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	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 recreational leave, the employee shall for the period of such leave, be paid the district allowance to which he/she 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 a period a district allowance at the appropriate rate pursuant to subclause (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) The rates expressed in subclause (6) of this clause shall be adjusted every 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 commencing on or after the 1st day of January each year.

(15) Map of District Allowance boundaries

36.—NO NEW DESIGNATIONS

No new designation shall be introduced during the currency of this award so as to reduce the status of any employee covered thereby.

37.—APPRENTICES

(1) Apprentices may be taken in the ratio of one apprentice for every two or fraction of two (the fraction being not less

than one) journeymen and shall not be taken in excess of that ratio unless—

(a) The union or unions concerned so agree; or

(b) The Commission so determines.

(2) Where an apprentice's rostered day off duty as prescribed in Clause 16.—Hours, of this Award falls within a period of block release, an alternative rostered day off will be arranged at a mutually convenient time to the employer and the apprentice.

38.—WAGES

(1) Subject to this clause, an adult employee in a classification specified in the tables set out in subclauses (2) and (5) hereof (other than an apprentice) shall be paid at the respective award wage rate per week assigned to that class of work.

The rates prescribed in subclauses (2) and (5) hereof shall operate from the first pay period commencing on or after 9 July 1992.

The all-purpose hourly rate for the Award shall be one-thirty-eighth of the total rate prescribed herein.

(2) Classification Structure

(a) (i) Water Industry Engineering Trades Employees

(other than Instrument/Electrical Classifications)

	Rate	First Arbitrated Safety Net Adjustment	Total Rate
	$	$	$
Level C13	357.50	8.00	365.50
Level C12	381.10	8.00	389.10
Level C11	402.90	8.00	410.90
Level C10	436.00	8.00	444.00
Level C9	457.80	8.00	465.80
Level C8	479.60	8.00	487.60
Level C7	501.40	8.00	509.40
Level C6	545.00	8.00	553.00
Level C5	566.80	8.00	574.80

(ii) Water Industry Engineering Trades Employees

(Instrument/Electrical Classifications)

	Rate	First Arbitrated Safety Net Adjustment	Total Rate
	$	$	$
Level DC10	494.10	8.00	502.10
Level DC9	525.20	8.00	533.20
Level DC8	547.00	8.00	555.00
Level DC7	568.80	8.00	576.80
Level DC6	601.10	8.00	609.10
Level DC5	622.90	8.00	630.90

(iii) In addition to the above rates an employee designated in classifications C13 to C7 inclusive or DC10 to DC7 inclusive shall receive an all purpose experience allowance of $10.30 payable after one year of service in the Water Industry. If an employee has already qualified for a Government Industry allowance or equivalent allowance in other areas of State Government employment, then this would qualify the employee for the all purpose experience allowance. This experience allowance shall be adjusted in accordance with any movements to the wage prescribed herein.

(iv) 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.

(b) Employees employed within the structure/levels within this clause shall perform work to the level of their competence in accordance with the definitions and training programme set out in Clause 5.—Definitions, and Clause 45.—Training, of this Award.

(c) Progression from one Water Industry Engineering Tradesperson/Employee level to the next shall be contingent upon such additional skills being required to be performed by the employer, the related level of technology being in operation, such a move promotes and maintains the cost efficiency and effectiveness of the work area, and the individual having demonstrated capability and such pre-requisites and minimum training as prescribed in the Clause 5.—Definitions, of this Award.

(d) In addition to the rates prescribed in subparagraph (i) of paragraph (a) hereof, an employee on successful completion of the first half (Stage 2B) of the instrument/electrical cross trade TAFE training shall be paid an all purpose allowance of $15.00 per week. Payment of this allowance is subject to satisfactory progression in instrument/electrical cross trade training and ceases upon appointment to the DC structure prescribed in subparagraph (ii) of paragraph (a) hereof.

(3) Transition Arrangements

(a) For the purposes of the adoption of the new classification structure the interim classifications shall be moved into the new levels as follows.

WIT Level C12

Engineering Trades (Government) Award 1967

Engineering Employee Level 2
Engineering Employee Level 3

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Employee Level 3

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Employee Level 3

WIT Level C11

Engineering Trades (Government) Award 1967

Engineering Employee Level 4 Group B
Engineering Employee Level 4 Group C
Engineering Employee Level 4 Group D

Engineering Trades (Government) Award 1967

Engineering Employee Level 4 Group A

Government Water Supply, Sewerage and Drainage Employees Award 1981

Engineering Employee Level 4 Group A

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Employee Level 4 Group A

WIT Level C10

Engineering Trades (Government) Award 1967

Engineering Tradesperson Level 1

Government Water Supply, Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 1

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Tradesperson Level 1

WIT Level C9

Engineering Trades (Government) Award 1967

Engineering Tradesperson Level 2

Government Water Supply, Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 2

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Tradesperson Level 2

WIT Level C8

Engineering Trades (Government) Award 1967

Engineering Tradesperson Level 3 Group A
Engineering Tradesperson Level 3 Group B

Government Water Supply, Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 3 Group B
Engineering Tradesperson Level 3 Group C

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Tradesperson Level 3 Group B
Engineering Tradesperson Level 3 Group C

Government Water Supply, Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 3 Group A

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Tradesperson Level 3 Group A

WIT Level C6

Government Water Supply, Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 4 Group A
Engineering Tradesperson Level 4 Group B
Engineering Tradesperson Level 4 Group C

(b) For the purpose of adoption of the new DC classification structure, instrument/electrical classifications shall be aligned into the new levels as follows—

(i) An employee on completion of the instrument/electrical cross trade training shall be appointed to the DC structure on one of the following bases—

(aa) Existing employees classified at C10, C9 or C8 following the reclassification process outlined in paragraph (5)(b) of Clause 44.—Structural Efficiency, of this Award shall be appointed to level DC8; or

(bb) Existing employees classified at C7, C6 or C5 following the reclassification process outlined in paragraph (5)(b) of Clause 44.—Structural Efficiency, of this Award shall be appointed to level DC7, DC6 or DC5 respectively.

(cc) Existing employees in either of the cases described in placitum (aa) or (bb) above shall not be able to pursue a claim for reclassification as described in paragraph (5)(b) of Clause 44.—Structural Efficiency, of this Award on the basis of studies undertaken and/or skills attained as part of the instrument or electrical cross training indentureship.

(ii) An instument/electrical fitting apprentice (dual trained) shall, on completion of his/her indenture be appointed at level DC10 if offered continuing employment with the Water Authority.

(iii) A new employee shall be appointed to the DC classification structure at a level commensurate with his/her skills and qualifications. A new employee holding trade qualifications in both instrument and electrical fitting (cross trained) shall be appointed at a level no lower than DC8.

(c) One-Off Reclassification

An employee who is classified at C8 on vertical skills in accordance with this transition and/or the Water Authority Engineering Trades Joint Development/Implementation Committee's agreed reclassification procedure is entitled to an additional 2.5% of the C10 rate, or $10.90 per week, if he/she was, at 9 July 1992, utilising horizontal or non-trade skills of three modular equivalents.

This additional payment will be included in that employee's classification rate for all purposes of the Award. It is available only through the one-off reclassification process, as outlined in Clause 44.—Structural Efficiency, of this Award, and ceases to be payable when that employee achieves the C7 classification.

The additional payment is NOT available to an employee who is classified at C8 on a mix of horizontal, vertical and/or non-trade skills.

(4)(a) Building Trades Employees—Wage Rate Per Week

	Rate	First Arbitrated Safety Net Adjustment	Total Rate
	$	$	$
Painter or Signwriter			
On Engagement	436.00	8.00	444.00
After One Year's Service	441.30	8.00	449.30
After Two Year's Service	445.60	8.00	553.60

(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. 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) Apprentices

The weekly wage rate shall be a percentage, as hereunder, of the tradesperson's rate—

	%
(a) 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 following year	75
Final year	88
Three year term—	
First year	55
Second year	75
Third year	88

(b) For the purposes of this part "Tradesperson's Rate" means the rate of pay prescribed for an employee classified as a Water Industry Tradesperson Level C10 in subclause (2) of this clause.

(6) Tool Allowance

(a) Engineering Trades

(i) Where an employer does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice the employer shall pay a tool allowance of—

(aa) $9.20 per week to such tradesperson; or

(bb) in the case of an apprentice a percentage of $9.20 being the percentage which appears against the year of apprenticeship in subclause (5) of this clause.

(ii) Any tool allowance paid pursuant to paragraph (i) of this subclause shall be included in, and form part of, the ordinary weekly wage prescribed in subclause (2) of this clause.

(iii) An employer shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(iv) A tradesperson or apprentice shall replace or pay for any tools supplied by the employer if lost through the negligence of the employee.

(b) Building Trades

In addition to the rate of pay prescribed in this clause for a Painter or a Signwriter, such employee shall be paid a tool allowance of $3.20 per week in accordance with the provisions of the Building Trades (Government) Award.

(7) Leading Hands

An employee placed in charge of—

(a) Metal Trades

(i) Three and not more than 10 other employees shall be paid $16.60 per week extra.

(ii) More than 10 and not more than 20 other employees shall be paid $25.40 per week extra.

(iii) More than 20 other employees shall be paid $32.80 per week extra.

(iv) A Certificated Rigger or Scaffolder on ships and buildings, other than a Leading Hand, who, in compliance with the provisions of the Occupational Health, Safety and Welfare Act and Regulations 1988, is responsible for the supervision of not less than three other employees shall be deemed a Leading Hand and shall be paid at the rate prescribed for a Leading Hand in charge of not less than three and not more than 10 other employees.

(b) Building Trades

(i) Three and not more than 10 other employees shall be paid $25.60 per week extra.

(ii) More than 10 and not more than 20 other employees shall be paid $34.10 per week extra.

(iii) More than 20 other employees shall be paid $42.70 per week extra.

(8) Construction Work Allowance

(a) Subject to the provisions of this clause, an employee specified in this clause shall be paid an allowance at the rate of $15.60 per week to compensate for disabilities when actually engaged on construction work on site (as defined).

(b) "Construction Work" for the purpose of paragraph (a) hereof, shall mean and include all work performed on site on the construction, alteration, repair or maintenance of roads, reservoirs and drainage works, pipelines, water and sewerage mains and services. It shall not include the following classes of work—

(i) work in, around and/or adjacent to any workshop, depot, yard, treatment works, nursery or other similar establishments;

(ii) work in, around and/or adjacent to pumping stations for less than two hours;

(iii) gardening operations; or

(iv) driving vehicles, floats or fork lifts when that driving is not directly associated with construction work (as defined) for less than four hours on the day.

(c) An employee referred to in paragraph (a) of this subclause who is employed on construction work (as defined) for less than one week shall be paid for each day so employed, 1/5th of the said allowance.

(d) Provided that an employee under this clause who is engaged in the construction, or alteration of any building, structure or other civil engineering project which is carried out in areas excluded in paragraph (b) of this subclause shall be paid a construction allowance at the rate of $7.80 per week.

39.—LIBERTY TO APPLY

(1) Issue of Clothing.

(2) Work done through Contractors.

(3) Standby Provisions.

(4) Redundancy.

(5) Travelling Time and Allowances—quantum.

(6) Long Service Leave.

(7) Electronic Technicians.

(8) Leave is reserved to the respondents to the Award to make application to vary Clause 38.—Wages of this Award consequent upon the outcome of the 1989/90 Paid Rates Review conducted by the Australian Industrial Relations Commission.

(9) Should any oversight, error or omission arise in the consolidation of the Government Water Supply, Sewerage and Drainage Award 1981, No. 2 of 1980, with the Government Water Supply (Kalgoorlie Pipeline) Award 1981, No. 15 of 1981 and the Engineering Trades (Government) Award 1967, Nos. 29, 30 and 31 of 1961 and 3 of 1962, insofar as that Award applied to employees of the Water Authority of Western Australia, the parties have liberty to further amend the Award to reflect the true intent of the parties.

40.—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 procuration 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 subscriptions 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.

41.—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 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.

42.—PAID LEAVE FOR ENGLISH LANGUAGE TUITION

(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 who are unable 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 accepted 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 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, 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 multi-skilling, award restructuring, industrial relations and safety provisions, and equal opportunity employment legislation.

43.—DISPUTE SETTLING PROCEDURE

(1) This procedure is entered into by all parties in the interests of promoting a more open environment conducive to change, which satisfies the principles of structural efficiency and effectiveness.

Parties to this procedure shall at all levels regard any dispute raised as a matter of importance.

This is not a procedure for the resolution of safety and/or disciplinary matters.

The Union and the Water Authority shall take steps to jointly notify all employees covered by this procedure of its terms and obligations.

(2) Objective

The objective of the parties to this procedure is to avoid industrial disputes and to resolve issues by—

(a) providing a mutually satisfactory mechanism for dealing with grievances;

(b) clearly identifying the grievance/dispute;

(c) engaging expeditiously in consultation and discussions and/or negotiations;

(d) having regard to the rules of natural justice abiding by the following procedure to facilitate an early resolution at the local level or wherever is most practical for an amicable settlement.

(3) Definition

A dispute shall include a disagreement or complaint or grievance or issue raised about any industrial relations matter by either party.

In the event of a dispute arising and this disputes settlement procedure being invoked by either party, the status quo shall be maintained pending resolution of the dispute by conciliation or arbitration. "Status quo" shall mean that which is the usual custom and practice applied to work arrangements.

In the event of a dispute over the facts of what constitutes the status quo the parties shall—

(a) At the level of employee—immediate supervisor/management affected by the dispute have discussions as soon as is practicable with a view to reaching agreement on what is to apply pending resolution of the dispute, in which case such agreement shall be deemed to be the status quo for the purposes of this procedure.

(b) In the event of no agreement being reached in paragraph (a), the parties shall refer that matter to the Australian Industrial Relations Commission for a conference, at which each party may put its proposal for the interim arrangement to apply on a without prejudice basis.

In the event of a party becoming aware of a breach of any part of this procedure by persons it represents, it shall take all such steps as soon as possible to correct or prevent such breach.

(4) Stages of Procedure

Any dispute is to be dealt with in accordance with the following procedure. At each stage discussions shall be confined to the issue as first stated.

(a) Preliminary Stage

(i) Any employee or group of employees with a grievance or complaint will discuss it at a local level with their immediate supervisor in the first instance; provided that this does not prevent a shop steward or union representative from directly approaching the immediate supervisor on behalf of such employee(s), or being present at such meeting and does not prevent any officer of the Water Authority from being present on behalf of management.

(ii) The supervisor will make any necessary enquiries and will attempt to resolve the matter or provide an authoritative answer if not on the day the issue is raised then as soon as it is practical to do so.

(iii) If any such issue requires time to provide an answer, the supervisor will keep the employee(s) informed of the progress, until an answer has been given.

(iv) If the employee or group of employees continues to be aggrieved or the issue is still in dispute, Stage 1 of the procedure shall be invoked.

(v) However, where the issue(s) has widespread implications for Water Authority employees represented by the union concerned, Stage 2 of the procedure shall be the first step in the dispute settling process.

(b) Stage 1

(i) If an issue is unresolved after completion of the Preliminary Stage and/or the employee(s) continues to be aggrieved then the dispute should be submitted in writing using the form specified in Attachment 1 to the supervisor's manager within five working days (excluding Saturdays, Sundays and public holidays).

Employees are recommended to seek the advice of their shop steward at this stage if they have not already done so.

(ii) As soon as possible, but usually within two working days (excluding Saturdays, Sundays and public holidays) of receipt of the document, the manager or nominated representative shall convene a meeting with a view to making a decision as to the action to be taken.

(iii) The employee's shop steward or union official, together with another member of management may be present. Each party is to be given prior notice of who will be present at the meeting.

(iv) The manager or nominated representative shall confirm the decision in writing to the parties concerned.

(v) If the employee continues to be aggrieved or unreasonable delay on the part of management has resulted in Stage 1 not being implemented or the issue is unresolved after the application of Stage 1 of this procedure then the matter as first stated shall be referred in writing to the Manager Industrial Relations.

(c) Stage 2

(i) On being notified on an unresolved issue/grievance the Manager Industrial Relations will arrange a meeting between the State Secretary of the union of nominee, the union's local representatives (if any), the Regional/Branch Manager involved or nominee and the local Water Authority management representative(s).

(ii) A meeting shall be convened as soon as possible but normally within three working days of a request by any party (excluding Saturdays, Sundays and public holidays). Depending upon the nature of the issue an extension to the three-day provision may be agreed between the parties.

(iii) Each party shall be given reasonable notice of the issues to be discussed or negotiated at the meeting convened.

(iv) If Stage 2 of the procedure is completed without full resolution of the issue(s) the parties may refer unresolved issue(s) to an agreed independent mediator in which case such action shall be deemed to be Stage 3.

(d) Stage 3

The mediator appointed shall be agreed by both parties and his/her terms of reference shall be to resolve the issue by arbitration. If a mediator is appointed this shall be the final stage of appeal.

(5) Each party is free to refer any industrial matter to the Australian Industrial Relations Commission as appropriate. In keeping with the spirit of this procedure this would be after Stage 2 has been exhausted, the matter remains unresolved and Stage 3 is an option that is not being followed.

(6) The parties recognise that problems related to safety and other hazardous situations may arise from time to time in the workplace or in the course of operations and these should be dealt with in accordance with the Occupational Health, Safety and Welfare Act and the relevant regulations.

(7) The parties recognise that matters and problems related to rehabilitation will be dealt with by the joint rehabilitation co-ordinating committee.

ATTACHMENT 1

WATER AUTHORITY OF WESTERN AUSTRALIA
DISPUTES SETTLING PROCEDURE SUBMISSION

1. Employee's Name(s)
2. Position Title
3. Place of Work
4. Region/Branch
5. Classification
6. Immediate Supervisor/Manager
7. Union Representative
8. Date Registered with Manager
9. Nature of dispute, location and date of dispute is applicable (clearly specify in writing the issue(s) and what remedy is being sought, continue on separate sheet if necessary).

.....

Employee's Signature

44.—STRUCTURAL EFFICIENCY

(1) The parties to this Award are committed to co-operating positively to increase the efficiency and productivity of the Water Authority and to enhance the career opportunities and job security of employees in the industry.

(2) The Water Authority, employees and the relevant union or unions shall establish a consultative mechanism and procedures appropriate to the size, structure and needs of the work place and the Water Authority generally. Measures raised by the parties for consideration consistent with the objectives in subclause (1) of this clause shall be processed through that consultative mechanism and procedures.

(3) Measures raised for consideration consistent with subclause (1) hereof shall be related to implementation of the new classification structure, the facilitative provisions contained in this award and, subject to Clause 45.—Training, matters concerning training.

(4) Without limiting the rights of either the employer or a union to arbitration, any other measure designed to increase flexibility at a work place 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.

(a) the changes sought shall not affect provisions reflecting national standards.

(b) the majority of employees affected by the change at the work place or enterprise must genuinely agree to such changes.

(c) employees shall not lose income as a result of any changes.

(d) the relevant union or unions must be a party to the agreement.

(e) the relevant union or unions shall not unreasonably oppose any agreement.

(f) 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.

(5) An agreed new wages and classification structure has been incorporated into this Award.

(a) Employees will be transferred into the new classification structure in accordance with subclause (3) of Clause 38.—Wages, of this Award.

(b) Reclassification will be according to the following principles—

(i) In the event that there is a claim for reclassification to a higher level under the new

structure on the grounds that the employee possesses equivalent skill and knowledge gained through on-the-job experience or on any other ground the following principles apply—

(aa) The parties agree that the agreed reclassification procedure shall be followed;

(bb) The jointly agreed Skills Descriptions shall be used as the basis for reclassification; when National Standards are available, a further review based on these standards shall take place;

(cc) An agreed accreditation authority shall test the validity of an employee's claim for reclassification;

(dd) Reclassification to any higher level shall be contingent upon such additional skills being required to be performed by the employer, the related level of technology being in operation, and such a move promotes and maintains the cost efficiency and effectiveness of the work area.

45.—TRAINING

(1) The parties to this award recognise that in order to increase the efficiency and productivity of the Water Authority and the metal and water supply industries generally, and to ensure mobility within the industries, a greater commitment to training and skill development is needed. 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 (2) of Clause 44.—Structural Efficiency, of this Award, or through the establishment of a training committee, the employer shall develop a training programme consistent with—

(a) the current and future skill needs of the Water Authority;

(b) the size, structure and nature of the operations of the Water Authority;

(c) the need to develop vocational skills relevant to the Water Authority of Western Australia and the metal and water supply industries 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 members of employer and employee representatives and have a charter which clearly states its role and responsibilities. For example—

(a) formulation of a training programme and availability of training courses and career opportunities to employees;

(b) dissemination of information on training programmes and availability of training courses and career opportunities to employees;

(c) monitoring and advising management and employees on the on-going effectiveness of the training.

(4)(a) When an employee undertakes relevant training identified and detailed in his/her job description, such training may be either on or off-the-job. Provided that if the relevant training so identified 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 enrollment and the purchase of prescribed textbooks, 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 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) All issues of paid training leave, including quantum and training consultative committees, shall be reviewed between the parties (M.T.F.U. (W.A.) and the Water Authority) after 12 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 metal and engineering industries.

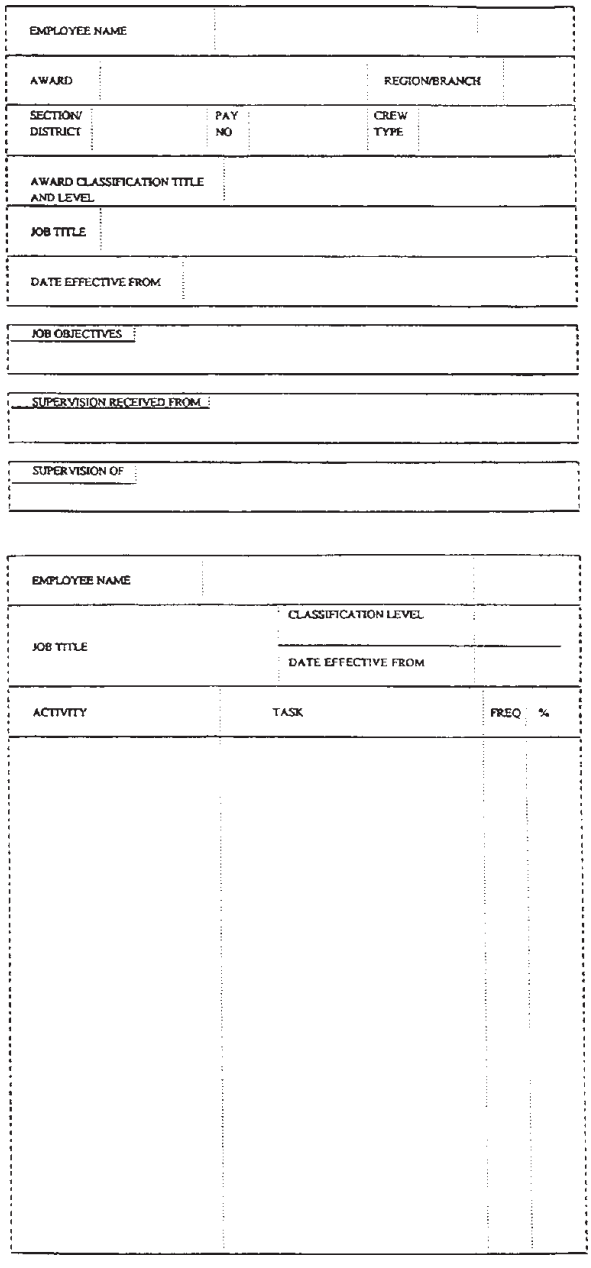
46.—JOB DESCRIPTION FORM

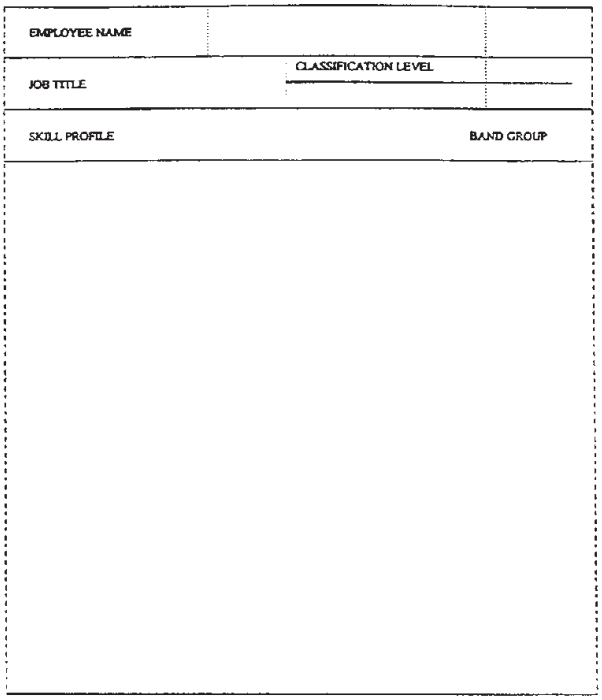
(1) All employees will require a job description which shall be recorded on the job description form.

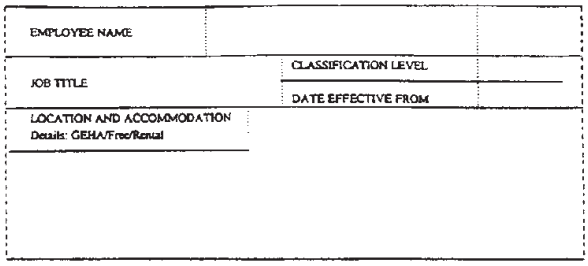
(2) The job description includes the job skills profile which shall be derived from the Enterprise Skills Schedule and descriptions, and may consist of skills selected from a single, part or multiple skills group.

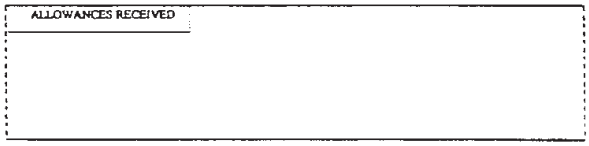
(3) The format of the job description form shall be as follows—

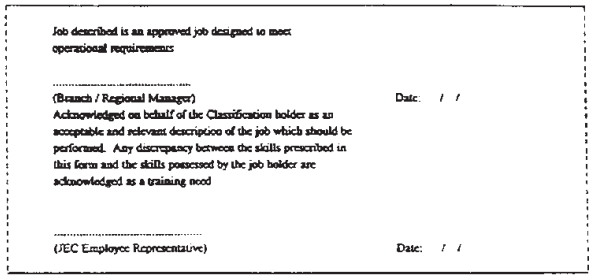
JOB DESCRIPTION FORM

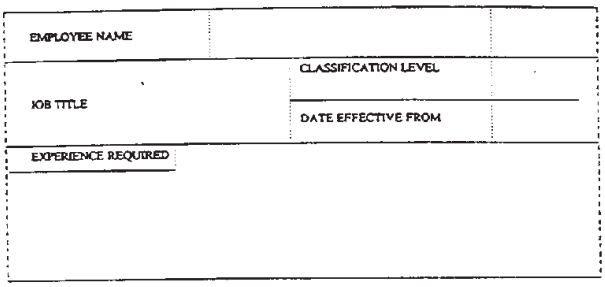


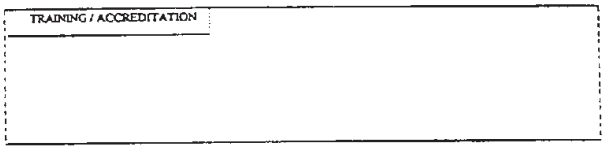












47.—JOB DESCRIPTION CREATION PROCEDURE

(1)(a) All employees shall have a jointly agreed job description, the format for which is contained in Clause 46.—Job Description Form, of this Award.

(b) In developing individual job descriptions, Major Generic job descriptions shall be used as a basis for discussion with the individual and depending upon the needs of the business and the job design under consideration, all or part of the job description may be used.

(c) A new job description should be generated where a long term change is envisaged.

(2) This procedure outlines the steps to be followed for the generation of a jointly agreed job description form.

(a) After preliminary discussions between the parties affected by any job design proposal, the proposal shall be presented to the local joint consultative committee.

(b) Documentation supporting the new job design as captured in the job description form shall include—

- How it affects work of those around/with it, and the impact on other existing jobs;
- Explanation of the extent to which the job design factors outlined in Clause 48.—Job Design, of this Award have been taken into account.

(c) The local joint consultative committee shall discuss and review the content and satisfy itself that the design is in line with the job design principles.

(d) The proposed job description as documented should then be forwarded to the Joint Development/Implementation Committee for discussion and approval. It is understood that any major changes to established work practices will be referred to the relevant union(s) for endorsement.

(e) Following Joint Development/Implementation Committee response, if approval has been given, Regional/Branch management and the employee representative of the Regional Joint Executive Committee should sign and adopt the Job Description forms.

(f) The disputes settling procedure exists for those who are aggrieved by the outcome of this process.

48.—JOB DESIGN

When applying Clause 47.—Job Description Creation Procedure, of this Award, the following factors must be assessed and evaluated.

The extent to which the job design—

- Improves the individual's career path and opportunity for continued learning.
- Improves operational effectiveness.
- Improves customer service.
- Provides sufficient variety of work.
- Increases potential pay.
- Improves the autonomy of the employee/team.
- Has an appropriate relation to existing job design.

Using the whole of job approach to design jobs the resulting job descriptions will consist of skills profiles. This may include non-trade skills which facilitate the completion of the whole task provided this does not lead to deskilling.

49.—INTRODUCTION OF CHANGE

(1) Employer's 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 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. In any event any job redesign must be agreed using the principles of job redesign contained in this Award.

(2) Employer's Duty to Discuss Change

(a) The employer shall discuss with the employees affected and their union or unions, 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 their unions 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 employees concerned and their union or unions, all relevant information about the changes including the nature of the changes proposed; a redesigned job description as described in the job description creation procedure contained in this Award; 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.

SCHEDULE A—PARTIES TO THE AWARD

Australian Electrical, Electronics, Foundry and Engineering Union (Western

Australian Branch)

Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous

Workers Division, Western Australian Branch

Metal and Engineering Workers' Union—Western Australia

The Operative Painters' and Decorators' Union of Australia, W.A. Branch, Union of Workers

Water Authority of Western Australia

SCHEDULE B—CLASSIFICATION TRANSITION

Levels Classifications

(1) Engineering Tradespersons—

C6 Level 4: (Includes persons previously engaged in the following classifications)—

Communication Tradesperson—Groups A, B and C
Electronics Tradesperson—Groups A, B and C
Instrumentation and Control Tradesperson—Groups A, B and C

C8 Level 3: (Includes persons previously engaged in the following classifications)—

A Communication Technician
Scientific Instrument Maker—Special Class

B Electrician—Special Class
Mechanical Tradesperson—Special Class

C Scientific Instrument Maker and Repairer
Tool Maker

Tradesperson assisting Foreperson (providing that the wage shall be maintained at 103.08% of the Level 1 rate for a Fitter, including tool allowance).

C9 Level 2: (Includes persons previously engaged in the following classifications)—

Tradesperson with marking off responsibilities
Welder—Special Class

C10 Level 1: (Includes persons previously engaged in the following classifications)—

Automotive Electrical Fitter
Blacksmith
Driller using Asquith or Tullis radial drill
Driller using borer or cutter bar
Electrical Fitter and/or Armature Winder
Electrical Installer
Fitter (including Meter Fitter)
Fitter and/or Turner
Fitter and/or First Class Machinist
First Class Machinist
Motor Mechanic
Plant Mechanic (Industrial)
Radio and Television Serviceperson
Sheet Metal Worker
Turner
First Class Welder
Fitter (Fuel Injection Room)
(In addition a skills allowance of $1.40 per week shall be paid after 12 months' experience under this designation at this Level of classification.)
Boilermaker

(b) Engineering Employees—

C11 Level 4: (Includes persons previously engaged in the following classifications)—

Plasterer's Labourer

C12 Level 3: (Includes persons previously engaged in the following classifications)—

Garage Attendant
Oxy or Electric Welder's Assistant
Third Class Machinist
Trades Assistant (General Mechanical)
Dressers—Shot blast and sand blast protected by properly enclosed cabin
Fitter's Assistant (including Meter Fitters Assistant)

SCHEDULE C—DEFINITIONS OF PREVIOUS CLASSIFICATIONS

(1) "Tradesperson Assisting Foreperson" means an employee who is a skilled tradesperson and whose duty is to assist the foreperson in administrative work as directed.

(2) "Trades Assistant" shall mean an employee directly assisting a tradesperson.

(3)(a) For the purposes of the classification "Boilermaker, the greater part of whose time is occupied in

marking off and/or template making" found at Clause 39, subclause (10), paragraph (1), item (zf), of this Award, "marking off" shall include but not be limited to—

(i) Lay-outs for true length development and for building assembly jigs upon.

(ii) Marking sections for the purpose of—

(aa) Drilling holes.

(bb) Joggling and notching.

(cc) Attaching cleats, gussets, fittings and component assembly.

(iii) Marking templates and patterns.

(iv) Marking plate material for the purpose of cutting, drilling, forming and assembly.

(v) Length marking for manual oxygen fuel gas flame cutting and manual plasma arc cutting of various sections in steels, stainless steels and non-ferrous metals.

(b) For the same purposes 'marking off' does not include—

(i) Marking off carried out by non-trade certified staff.

(ii) Length marking of section to be cut mechanically with equipment such as band saw, circular saw,

(iii) Marking materials, job parts or completed jobs with identification numbers or codes, etc.

(iv) Using the automatic tracing system on profile cutting machines.

(v) Setting adjustable stops on mechanical cutting machines such as the iron worker, band saw, circular saw, etc.

(vi) Using templates or patterns to mark material for cutting, etc.

(4) "Welder, First Class" means an employee using electric arc or acetylene, petrol or coal gas blow pipe on any work other than—

(a) filling castings; or

(b) cutting scrap metal; or

(c) welding with the aid of jigs; or

(d) operations specifically mentioned as being the work of a second class welder in the definition of that term.

(5) "Welder, Second Class" means an employee who—

(a) uses any of the foregoing types of welding apparatus in filling castings; or

(b) welds with the aid of jigs; or

(c) operates automatic welding machines for the setting up of which the employee is not responsible; or

(d) operates a profile cutting or a straight line cutting machine.

(6) "Electrician—Special Class" means, subject to paragraph (c) hereunder, an electrical fitter or electrical installer who—

(a) (i) has satisfactorily completed a prescribed post trade course in industrial electronics;

(ii) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under subparagraph (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 to examine, diagnose and modify systems comprising inter-connected circuits, 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 courses.

(c) For the purposes of this Award an employee shall be deemed to be an Electrician—Special Class only for the time during which the foregoing conditions are met, unless—

(i) that time exceeds 16 hours per week; or

(ii) in the opinion of the employer or, in the event of disagreement, in the opinion of the Western Australian Industrial Relations Commission that time is likely during the course of employment to exceed two days per week on average, in which case such employee shall be classified an Electrician—Special Class for as long as the employment continues on either of those bases.

(d) In the event of disagreement about the implementation of this Electrician—Special Class provision, the matter may be referred to the Western Australian Industrial Relations Commission for determination.

(e) For the purposes 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 New South Wales 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 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.

(7) "Scientific Instrument Maker—Special Class" means, subject to paragraph (c) hereunder, a scientific instrument maker who—

(a) (i) has satisfactorily completed a prescribed post trade course in industrial electronics;

(ii) has, whether through practical experience or otherwise, achieved a standard of knowledge comparable to that which would be achieved under subparagraph (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 to examine, diagnose and modify systems comprising inter-connected 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 courses.

(c) For the purposes of this Award an employee shall be deemed to be Scientific Instrument Maker—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 the 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 two days per week on average.

in which case the employee shall be classified a Scientific Instrument Maker—Special Class for as long as employment continues on either of those bases.

(d) In the event of disagreement about the implementation of this Scientific Instrument Maker—Special

Class provision, a Board of Reference shall determine the matter.

(e) For the purposes 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 New South Wales 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 the Department of Education, Queensland.

(v) The Certificate in Industrial Electronics of the Technical Education Division, Education Department of Western Australia.

(8) "Communication Tradesperson" means a Radio and TV Tradesperson Special Class working at a level beyond that of a Radio and TV Tradesperson Special Class and who is mainly engaged in applying his/her knowledge and skills to the tasks of installing, repairing, maintaining, servicing, modifying, commissioning, testing, fault finding and diagnosing of complex communications equipment and systems, utilising complex digital integrated circuits. The application of this skill and knowledge would require an overall understanding of the operating principles of the systems and the equipment on which the tradesperson is required to carry out his/her tasks.

To be classified as a Communications Tradesperson, a tradesperson must have at least three years' on-the-job experience as a tradesperson on communications equipment and systems—12 months of which must be at a level of Radio and TV Tradesperson Special Class—and in addition must have satisfactorily completed a post trades course in electronics equivalent to at least two years' part-time study.

In addition, to be classified as a Communication Tradesperson a tradesperson must be capable of—

(a) maintaining and repairing multi-function printed circuitry of the type described in this definition 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 in this definition.

(9) "Electronics Tradesperson" means an electrical tradesperson working at a level beyond that of Electrician Special Class and who is mainly engaged in applying this 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 and/or analogue control systems utilising integrated circuitry. The application of this skill and knowledge would require an overall understanding of the operating principles of the systems and equipment on which the tradesperson is required to carry out his/her tasks.

To be classified as an Electronics Tradesperson, a tradesperson must have at least three years' on-the-job experience as a tradesperson in electronics systems utilising integrated circuits and in addition must have satisfactorily completed a post trades course in electronics equivalent to at least two years' part time study.

In addition, to be classified as an Electronics Tradesperson, a tradesperson 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 this 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.

(10) "Instrumentation and Controls Tradesperson" means an instrument tradesperson working at a level beyond that of Scientific Instrument Maker Special Class and who is mainly engaged in applying these skills and knowledge to installing, repairing, maintaining, servicing, testing, modifying, commissioning, calibrating and fault finding industrial instruments which make up a complex control system which utilises some combination of electrical, mechanical, hydraulic and pneumatic principles and electronic circuitry containing complex analogue and/or digital control systems utilising integrated circuitry.

The application of this skill and knowledge would require an overall understanding of the operating mode of principles of the various types of measurement and control devices on which the tradesperson is required to perform these tasks.

To be classified as an Instrumentation and Controls Tradesperson, a tradesperson must have at least three years' on-the-job experience as a tradesperson—12 months of which must be at the level of Instrument Tradesperson—Complex Systems and in addition must have completed a related post-trades course equivalent to at least two years' part-time study.

In addition, to be classified as an Instrumentation and Controls Tradesperson, a tradesperson must be capable of—

(a) maintaining and repairing multi-function printed circuitry of the type described in this definition 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 technical nature on specific tasks or assignments as directed and within the scope of the work described in this definition.

(11) "Mechanical Tradesperson—Special Class" means subject to paragraph (c) hereunder, a Mechanical Tradesperson who—

(a) (i) is engaged on or in connection with fluid power circuitry, which work requires for its performance the standard of knowledge and skills referred to in subparagraphs (iii) and (iv) hereof; 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 subparagraph (iii) hereof 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) hereof;

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 a Mechanical 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 Mechanical 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 (a)(iv) above.

(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 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' 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 purpose of this definition, fluid power circuitry involves industrial hydraulics and/or industrial pneumatics.

(12) "Motor Mechanic" means an employee engaged in assembling (except for the first time in Australia), making, repairing, altering or testing the metal parts (including electric) of the engines or chassis of motor vehicles other than motor cycles.

(13) "Process Worker" means an employee engaged on repetition work on any automatic, semi-automatic, or single purpose machine, or any machine fitted with jigs, gauges, or other tools, rendering operations mechanical, or in the assembling of parts of mechanical appliances or other metallic articles so made, or any repetitive hand processes.

(14) "Toolmaker" means a tradesperson making and/or repairing any precision tool, gauge, die or mould to be affixed to any machine, who designs or lays out his/her work and is responsible for its proper completion.

(15) "Third-class Welder" means an employee who uses any of the foregoing types of welding apparatus in tacking preparatory to the completion of work by any other employee.

(16) "Fourth-class Welder" means an employee using an electric spot or butt-welding machine, or cutting scrap with oxy-acetylene blow pipe, petrol or coal gas blow pipe.

(17) "Instrument Tradesperson—Complex Systems" means an instrument tradesperson who is mainly engaged in installing, repairing, maintaining, servicing, testing, modifying, commissioning, calibrating and fault finding instruments which make up a complex control system which utilises some combination of electrical, electronic, mechanical, hydraulic and pneumatic principles.

To be classified as an Instrument Tradesperson—Complex Systems, a tradesperson will have—

(a) had a minimum of two years' on-the-job experience as a tradesperson working predominantly on complex and/or intricate instrument systems as will enable him/her to perform such work under minimum supervision and technical guidance; and

(b) satisfactorily completed an appropriate post trade course equivalent to at least two years' part-time study or has achieved to the satisfaction of the employer a comparable standard of skill and knowledge by other means including in-plant training or on-the-job experience referred to in paragraph (a) above.

SCHEDULE D—ENGINEERING TRADESPERSONS (DISTRICT ELECTRICAL TECHNICIANS)

1.—TITLE

This Schedule shall be known as Schedule D—Engineering Tradespersons (District Electrical Technicians) and comprises conditions conferred by Order No. C 749 of 1990.

2.—ARRANGEMENT

3.—APPLICATION AND GENERAL CONDITIONS OF EMPLOYMENT

The provisions of this Schedule shall apply to persons employed by the Water Authority of Western Australia as Engineering Tradespersons (District Electrical Technicians). The provisions of this Schedule shall apply in addition to the provisions of the Award.

4.—STANDBY

Engineering Tradespersons (District Electrical Technicians) employed by the Water Authority of Western Australia shall be rostered for standby each alternate week to be available for out of hours duty for seven days in accordance with a formal roster and payment for standby shall be made in accordance with subclause (3) of Clause 19.—Overtime, of the Award.

5.—WAGES

In addition to the total weekly wage prescribed in Clause 38.—Wages, of the Award for the classification Water Industry Engineering Tradesperson Level C8, on all purpose payment equal to 25% of the total weekly wage and tool allowance shall be paid to District Electrical Technicians. Except as provided in Clause 4.—Standby and Clause 6.—Overtime, of this Schedule, such payment shall be paid in recognition of all out of hours work.

6.—OVERTIME

In addition to the payment provided for in Clause 5.—Wages, of this Schedule, overtime shall be paid in accordance with the Award where out of hours work is required and involves—

(1) Installation work necessary to complete a construction project.

(2) Work not associated with a fault in an operating system provided the work is not a continuation of the normal daily maintenance.

(3) Call outs occurring on a non-standby week.

(4) Emergencies brought about by cyclone, flood or storm or other similar occurrences; or

(5) Call outs occurring on a standby week—time in excess of a six hour continuous period inclusive of travelling time.

7.—LATE START

Notwithstanding the provisions of subclause (4) of Clause 19.—Overtime, of the Award, all time worked after midnight and prior to the commencement of the ordinary work of that day shall be added to the usual commencing time of that day to enable a late start for such employee and in any event, any call out after midnight shall entitle the employee to a minimum late start of two hours.

8.—TRAVELLING ALLOWANCES

When a job necessitates an overnight stay away from headquarters, reimbursement shall be according to the rate prescribed in subclause (2) of Clause 42.—Travelling Allowance, of the Public Service Award 1992.

9.—MEAL ALLOWANCES

The provisions of the Public Service Award 1992, subclause (5) of Clause 42.—Travelling Allowance, shall apply in circumstances where the job does not involve an overnight stay.

10.—ASSISTANTS

Assistants shall be assigned on a needs basis determined by the nature of the particular job. Any dispute shall be determined having regard for the provisions of the Occupational Health, Safety and Welfare Act.

11.—TELEPHONES

(1) The cost of new installations and/or new connections shall be met by the Water Authority of Western Australia. District Electrical Technicians shall be reimbursed costs associated with rental and Water Authority business calls in the manner applying generally to Authority employees.

(2) Employees relieving as District Electrical Technicians shall be reimbursed costs of rental and business calls proportionate to the duration of the relief.

12.—VEHICLES

District Electrical Technicians shall be supplied suitable vehicles which shall be equipped to a suitable standard agreed to by the parties from time to time.

13.—DISTRICTS

(1) District Electrical Technicians employed by the Water Authority of Western Australia shall operate within districts identified by the parties through an exchange of letters from time to time for the purposes of allocating day to day routine maintenance.

(2) Variations to the districts described in subclause (1) of this clause shall be by agreement between the parties and shall be limited to such variations as are needed due to changes in workload which may occur from time to time.

(3) Call outs on standby weeks shall be limited to those districts identified by the standby roster.

14.—DATE OF OPERATION

This Schedule shall operate from the first pay period on or after the 1st day of May, 1988.

SCHEDULE E—ENGINEERING TRADESPERSONS (MOBILE MECHANICAL FITTERS)

1.—TITLE

This Schedule shall be known as Schedule E—Engineering Tradespersons (Mobile Mechanical Fitters) and comprises conditions conferred by Order No. C 380 of 1991.

2.—ARRANGEMENT

3.—APPLICATION AND GENERAL CONDITIONS OF EMPLOYMENT

The provisions of this Schedule shall apply to persons employed by the Water Authority of Western Australia as Engineering Tradespersons (Mobile Mechanical Fitters). The provisions of this Schedule shall apply in addition to the provisions of the Award.

4.—DATE OF OPERATION

This Schedule shall take effect on and from 25 July 1991.

5.—WAGES

In addition to the appropriate total weekly wage prescribed in Clause 38.—Wages, of the Award, an all purpose payment equal to 25% of the total weekly wage and tool allowance shall be paid to Mobile Mechanical Fitters. Except as provided in Clause 6.—Overtime of this Schedule, such payment shall be in recognition of all out of hours work.

6.—OVERTIME

In addition to the payment set out in Clause 5.—Wages, of this Schedule, overtime shall be paid in accordance with the Award where out of hours work is required and involves—

(1) Installation work necessary to complete a construction project.

(2) Work not associated with a fault in an operating system provided the work is not a continuation of the normal maintenance programme.

(3) Emergencies brought about by cyclone, flood or other similar occurrences.

(4) Call Outs in excess of a six hour continuous period inclusive of travelling time. In such a case, the whole of the period worked, inclusive of travelling time, shall be paid for in accordance with the overtime provisions of the Award.

7.—LATE START

Notwithstanding the provisions of subclause (4) of Clause 19.—Overtime, of this Award, all time worked after midnight and prior to the commencement of the ordinary work of that day shall be added to the usual commencing time of that day to enable a late start for such employee and in any event, any call out after midnight shall entitle the employee to a minimum late start of two hours.

Such a late start shall be without loss of pay.

8.—TELEPHONES

(1) Where, at the date of this Schedule, the telephone rental and business calls of an employee were being paid for by the employer, that arrangement shall continue whilst the employment status of that employee remains constant.

(2) An employee relieving as a Mobile Mechanical Fitter shall be reimbursed pro rata telephone rental for the duration of such relief, where the employee being relieved has such rental reimbursed.

(3) In any event, an employee shall be reimbursed the cost of business calls.

(4) Allocation of new installations and/or connections paid for by the employer shall be at discretion of the Water Authority.

9.—LIBERTY TO APPLY

(1) Should any oversight, omission or error arise in the formalisation of conditions of employment for Mobile Mechanical Fitters employed by the Water Authority of Western Australia, either party shall have liberty to apply to further amend this Schedule to reflect the true intent of the parties.

(2) The union reserves liberty to apply for the provisions of the Public Service Award 1992 to apply with respect to meal and travelling allowances.

Dated at Perth this 20th day of March, 1981.

GRAIN HANDLING SALARIED OFFICERS' CONSOLIDATED AWARD 1989
No 37 of 1965.

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 February, 1996

J. CARRIGG,
Registrar.

Grain Handling Salaried Officers' Consolidated Award 1989.

1.—TITLE

This Award shall be known as the Grain Handling Salaried Officers' Consolidated Award 1989.

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

2A.—STATE WAGE PRINCIPLES—JUNE 1991

It is a term of this award that the Association undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991 not to pursue any extra claims, award or overaward except when consistent with the State Wage Principles.

2B.—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) In conjunction with testing the new award structure, the Association is prepared to discuss all matters raised by the employer for increased flexibility. As such any discussion with the Association must be premised on the understanding that—

(a) The majority of employees of the Company must genuinely agree to proposed changes.

(b) No employee will lose income as a result of the change.

(c) The Association must be party to the agreement, in particular, where enterprise level discussions are considering matters requiring any award variation, the Association must be invited to participate.

(d) The Association will not unreasonably oppose any agreement.

(e) Agreements will be ratified by the Commission.

(f) The disputes procedure will apply if agreement cannot be reached in the implementation process on a particular issue.

(3) Should an agreement be reached pursuant to subclause (2) hereof, and that agreement requires award variations, the parties will not unreasonably oppose that award variation.

(4) The parties agree that under this heading any award matter can be raised for discussion.

(5) The parties agree that the restructuring committee will continue to meet with the aim of modernising the Award.

3.—SCOPE

This Award shall apply to all employees other than seasonal employees employed by the respondent in the classifications contained in Clause 31.—Salaries.

4.—TERM

The term of this Award shall be for a period of three years as from the date hereof.

5.—PAYMENT OF SALARIES

Salaries shall be paid by the use of electronic funds transfer on a weekly or monthly basis. Any employee due to personal circumstances may be exempted from such payment method on the condition that such exemption only be through payment by cheque and approved by the employer.

6.—CONTRACT OF SERVICE

(1) The contract of service shall be by the month and shall be terminable by one month's notice or by the payment or forfeiture of one month's pay in lieu of such notice on either side.

Provided that during the first three months of employment one week's notice or payment or forfeiture of one week's pay in lieu of such notice on either side shall apply.

(2) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself/herself for duty except when such absence is due to illness and comes within the provisions of Clause 19.—Absence Through Sickness hereof or for any day upon which the employee cannot be employed because of any strike by the Union or by any Union affiliated with it.

(3) The provisions of subclause (1) of this clause do not affect the employer's right to dismiss for misconduct and an employee so dismissed shall be entitled to wages up to the time of dismissal only.

7.—HOURS OF DUTY

(1) Except as provided herein, the ordinary hours of work shall be 38 per week to be worked from Monday to Friday inclusive, between the hours of 7.00 am and 6.00 pm, provided those hours may be worked in 19 days each four weeks by agreement between the employer and the Association.

(2) Subject to the provisions of this clause, a 38 hour week shall be implemented as follows—

(a) During a work cycle a 28 consecutive days (that is, four consecutive weeks) an employee's ordinary hours shall be arranged on the basis that for three of the four weeks the employee works 40 ordinary hours each week and in the fourth week the employee works 32 ordinary hours.

(b) An employee shall work for eight ordinary hours each day, Monday to Friday inclusive, for three weeks

and eight ordinary hours for four days only in the fourth week, a total of 19 days during the work cycle.

(c) The weekly salary rates for ordinary hours of work applicable to an employee shall be the ordinary weekly rate set out for the employee's classification in Clause 31.—Salaries, of this Award, and shall be paid each week even though more or less than 38 ordinary hours are worked that week.

(d) An employee shall accrue a credit for each day he/she works actual ordinary hours in excess of the daily average, which would otherwise be seven hours 38 minutes. Consequently, for each day an employee works eight ordinary hours he/she shall accrue a credit of 24 minutes (0.4 hours). Such credits shall be carried forward so that in the week of the cycle that an employee works only four days, the employee's pay will be for an average of 38 ordinary hours even though that week he/she works a total of 32 ordinary hours.

(e) An employee shall not accrue a credit for any day that he/she is absent from work.

(3) The rostered day off shall be taken in accordance with a schedule supplied by the Company and shall be paid for at ordinary rates.

(4) If the employer requires an employee to work on a rostered day off, such employee shall work as required with such work being paid for in accordance with subclause (5) hereof, and the employee shall accumulate a day in lieu of the rostered day off which he/she would otherwise have had. An employee shall be entitled to take such an accumulated day in lieu at a time mutually convenient to both the employee and the employer.

(5) Employees required to travel regularly in the performance of their duties shall have no fixed hours of duty.

(6) Subject to Clause 9.—Overtime an employee may be required to work beyond the hours herein prescribed due to the exigencies of the employer's business, and shall thereupon work in accordance with such requirements, but an employee specified in subclause (5) hereof shall not be kept away from his/her regular place of residence for more than 12 days.

(7) An employee referred to in Clause 8.—Shift Work, may be required to work shift work in accordance with the provisions of that clause.

(8) Employees whose ordinary hours were not the subject of an agreement between the parties concerning reduced working hours as at the 31st December, 1982, shall continue to work the hours they usually and customarily work as ordinary hours.

8.—SHIFT WORK

PART I—AVON AND MERREDIN

(1) This part of Clause 8 shall apply to employees employed at the Avon and Merredin Transfer Depots as Supervisors and Forepersons.

(2) Employees covered by this part may be required to work on a shift on any day Monday to Friday inclusive.

(3) For the purposes of this part—

(a) A shift shall be deemed to be a period of eight working hours where the majority of these hours are worked outside the hours of 7.00 am to 6.00 pm.

(b) Where a shift commences at or after 10.00 pm on any day, the whole of that shift shall be deemed to have been worked on the following day.

(4) An employee who works a shift under this clause shall in addition to the ordinary rate be paid a loading of 55% for the shift worked.

(5) Where the employer requires an employee to work shifts, the employee where practicable shall receive at least 24 hours' notice of the commencement of shift work.

(6) An employee may be placed on shift work at any time during the week; however once placed on shift work the employee will remain on that shift for the remainder of the week.

(7) Notwithstanding the provisions of Clause 9.—Overtime of this Award an employee working a shift as prescribed under this clause who works in excess of eight hours per day or 40 hours per week shall be paid at double the ordinary rate (exclusive of the shift loading) for the time worked.

(8) An employee shall be entitled to the same crib as that commonly applying at the depot. In the event of a dispute the matter may be referred to the Western Australian Industrial Relations Commission for determination.

PART II—KWINANA TERMINAL

(1) Subject to the provisions of this clause, the employer may work Supervisors and Forepersons at the Kwinana Grain Terminal on day and evening shifts.

(2) For the purposes of this part, "Day Shift" means eight hours of work performed between the hours of 7.30 am and 3.30 pm and "Evening Shift" means eight hours of work performed between the hours of 3.15 pm and 11.15 pm.

(3) An employee who works an "Evening Shift" shall, in addition to the ordinary rate, be paid a loading of 55% for each shift worked.

(4) Where the employer requires an employee to work shifts, the employee where practicable shall receive at least 24 hours' notice of the commencement of shift work.

(5) An employee may be placed on evening shifts at any time during the week, however, once placed on shift work, the employee will remain on that shift for the remainder of that week.

(6) Notwithstanding the provisions of Clause 9.—Overtime of this Award the following provisions shall apply to employees covered by this part—

(A) Day Shift Employees

(a) (i) All time worked in excess of eight hours per day or outside the usual starting and finishing times, 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.

(ii) An employee who continues working after the normal finishing time to complete a specific operation shall be paid for a minimum of one and one half hours at the appropriate rate, provided that, the employee shall not be required to work the full one hour and one half if the operation is completed in a shorter period of time.

(iii) Should overtime be required to continue following the designated (overtime) meal break an employee shall be paid for a minimum of two hours at the appropriate rate.

(b) (i) Except as provided for in this clause, all time worked before 12.00 noon Saturdays shall be paid for at the rate of double time.

(ii) The employer may require work up to 12.00 noon Saturday and such work will be performed as required. A minimum payment of four hours at the appropriate rate will apply. No work shall be carried out between 12.00 noon and 12.00 pm Saturday, except where wages employees under supervision are working. If work is carried out after 12.00 noon, that work shall be paid for at the rate of double time and one half. When work is performed after 12.00 noon the lunch period shall be from 11.30 am to 12.00 noon.

(iii) The employer shall notify an employee on Friday afternoon before 3.30 pm of the requirement to work beyond 12.00 noon Saturday. If the work is then not required payment shall be up to the time notified that the employee would be required.

(iv) All time worked between 12.00 pm Saturday and 7.00 am Sunday shall be paid for at the rate of double time and in addition the employee will be granted one day in lieu with pay at the day shift rate to be taken at some time that is agreeable both to the employer and the employee concerned.

(c) Except as provided for in this subclause all time worked on Sundays shall be paid for at the rate of double time.

(d) All time worked between 11.00 pm on the day preceding a holiday under this Award and 11.00 pm on that holiday shall be deemed to be overtime.

(e) Where an employee works in excess of eight hours on any of the days prescribed as holidays in Clause 17.—Holidays of this Award payment shall be at the rate of double time and one half.

(B) Evening Shift Employees

Where an employee works overtime on the evening shift that overtime shall conclude at 12.15 am and be paid for at double the ordinary rate.

(C) The following provisions shall apply to all employees covered by this part—

(a) When overtime work is necessary it shall, whenever practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.

(b) An employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work or shift on the next day so that the employee has not had at least ten consecutive hours off duty between those times shall, subject to this clause, 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. 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 for such period and then shall be entitled to be absent until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

PART III—OTHER WORK PLACES

(1) Other than for the provisions of Part I and II of this clause, the employer may work employees on shift work on any day Monday to Friday inclusive.

(2) For the purposes of this part—

(a) A shift shall be deemed to be a period of eight working hours where the majority of these hours are worked outside the hours of 7.00 am to 6.00 pm.

(b) Where a shift commences at or after 10.00 pm on any day, the whole of that shift shall be deemed to have been worked on the following day.

(3) An employee who works a shift under this part shall in addition to the ordinary rate be paid a loading of 55% for the shift worked.

(4) Where the employer requires an employee to work shifts, the employee where practicable shall receive at least 24 hours' notice of the commencement of shift work.

(5) An employee may be placed on shift work at any time during the week; however once placed on shift work the employee will remain on that shift for the remainder of the week.

(6) Notwithstanding the provisions of Clause 9.—Overtime of this Award an employee working a shift as prescribed under this clause who works in excess of eight hours per day or 40 hours per week shall be paid at double the ordinary rate (exclusive of the shift loading) for the time worked.

9.—OVERTIME

(1) Except as hereinafter provided all work performed outside of the ordinary hours prescribed in Clause 7.—Hours of Duty and in Clause 8.—Shift Work hereof shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(2) All time worked between midnight and the usual starting time on Monday to Friday inclusive shall be paid for at the rate of double time, but employees called upon to start work within an hour of the usual starting time shall be paid at time and one half until the usual starting time.

(3) Subject to the provisions of this clause—

(a) All time worked on a Saturday prior to 12.00 noon or a Sunday shall be paid for at the rate of double time with a minimum payment of four hours.

(b) All time worked on a Saturday after 12.00 noon shall be paid for at the rate of double time and one half.

(c) All time worked during the ordinary hours by an employee on any day prescribed as a holiday under this Award shall be paid for at the rate of time and one half in addition to the holiday pay to which the employee is entitled under Clause 17.—Holidays.

(d) All time worked outside the ordinary hours by an employee on any day prescribed as a holiday under this Award shall be paid for at the rate of double time and one half.

(4) For overtime—

(a) Commencing more than one hour after the usual finishing time or ceasing more than one hour before the usual starting time there shall be a minimum payment of four hours.

(b) Commencing after or continuing past the conclusion of a recognised tea break at the place of work there shall be a minimum payment of two hours.

(5) For the purpose of assessing overtime each day shall stand alone.

(6) Except in relation to work on holidays prescribed by this Award and on Saturdays after 12.00 noon, nothing herein shall be deemed to require the payment of a higher rate than double time.

(7) Time worked by an employee during a period that the employee has not been directed to work by the employer shall not be deemed to be overtime.

(8) Where an employee to whom subclause (5) of Clause 7.—Hours of Duty applies leaves the job for the day and is recalled to attend an emergency payment shall be for the time so spent at the rate of time and one half for the first two hours and double time thereafter.

(9) Except as provided in subclauses (3) and (8) hereof the provisions of this clause do not apply to time worked from Monday to Friday inclusive by employees to whom subclause (5) of Clause 7.—Hours of Duty applies.

10.—MEAL ALLOWANCE

A meal allowance of $6.03 shall be paid to each employee in the following circumstances—

(1) If the the employee is required to work 10 or more hours on any day Monday to Friday inclusive; or

(2) If the employee is required to continue or recommence working after 1.00 p.m. or 6.00 p.m. on a Saturday, Sunday or any holiday prescribed under this Award; or

(3) If the employee having worked between the hours of midnight to 7.00 a.m. is required to continue or recommence at 8.00 a.m.

(4) The provisions of this clause do not apply to the working of ordinary hours whilst on shift work as set out in Clause 8.—Shift Work.

11.—TRAVELLING TIME

An employee, other than an employee to whom subclause (5) of Clause 7.—Hours of Duty applies, shall when directed to travel outside the normal working hours, be paid at ordinary rates up to a maximum of 12 hours in any 24 hour period.

12.—TRAVELLING ALLOWANCE

When an employee is required to travel away from home on the employer's business, all reasonable expenses actually incurred for such travelling and board, meals and/or lodging shall be reimbursed by the employer.

13.—TRANSFER ALLOWANCE

(1) Where an employee is transferred from one locality to another reasonably involving a change of residence the employee shall—

(a) Be paid for all costs of expert and professional removal of household goods actually and reasonably incurred.

(b) Be paid for a period of three months the difference in rental actually incurred between the accommodation vacated and the new home, or if the employee owns accommodation, between the rental value of the accommodation vacated and the new accommodation. Provided that where, in the employer's opinion the rental actually incurred for the new accommodation is not reasonable the employer shall pay such lesser sum as deemed reasonable.

(c) Be entitled to claim an amount of up to $1,000 for such necessary alterations or replacement of things such as floor coverings or window treatments.

(d) Be eligible to transfer one (1) private family vehicle at the company agreed kilometreage rate.

(e) Be reimbursed any SEC meter reading charge.

(f) Be reimbursed for the cost of the redirection of personal mail.

(g) Be reimbursed for the reasonable costs of alterations to electrical appliances and adaptors when required.

(2) Where an employee with dependants is transferred from one locality tonother to suit the convenience of the employer and at which no suitable accommodation is available, the employee shall, if the transfer involves the dependants, be paid such reasonable accommodation expenses actually incurred until such time as suitable accommodation is available or for a period of six months, whichever shall be the shorter.

(3) Where an employee is temporarily transferred from one locality to another, to the extent that daily travel to and from the job is impracticable but the transfer does not reasonably involve a change of residence, travelling allowance shall be made for return home at regular intervals of not more than three weeks.

(4) Where an employee is temporarily transferred from one place of employment to another in the same locality, the employee shall be paid travelling time in excess of one hour per day at ordinary rates for all time spent in excess of that time usually occupied in travelling between the employee's residence and preceding place of employment and shall be paid fares actually and reasonably incurred in excess of those normally incurred in travelling between the employee's residence and preceding place of employment.

(5) Where an employee is permanently transferred from one place of employment to another in the same locality, the employer shall give all possible notice of the projected change. In the event of no notice being given or of the notice given being for less than one month, the provisions of the previous subclause shall apply for one month.

14.—CAMP AND AWAY FROM HOME ALLOWANCE

Employees not entitled to travelling allowances but whose duties require or compel them to camp on the job shall be paid an allowance of $9.51 for each day so required or compelled to camp with a maximum of $66.60 per week.

15.—DISABILITY ALLOWANCE

(1) An employee shall be entitled to be paid a disability allowance in the following circumstances—

(a) If the employee's duties regularly require the performance of normal duties in an environment in which a disability allowance is paid by the employer to other employees; and

(b) If the employee actually performs such duties in the same physical area and environment as an employee who is paid a disability allowance by the employer; and

(c) If the employee performs such duties in that environment for a continuous period of not less than 60 minutes on each occasion; or

If the employee performs such duties in that environment for a cumulative period of not less than one hour a day.

(2) The disability allowance paid shall be the same hourly rate of allowance paid to other employees by the employer under their respective awards. Such allowance shall not be computed as salary in the case of overtime.

(3) Provided that if the employer is satisfied that an employee has not actually incurred the same disabilities for which the allowance is prescribed, being the disabilities incurred by the aforementioned employees in receipt of a disability allowance under their respective awards, the employer may refuse to pay the disability allowance to that employee for the period claimed.

(4) Any disputes arising from the application of this clause shall be immediately referred to the Company's Industrial Officer by the employee concerned and, if not resolved within 48 hours, referred to the Association so that in the event of ultimate disagreement, the matter may be referred to the Western Australian Industrial Relations Commission.

16.—PROTECTIVE CLOTHING AND SAFETY FOOTWEAR

(1) The employer shall provide suitable protective clothing and footwear for the protection of an employee's clothing or footwear where it is reasonable to assume that these items will be necessarily unduly soiled or injured by the nature of the work performed.

(2) Any disagreement between the parties may be referred to a Board of Reference by either party.

(3) Employees may be required to wear suitable safety footwear where necessary, and the employer shall supply such footwear free of charge.

Subject to the employer being satisfied that such footwear requires replacement because of fair wear and tear, an employee shall be entitled to two issues of safety footwear each year.

17.—HOLIDAYS

(1) Subject to Clause 9.—Overtime, the following days or days observed in lieu shall, except as provided herein be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Easter Tuesday, 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.

(2) Where any of the abovenamed days falls on a Saturday or a Sunday it shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday it shall be observed on the next succeeding Tuesday. The days observed in such cases shall be deemed a holiday or holidays without deduction of pay in lieu of the days observed.

18.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four consecutive weeks' leave with payment of actual salary (but not including any loadings or allowances) plus a loading of 17.5% shall be allowed annually to an employee by the employer after a period of 12 months' continuous service with that employer.

(2) If any holiday prescribed in Clause 17.—Holidays hereof 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.

(3) If after one month's continuous service in any qualifying 12 monthly period, an employee leaves the employment or the employment is terminated by the employer through no fault of the employee, the employee shall be paid one third of a week's pay at the employee's ordinary rate of salary in respect of each completed month of continuous service.

(4) Any time in respect of which an employee is absent from work, except time for which the employee 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 the right to annual leave.

(5) In the event of an employee being employed by the employer for portion only of a year the employee shall only be entitled, subject to subclause (3) of this clause, to such leave on full pay as is proportionate to the length of service during that period with the employer, and if such leave is not equal to the leave given to the other employees then the employee shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(6) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(7) In special circumstances and by mutual consent of the employer and the employee, annual leave may be taken in not more than two periods.

19.—ABSENCE THROUGH SICKNESS

(1) An employee who is incapacitated for duty in consequence of illness or injury shall as soon as possible advise the senior officer in sufficient time to enable arrangements to be made for the performance of the employee's duties.

(2) Such an employee shall be entitled to payment for non-attendance on the ground of personal ill-health for one-sixth of a week for each completed month of service. Provided that payment for absence through ill-health shall be limited to two weeks' pay in each year of service. Provided further that an employee with at least two years of service shall be entitled to payment for sickness up to one-third of a week for each completed month of service, with a limit of four weeks' pay in each year of service.

(3) In the event of the employee being entitled by service subsequent to the sickness to a greater allowance than that made at the time the sickness occurred, payment hereafter may be adjusted at the end of each year of service or at the time the employee leaves the service of the employer.

(4) This clause shall not apply where the employee is entitled to compensation under the Workers' Compensation Act.

(5) No employee shall be entitled to the benefits of this clause unless satisfactory proof is provided to the employer of sickness, but the employer shall not be entitled to a medical certificate unless the absence is for three days or more.

(6) Sick leave shall accumulate from year to year so that any balance of the period specified in subclause (2) of this clause which has in any year not been allowed to any employee as paid sick leave may be claimed by the employee and subject to the conditions hereinbefore prescribed shall be allowed in any subsequent year without diminution of the sick leave prescribed in respect of that year. The sick leave herein provided shall be allowed to accumulate and any portion unused in any year may be availed of in the next or any succeeding year.

(7) An employee shall, if so directed, present himself/herself for examination by a medical officer selected by the employer at such time and place as shall be fixed and the payment of sick leave shall be made on the basis of such examination.

(8) If an employee falls sick whilst on annual leave and provides at the time satisfactory medical evidence that he/she is unable to leave their place of residence, the employee may, with the approval of the employer, be granted at a time convenient to the employer, additional leave equivalent to the period of sickness falling within the rostered period of annual leave. Provided that the period of sickness is at least one week. Subject to sick leave credits, the period of sickness is at least one week. Subject to sick leave credits, the period of certified sickness shall be paid for and debited as sick leave.

(9) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this Award shall not count for this purpose of determining the right to payment under this clause.

20.—MATERNITY LEAVE

Employees covered by this Award shall be entitled to the same maternity leave provisions as those contained in the Clerks (Grain Handling) Award No. 34 of 1977, as amended.

21.—BEREAVEMENT LEAVE

An 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 four working days.

Proof of such death shall be furnished by the employee to the satisfaction of the employer if so requested.

Provided that this clause shall have no operation while the period of entitlement of leave under it coincides with any period of leave.

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.

22.—LONG SERVICE LEAVE

The long service leave entitlements of employees covered by this award shall be those contained at 71 WAIG 1. Notwithstanding the above the said entitlements shall be as follows—

(1) In respect of the first 10 years' period of qualifying service—13 weeks' leave.

(2) In respect of the next ensuing 10 years' period of qualifying service—13 weeks' leave.

(3) In respect of the next ensuing seven years' period of qualifying service—13 weeks' leave.

(4) In respect of the next ensuing six years' period of qualifying service—13 weeks' leave.

(5) In respect of each five years' period of qualifying service completed thereafter—13 weeks' leave.

23.—BOARD OF REFERENCE

(1) The Commission hereby appoints for the purposes of this Award a Board of Reference consisting of a Chairperson 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 allowing, approving, fixing, determining or dealing with any matter of difference 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.

24.—UNION NOTICES

The employer shall allow Union Notices and a copy of this Award, if supplied by the Union, to be posted up in places accessible to the employees and approved by the employer.

25.—INTERVIEWING EMPLOYEES

In the case of a disagreement existing or anticipated concerning any of the provisions of this Award, an accredited representative of the Union shall be permitted to interview employees during the recognised meal hour on the business premises of the employer, but this permission shall not be exercised, without the consent of the employer, more than once in any one week.

26.—RECORDS

(1) The employer shall keep a time and salaries record showing the name of each employee, the nature of the work performed, the hours worked, and the salaries and allowances paid. 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 salaries record shall be open for inspection by a duly accredited official of the Union during the usual office hours.

27.—PRESERVATION OF ACCRUED RIGHTS

No employee shall, as a result of this Award, suffer any reduction in total salary or conditions which was being received prior to the date of operation of this Award.

28.—EQUIPMENT

All instruments, tools, equipment and reference books necessary for the proper and efficient discharge of duties shall be provided by the employer on the job and shall remain the property of the employer.

29.—FIRST AID EQUIPMENT

Adjacent to each working area, a first aid kit shall be set aside for the treatment of illness or injuries. The first aid area and equipment shall be related to the nature of the work undertaken and the number of persons employed and the distance from medical facilities.

30.—HIGHER DUTIES

(1) An employee solely engaged for five days or more on duties carrying a higher rate than the employee's ordinary classification shall be paid the higher rate while so engaged.

(2) If the employee's actual rate of pay is more than the base level of the position being relieved, then the higher rate referred to in subclause (1) hereof shall be the relieving employee's next higher increment.

31.—SALARIES

(1) The rates of pay of adult employees shall be as prescribed by this clause and the rates of pay of junior employees shall be the following percentages of the prescribed adult rate for the work upon which the junior employee is engaged—

16 years of age	80%
17 years of age	90%

(2) For the purpose of adjustment and payment the weekly salary shall be calculated as six three hundred and thirteenths of the annual salary, the fortnightly salary as double the weekly salary, and the monthly salary as one twelfth of the annual salary.

(3) (a) The salary rate per annum for adult employees shall be as follows—

	Base	1st Increment	2nd Increment
Level 10	54,659	56,709	58,836
Level 9	48,944	50,780	52,684
Level 8	43,826	45,469	47,175
Level 7	39,243	40,715	42,242
Level 6	35,139	36,457	37,825
Level 5	31,465	32,645	33,869
Level 4	28,175	29,232	30,328
Level 3	25,242	26,188	27,170
Level 2	22,602	23,450	24,329
Level 1	20,240	20,998	21,785

(b) Calculations of each salary rate of pay shall be as follows:

Commencing from the Level 1 base rate each successive rate of pay shall be increased by 3.75%.

(c) The alignment of classifications to salary levels shall be as follows:

Classifications	Levels
Superintendent GI	9/10
Superintendent GII	8/9
Superintendent GIII	7/9
Superintendent GIV	6/8
Superintendent GV	5/7
Supervisor GI—Officer GI—Technician GI	4/6
Supervisor GII—Officer GII—Technician GII	3/5
Supervisor GIII—Officer GIII—Technician GIII—Technician GIV	2/4
Technician GIV	1/3

(4) Promotion to an employee's next and subsequent increments shall be based on a combination of performance, qualifications and experience, upon recommendation from the Section and/or Department Head.

32.—APPOINTMENTS AND PROMOTIONS

At least two weeks' notice of all vacancies and new positions shall be given in the employer's "Staff Bulletin" showing the salary and conditions relating to the position.

33.—ISOLATION ALLOWANCE

(1) In addition to the salaries prescribed in Clause 31.—Salaries, of this Award, the following isolation allowances shall apply to employees who are based at any of the following receival points for a week (seven days)—

	$
Beaumont	4.90
Bonnie Rock	7.10
Bullfinch	6.80
Cascades	4.90
Dulyalbin	6.80
Dunn Rock	7.60
Esperance	4.40
Gairdner River	7.10
Goodlands	7.10
Grass Patch	4.90
Holland Rocks	7.10
Holleton	6.80
Holt Rock	7.60
Hyden	7.60
Hyden East	7.60
Hyden South East	7.60
Jacup	7.60
Jerdacuttup	7.60
Kojaneerup	7.10
Lake King	7.60
Lake Varley	7.60
Lake Cairlocup	7.10
Lort River	4.90
Marvel Loch	6.80
Mindarabin	7.10
Mt Madden	7.60
Mt Sheridan	7.60
Mt Walker	7.60
Munglinup	4.90
Mukinbudin	7.10
Pingrup	7.10
Ongerup	7.10
Ravensthorpe	7.60
Salmon Gums	4.90
Southern Cross	6.80
South Yilgarn	6.80
Tampu	7.10
Warralackin	6.80
Wellstead	7.10
West River	7.60
Wialki	7.10
Wilgoyne	7.10
Woolocutty	7.60

(2) Except as provided in subclause (3) hereof, an employee who has—

(a) A dependant shall be paid double the allowance prescribed in subclause (1) hereof.

(b) A partial dependant shall be paid the allowance prescribed in subclause (1) hereof 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 is provided with board and lodging by his/her employer, free of charge, such employee shall be paid 66-2/3 per cent of the allowance prescribed in subclause (1) hereof.

(4) Subject to subclause (2) hereof, casual employees, employed for less than a full week shall receive that proportion of the isolation allowance as equates with the proportion that their wage for ordinary hours that week is to the rate for the work performed.

(5) 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 isolation allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid isolation allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7) For the purpose of this clause—

(a) "Dependant" shall mean—

(i) a spouse or de facto spouse; or

(ii) a child where there is no spouse or de facto spouse;

who does not receive a district or location allowance.

(b) "Partial Dependant" shall mean a "Dependant" as prescribed in paragraph (a) hereof who receives a

district or location allowance which is less than the isolation allowance prescribed in subclause (1) hereof.

(8) Subject to the making of a General Order pursuant to section 50 of the Western Australian Industrial Relations Act, that part of each isolation allowance representing prices shall be varied by application to the Western Australian Industrial Relations Commission and applicable 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 10 cents.

34.—CASUAL EMPLOYEES

(1) The minimum wage rate for casual employees shall be the rate applicable to the relevant classification in Clause 31.—Salaries, with the addition of twenty (20) percent. The resultant wage rate shall be divided by 38 to determine the hourly rate.

(2) The minimum wage rate for casual employees required to work shift work, shall be the rate prescribed by subclause (1) above, plus the relevant shift work penalty prescribed in Clause 8.—Shift Work.

(3) Casual employees shall be engaged by the day or part thereof with a minimum period of engagement on any day of four hours.

(4) Casual employees shall not be entitled to any authorised leave prescribed by this Award.

(5) Casual employees shall not be employed for a continuous period exceeding 12 weeks.

(6) Employees shall be informed at the time of engagement that their employment is on a casual basis.

HEALTH ATTENDANTS AWARD, 1979.

AWARD No. A 49 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 19th day of February, 1996.

J. CARRIGG,
Registrar.

Health Attendants Award, 1979.

1.—TITLE

This award shall be known as the Health Attendants Award, 1979.

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

2A.—STATE WAGE PRINCIPLES—JUNE 1991

It is a term of this Award that the Union undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991 not to pursue any extra claims, award or overaward, except when consistent with the State Wage Principles.

3.—AREA

This award shall have effect throughout the State of Western Australia.

4.—SCOPE

This award shall apply to all workers employed in the callings listed in Clause 11. hereof by employers engaged in the health and physical culture industry as carried on by the respondents.

5.—TERM

The term of this award shall be for a period of one year from the beginning of the first pay period to commence on or after the date hereof.

6.—CONTRACT OF SERVICE

(1) (a) Except in the case of a casual worker, the contract of hiring every worker shall be a weekly contract terminable by one week's notice on either side given on any working day or in the event of such notice not being given, by the payment of one week's pay by the employer or the forfeiture of one week's pay by the worker. Provided this shall not affect the right of an employer to dismiss a worker without notice for misconduct and in such cases wages shall be paid up to the time of dismissal.

(b) The contract of service for a casual worker shall be by the hour, terminable at any moment by one hour's notice on either side or in the event of such notice not being given, by the payment of one hour's pay by the employer or the forfeiture of one hour's pay by the worker.

(2) The employer shall be under no obligation to pay for any day not worked upon which the worker is required to present himself for duty, except when such absence from work is due to illness and comes within the provisions of clause 17 or such absence is on account of holidays to which the worker is entitled under the provisions of this award.

(3) 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 break down of the employers machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.

(4) The employer may engage an employee on a probationary period for not longer than three months during which time it will be possible for either the employee or employer to end the contract with one day's notice.

(5) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

7.—HIGHER DUTIES

A worker 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 he shall be paid the higher rate for the whole day.

8.—PART-TIME WORKERS

(1) A "Part-Time Worker" shall mean any worker who works regularly from week to week for no more than 34 hours in any week.

Such part-time worker shall be paid at the rate of one-fortieth of the appropriate ordinary rate of wage prescribed by this award for the class of work performed for each hour worked.

(2) (a) Payment for Holidays, Annual Leave and Absence through Sickness for such part-time workers, pursuant to Clause 15—Holidays, 16—Annual Leave and 17—Absence through Sickness of this award shall be in the proportion that the hours regularly worked each week bears to forty hours.

(b) For the purpose of calculating the payment for annual leave, the hours regularly worked each week shall be the weekly arithmetical average of the total ordinary hours worked during the qualifying period for such annual leave.

9.—CASUAL WORKERS

(1) Notwithstanding the provisions of clause 8. a casual worker shall mean a worker who is engaged and paid as such.

(2) Such worker shall receive 20% in addition to the appropriate wage rate prescribed in clause 11 hereof.

10.—HOURS OF WORK

SECTION A—HOURS:

(1) (a) The provisions of this clause apply to all employees to whom this award applies.

(b) Subject to the provisions 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 14 consecutive days; or

(iii) 114 hours within a work cycle not exceeding 21 consecutive days; or

(iv) 152 hours within a work cycle not exceeding 28 consecutive days.

(c) Nothing in this clause shall be construed to prevent the employer and the majority of employees affected in the workplace or part thereof reaching an agreement to operate any method of working a 38 hour week provided that agreement is reached in accordance with the following procedure—

(i) the Union will be notified in writing of the proposed variations prior to any change taking place;

(ii) the proposed variations for each workplace or part thereof shall be explained to the employees concerned and written notification of proposals will be placed on the notice board at the work site;

(iii) the parties will then consult with each other on the changes with a view to reaching agreement;

(iv) where the majority of Union members do not support the agreement then the issues will be referred to the Western Australian Industrial Relations Commission for conciliation and, if necessary, arbitration.

SECTION B—IMPLEMENTATION OF 38 HOUR WEEK:

(1) Except as provided in subclause (4) hereof, the method of implementation of the 38 hour week may be any one of the following:

(a) By employees working less than eight ordinary hours on one or more days each week or fortnight; or

(b) By fixing one day of ordinary working hours on which all employees will be off duty during a particular work cycle; or

(c) 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 hours off duty during that cycle.

(d) Any day off duty shall be arranged so that it does not coincide with a holiday prescribed in subclause (1) of Clause 15.—Holidays of this award.

(2) In each place of employment 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 1 October 1987.

(3) In the absence of an agreement the procedure for resolving special, anomalous or extraordinary problems shall be as follows:

(a) Consultation shall take place within the particular establishment concerned.

(b) If it is unable to be resolved at establishment level, the matter shall be referred to the Secretary of the Union or his/her deputy, at which level a conference of the parties shall be convened without delay.

(c) In the absence of agreement either party may refer the matter to the Western Australian Industrial Relations Commission.

(4) Different methods of implementation of a 38 hour week may apply to various groups or sections of employees in the establishment concerned.

(5) Notice of Days Off Duty

Except as provided in subclause (6) hereof, in cases where, by virtue of the arrangement of his/her ordinary working hours, an employee, in accordance with paragraphs (b) and (c) of subclause (1) hereof, is entitled to a day off duty during his/her work cycle, such employee shall be advised by the employer at least four weeks in advance of the day he/she is to take off duty.

(6) (a) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (b) and (c) of subclause (1) 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.

(b) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(c) Where Accrued Days Off are allowed to accumulate, the employer may require that they be taken within 12 months of the employee becoming entitled to an ADO.

SECTION C—PROCEDURES FOR DISCUSSIONS:

(1) Procedures shall be established for discussions, the objective being to agree on the method of implementing a 38 hour week in accordance with Section A—Hours and Section B—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.

(2) The procedure should allow for discussions to continue even though all matters may not be resolved by 1 October 1987.

(3) 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.

(4) The procedures should allow for the monitoring of agreements and understandings reached.

(5) In cases where agreement cannot be reached in the first instance or where problems arise after initial agreements or understandings have been achieved, 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 subclause (3) of Section B of this clause.

11.—WAGES

The minimum weekly wage to be paid to employees bound by this award shall be as follows:

	Base Rate Per Week $	1st & 2nd Arbitrated Safety Net Adjustment $	Minimum Weekly Rate $
(1) Adult Employees:			
Instructor/ess Controller	363.30	16.00	379.30
Instructor/ess	350.70	16.00	366.70
Masseur/Masseuse	350.70	16.00	366.70
Health Attendant	337.10	16.00	353.10

(2) Junior Workers (percentage of the "Instructor/ess" wage rate):

	%
Under 16 years of age	40
16 to 17 years of age	50
17 to 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

(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, except 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.

12.—PAYMENT OF WAGES

(1) The wages must be paid at least fortnightly either by cash or bank draft and in the employer's time.

(2) No deduction shall be made from a worker's wages unless the worker has authorised such deduction in writing.

13.—SPECIAL RATES FOR CERTAIN ORDINARY HOURS

A worker who works on more than five days in any week shall be paid at the rate of time and one-half for all ordinary hours worked on the sixth or seventh day.

14.—OVERTIME

(1) (a) Subject to the provisions of this subclause, all work done beyond the ordinary working hours on any day, Monday to Friday inclusive, or before the fixed starting time or after the fixed ceasing time shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(b) For the purposes of this subclause, ordinary hours shall mean the hours of work fixed in an establishment in accordance with Sections A—Hours, B—Implementation of 38 Hour Week and C—Procedures for Discussions of Clause 10.—Hours of Work.

(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 one half.

(2) (a) An employer may require any employee to work reasonable overtime and such employee shall work overtime in accordance with such requirement.

(b) No Union party to this award, or employee or employees covered by the 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.

(3) (a) Subject to the provisions of paragraph (b) 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 $5.00 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 paid $3.45 each meal so required.

(b) The provisions of paragraph (a) of this clause 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/she 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/she can reasonably go home.

(c) If an employee to whom subparagraph (i) of paragraph (b) of this subclause applies has, as a consequence of the notification referred to in that subparagraph, provided himself/herself with a meal or meals and is not required to work overtime or is required to work less overtime than the period notified, he/she shall be paid, for each meal provided and not required, the appropriate amount prescribed in paragraph (a) of this subclause.

(4) (a) Rest Period after Overtime: 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 employee) who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least 10 consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she 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 the employer, such employee resumes or continues work without having had such 10 consecutive hours off duty, he/she shall be paid at double rates until he/she is released from duty for such period and he/she shall then be entitled to be absent until he/she has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(5) An employee who is recalled to work shall be paid a minimum of three hours at the appropriate overtime rate.

(6) (a) By agreement between the employee and employer time off in lieu of payment for overtime may be granted proportionate to the payment to which the employee is entitled. Such time to be taken in unbroken periods according to each period of overtime worked unless otherwise agreed between the employer and employee concerned.

(b) The actual period of time off may be accrued and taken at a time agreed between the employer and employee concerned.

15.—HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject to this subclause, 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 a worker need not present himself for duty and payment may be deducted, but if work be done, ordinary rates of pay shall apply.

(3) 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 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.

(4) The provisions of this clause shall not apply to casual workers.

16.—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 and shall be taken annually by the employee after a period of 12 months' continuous service with that employer.

(b) Where, pursuant to subclause (3) of Clause 2.—Long Service of the Long Service Leave provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive, the period of continuous service which an employee has had with the transmittor (including any such service with any prior transmittor) is deemed to be service of the employee with the transmittee, then that period of continuous service shall be deemed to be service with the transmittee for the purposes of this subclause.

(2) (a) In addition to the payment prescribed for annual leave an employee shall be paid a loading of 17.5% calculated on his/her ordinary wages as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) Payment for annual leave shall be made prior to such leave being taken.

(4) If any prescribed 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.

(5) Any time in respect of which an employee is absent from work, except time for which he/she is entitled to claim sick pay 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/her right to annual leave.

(6) (a) For the purposes of this clause service shall be deemed to be continuous notwithstanding:

(i) The transmission of a business where paragraph (b) of subclause (1) of this clause applies;

(ii) Any absence from work referred to in subclause (5) of this clause;

(iii) Any absence from work on account of personal sickness or accident, proof whereof shall be upon the employee, or on account of leave granted by the employer;

(iv) Any absence with reasonable cause, proof whereof shall be upon the employee, but in such a case the employee shall inform the employer in writing, if practicable, within seven days of the commencement of such absence of the nature of the cause.

(b) Any absence from work by reason of any cause not being a cause specified in paragraph (a) hereof shall not be deemed to break the continuity of service for the purposes of this clause unless the employer, during the absence or within 14 days of the termination of the absence, notifies the employee in writing that such absence will be regarded as having broken the continuity of service.

Such notice may be given to an employee by delivering it to him/her personally or by posting it to his/her last known address in which case it shall be deemed to have reached the employee in due course of post or, where a number of employees are absent from work, by posting up of a notification in the employer's establishment.

(c) An absence from duty referred to in this subclause shall not, except as provided in subclause (5) of this clause, be taken into account in calculating the period of 12 months' continuous service.

(7) (a) An employee whose employment terminates after he/she has completed a 12 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 subclauses (1) and (2) in lieu of that leave or, in a case to which subclause (8) of this clause applies, in lieu of so much of that leave as has not been allowed unless:

(i) He/she has been justifiably dismissed for misconduct; and

(ii) The misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying 12 monthly period, an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall:

(i) If such termination occurs before 1 October 1987 be paid 3.08 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by 40, in respect of each completed week of continuous service; or

(ii) If termination occurs on or after 1 October 1987 be paid 2.923 hours' pay at the rate of wage prescribed by subclause (1) of this clause, divided by 38, in respect of each completed week of continuous service.

(8) In special circumstances and by mutual consent of the employer, the employee and the Union concerned, annual leave may be taken in not more than two periods, but neither of such periods shall be less than one week.

(9) By arrangement between the employer and the employee, annual leave may be allowed to accumulate from year to year but where the leave to which an employee is entitled, or any portion thereof, is allowed to accumulate to meet the convenience of the employee, the ordinary wage for that leave shall be the ordinary wage applicable to the employee at the date at which he/she became entitled to the leave unless the employer agrees in writing that the wage be that applicable at the date the leave commences.

(10) The provisions of this clause shall not apply to casual employees.

(11) An employer may specify a reasonable period during which annual leave may not be taken to meet operational requirements at the workplace concerned.

(12) An employer may require an employee to take annual leave within twelve months of such leave falling due.

17.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at his/her 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 paragraph (a) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 10.—Hours of Work so that he/she 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 paragraph (b) or (c) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 10.—Hours of Work so that he/she 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:

$$\frac{\text{duration of absence}}{\text{ordinary hours normally worked that day}} \times \frac{\text{appropriate weekly rate}}{5}$$

An employee shall not be entitled to claim payment for personal ill health or injury nor will his/her sick leave entitlement be reduced if such ill health or injury occurs on the week day he/she is to take off duty in accordance with paragraph (b) or (c) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 10.—Hours of Work.

(b) Notwithstanding the provisions of paragraph (a) of this subclause an employee may adopt an alternative method of

payment of sick leave entitlements where the employer and the majority of his/her employees so agree.

(c) Entitlement to payment shall accrue at the rate of 1/6th 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 his/her 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 10 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 his/her inability to attend for work, the nature of his/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.

Where practicable notification of absence due to sickness is to be given no later than two hours after the normal start time. In the case of shift workers, where practicable, the notification is to be given prior to the start of normal shift hours.

(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 he/she is absent on annual leave and the 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/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she 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/she is unable to attend for work on the working day next following his/her 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/she 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.

(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 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.—Long Service of the Long Service Leave provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1 to 4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittor 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.

18.—BEREAVEMENT LEAVE

A worker shall, on the death within Australia of a wife, husband, de-facto wife, or de-facto 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 worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of the employer.

Provided that payment in respect of bereavement 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 worker concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

19.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6 both inclusive, shall be deemed to be part of this award.

20.—JUNIOR WORKERS CERTIFICATE

Upon being engaged a junior worker shall establish his full name and date of birth by the production of a record of his registration of birth or by such other means as are satisfactory to the employer.

21.—PROPORTION OF JUNIOR WORKERS

Junior workers may only be employed in the proportion of one junior worker to every two or fraction of two adult workers.

22.—TIME AND WAGES RECORD

(1) The employer shall keep a record showing—

(a) the name of each worker
(b) the nature of his work
(c) the starting and finishing times of each day
(d) the total hours worked
(e) the wages and overtime paid.

(2) Each worker shall be required to sign the record on receipt of his wages, only if correct.

(3) 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 employers' office or other convenient place and he shall be allowed to take extracts therefrom. Provided that if for any reason the records not be available when the official calls, it shall be made available for inspection within twenty-four hours, either at the employer's office or other convenient place.

23.—RIGHT OF ENTRY

Accredited representatives of the Union shall be permitted, by appointment with the employer, to interview workers on the business premises during non-working times or meal breaks, unless the employer agrees to other arrangements during working hours to accomodate the nature of the working roster.

24.—UNION NOTICES AND POSTING OF AWARD

(1) An employer shall provide a notice board in his establishment upon which an accredited union representative shall be permitted to post formal union notices, signed or countersigned by the representative posting them. Any notice

posted on such a board not signed or countersigned may be removed by an accredited union representative or the employer.

(2) A copy of this award, if supplied by the union, shall be allowed to be posted on the notice board referred to in subclause (1) of this clause.

25.—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 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) 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 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 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 (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 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 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.

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.

(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 on maternity leave or, in the case of an 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 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 her employment continues beyond the 12 months qualifying period.

26.—PAYMENT OF WAGES—38 HOUR WEEK

(1) Each employee shall be paid the appropriate rate shown in Clause 11.—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 employee, 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 paragraph (a) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 10.—Hours of Work so that he/she 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 paragraphs (b) or (c) of subclause (1) of Section B—Implementation of 38 Hour Week of Clause 10.—Hours of Work so that he/she 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 his/her wages 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) Section B—Implementation of 38 Hour Week in Clause 10.—Hours of Work in subclause (1), paragraphs (c) and (d) provides that in implementing a 38 hour week the ordinary hours of an employee may be arranged so that he/she 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 employees' ordinary hours were arranged on the basis that for three of the four weeks he/she worked 40 ordinary hours each week and in the fourth week he/she worked 32 ordinary hours. That is, he/she would work for eight ordinary hours each day, Monday to Friday inclusive, for three weeks and eight ordinary hours on four days only in the fourth week—a total of 19 days during the work cycle.

(iii) In such 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 11.—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 he/she works actual ordinary hours in excess of the daily average which would otherwise be seven hours 36 minutes. This 'credit' is carried forward so that in the week of the cycle that he/she works on only four days, his/her actual pay would be for an average of 38 ordinary hours even though, that week, he/she works a total of 32 ordinary hours.

Consequently, for each day an employee works eight ordinary hours he/she 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 seven hours and 36 minutes.

(iv) As provided in subclause (3) of this clause, an employee will not accrue a 'credit' for each day he/she 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 paragraph (b) or (c) of Section B—Implementation of 38 Hour Week of Clause 10.—Hours of Work 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 he/she is so absent, lose average pay for that day calculated by dividing his/her average weekly wage rate by five.

An employee who is so absent from duty for part of a day shall lose average pay for each hour he/she is absent by dividing his/her average daily pay rate by eight.

(b) Provided when such an employee is absent from duty for a whole day he/she will not accrue a 'credit' because he/she would not have worked ordinary hours that day in excess of seven hours 36 minutes for which he/she would otherwise have been paid. Consequently, during the week of the work cycle he/she is to work less than 38 ordinary hours he/she 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/she does not accrue for each whole day during the work cycle he/she is absent.

The amount by which an employee's average weekly pay will be reduced when he/she 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:

$$\text{Total of 'credits' not accrued during cycle} \times \frac{\text{average weekly pay}}{38}$$

Examples:

(An employee's ordinary hours are arranged so that he/she works eight ordinary hours on five days of each week for three weeks and eight 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 less one day's pay (ie. 1/5th)

2nd and 3rd weeks	=	average weekly pay each week
4th week	=	average pay less credit not accrued on day of absence
	=	average pay less 0.4 hours x average weekly pay / 38

2. Employee takes each of the four 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
	=	1/5th average pay less 0.4 hours x average weekly pay / 38
	=	1/5th average pay less 1.6 hours x 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 his/her ordinary working hours, is to take 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) Method of Payment

The employee may be paid his/her wages by cheque or into his/her bank account.

(7) Termination of Employment

An employee who lawfully leaves his/her employment or is dismissed for reasons other than misconduct shall be paid all moneys due to him/her at the termination of his/her service with the employer.

Provided that in the case of an employee whose ordinary hours are arranged in accordance with paragraph (b) or (c) of subclause (1) of Section B—Implementation of 38 Hour Week and who is paid average pay and who has not taken the day off due to him/her during the work cycle in which his/her 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 his/her 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 his/her employer to state in writing with respect to each week's wages the amount of wages to which he/she is entitled, the amount of deductions made therefrom, the net amount being paid to him/her, 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, provided that until 1st September 1988 the divisor shall be 40 in lieu of 38.

(10) No deduction shall be made from an employee's wages unless the employee has authorised such deduction in writing.

27.—SUPERANNUATION

(1) Employer Contributions:

(a) An employer shall contribute 3% of ordinary time earnings per eligible employee into one of the following Approved Superannuation Funds:

(i) Westscheme; or

(ii) an exempted Fund allowed by subclause (4) of this clause.

(b) Except where the Trust Deed provides otherwise employer contributions shall be paid on a monthly basis for each week of service that the eligible employee completes with the employer.

(c) 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. No contributions shall be made in respect of annual leave paid out on termination or any other payments on terminations.

(2) Fund Membership:

(a) Contributions in accordance with subclause (1)—Employer Contributions of this clause, shall be calculated by the employer on behalf of each employee from the date one month after 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:

(i) the employer shall provide the employee with an application to join the Fund and documentation explaining the Fund within one week of employment commencing.

(ii) If the employee fails to return to the employer a completed application to join the Fund within two weeks of receipt, the employer shall send to the employee by certified mail, a letter setting out relevant superannuation information, the letter of denial set out in subclause (6) of this clause and an application to join the Fund.

(iii) Where the employee completes and returns the letter of denial, no contribution need be made on that employee's behalf.

(iv) Where the employee completes and returns neither the application to join the Fund nor the letter of denial within one week of postage, the employer shall advise either the Union or the Fund Administrator in writing of the employee's failure to return the completed form.

(v) From two weeks following the employer's advice pursuant to paragraph (iv) should the employee not have returned the completed form the employer shall be under no obligation to make superannuation payments on behalf of that employee.

Provided that if at any time an employee returns a signed application form, notwithstanding a previous failure to return such form or the return of a letter of denial, the employer shall make contributions on behalf of that employee from the date of return of the signed application form.

(b) Part-time and casual employees shall not be entitled to receive the employer contribution mentioned in subclause (1)—Employer Contributions of this clause, unless they work a minimum of 12 hours per week.

(c) Casual employees who are employed for 32 consecutive working days or less shall not be entitled to the benefits of this clause.

(3) Definitions:

"Approved Fund" shall mean any Fund which complies with the Australian Government's Operational Standards for Occupational Superannuation.

"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 bonus.

(4) Exemptions:

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Order:

(a) was contributing to a Superannuation Fund, in accordance with an Order of an industrial tribunal; or

(b) was contributing to a Superannuation 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) subject to notification to the Union, was contributing to a Superannuation Fund for employees covered by this award where such payments are not made pursuant to an Order of an industrial tribunal; or

(d) was not contributing to a Superannuation Fund for employees covered by this award; and

(i) written notice of the proposed alternative Superannuation Fund is given to the Union; and

(ii) contributions and benefits of the proposed alternative Superannuation Fund are no less than those provided by this clause; and

(iii) within one month of the notice prescribed in paragraph (i) being given, the Union has not challenged the suitability of the proposed Fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(5) Operative Date:

This clause shall operate from the beginning of the first full calendar month following Western Australian Industrial Relations Commission approval of the clause.

(6) Letter of Denial:

The letter of denial shall be in the following form:

"To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand:

(1) that should I sign such form you will make contributions on my behalf; and

(2) that I am not required to make contributions of my own; and

(3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the Fund or have contributions made on my behalf.

_____

(Signature)

_____

(Name)

_____

(Address)

_____

(Classification)

_____

(Date)"

28.—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.

Dated at Perth this 16th day of September 1980.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENTS

American Health Studios
Carine Glades Health Studio
Kevin Duffs Health Studio
New Life Health Academy
Healthworld
The Executive Health Club
Ian Goodwin's Health Club
Garden City Health and Beauty Club
Sportsman Health Studio
Webbs Health Academy
True Health
Fletchers Fitness World
Albany Fitness Centre
Geraldton Health Studio
Rockingham Health Academy

HEALTH WORKERS—COMMUNITY AND CHILD HEALTH SERVICES AWARD, 1980
Award No. R 21 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 21th day of February, 1996

(Sgd.) J. CARRIGG,
[L.S] Registrar.

Health Workers—Community and Child Health Services Award, 1980.

1.—TITLE

This award shall be known as the Health Workers—Community and Child Health Services 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

3.—AREA AND SCOPE

This award applies to any person employed by the Commissioner for Public Health in any classification mentioned in clause 20.—Wages in the Community Health and Child Health Services Branch, Department of Health and Medical Services and shall have effect throughout the State of Western Australia.

4.—TERM

The term of this award shall be for a period of two years from the beginning of the first pay period commencing on or after the 14th day of April, 1980.

5.—DEFINITIONS

Levels prescribed for Aboriginal Health Workers are those which relate to the 5 level career structure specified in Clause 19.—Wages, of this Award.

"Level 1—Currently Practising Conditional Aboriginal Health Worker" means an Aboriginal Health Worker employed by the Health Department of Western Australia before the implementation of the career structure, providing a limited range of direct primary health care services and not being eligible to be classified at Levels 2 to 5 inclusive.

"Level 2—Qualified Aboriginal Health Worker" means an Aboriginal Health Worker employed by the Health Department of Western Australia who provides a broad range of direct primary health care services and possesses as a minimum, the Advanced Certificate in Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and the union.

"Level 3—Senior Aboriginal Health Worker" means an Aboriginal Health Worker employed by the Health Department of Western Australia who provides specialist and/or supervisory and/or co-ordination services and possesses as a minimum, the Advanced Certificate in Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and the union.

"Level 4—Manager of Aboriginal Health Work" means an Aboriginal Health Worker employed by the Health Department of Western Australia who has responsibility for resources management of Aboriginal health work for a given area and possesses as a minimum, the Advanced Certificate in Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and the union.

"Level 5—State Co-ordinator—Aboriginal Health Work" means an Aboriginal Health Worker employed by the Health Department of Western Australia who has policy and co-ordination responsibilities for Aboriginal Health Work across the Health Department of Western Australia and possesses as a minimum, the Advanced Certificate in Aboriginal Health Work, obtained through an accredited education provider or an alternative qualification acceptable to the employer and the union.

Positions at Levels 3 and 5 inclusive shall be filled by competition between applicants against prescribed essential and desirable selection criteria. Progression to Levels 3 to 5 inclusive shall not be automatic.

"Level 1—Ethnic Health Worker" means an Ethnic Health Worker who is employed by the Health Department of Western Australia who does not possess the National Accreditation Authority for Translators and Interpreters (NAATI), Level 2 Certificate or higher in a language required by the employer.

"Level 2—Ethnic Health Worker" means an Ethnic Health Worker who is employed by the Health Department of Western Australia who possesses the National Accreditation Authority for Translators and Interpreters (NAATI) Level 2 Certificate or higher in a language required by the employer.

"Union" means the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

"Accrued day(s) off" means the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 6.—Hours, of this Award.

6.—HOURS

(1) From January 1, 1985, and subject to the provisions of the Schedule D—Memorandum of Agreement the ordinary hours of duty shall be an average of 38 per week with the hours actually worked being 40 per week or 80 per fortnight to be worked eight hours per day on any five days of the week or ten days of the fortnight.

Except where provided elsewhere, the ordinary hours shall be worked with two hours of each week's work accruing as an entitlement to a maximum of 12 Accrued Days Off in each 12 month period. The Accrued Days Off shall be taken in a minimum period of one week made up of five consecutive Accrued Days Off in conjunction with a period of annual leave or at a time mutually acceptable to the employer and the employee.

Notwithstanding the provisions of this subclause where an employer and employee mutually agree Accrued Days Off may be taken in single day absences.

(2) By agreement between the Union and an employer the ordinary hours of an employee in lieu of the provisions of subclause (1) hereof, may be worked:

(a) within a 20 day, four week cycle with 0.4 of an hour of each day worked accruing as an entitlement to take the 20th day in each cycle as an Accrued Day Off.

(b) Within a ten day, two week cycle, with an adjustment to hours worked to enable 76 hours to be worked over nine days of the two week cycle and an entitlement to take the 10th day in each cycle as an Accrued Day Off.

(3) An employer and employee may by agreement substitute the Accrued Day Off the employee is to take off for another day in which case the Accrued Day Off shall become an ordinary working day.

(4) The spread of hours in any one day shall not exceed ten hours provided where conditions are such that the employer requires employees to work outside of the spread of hours the employee and the employer may agree to such variations of the spread of hours as is considered appropriate in which case

overtime shall only be computed on the time worked in excess of the ordinary working hours as prescribed in subclause (1) of this clause.

(5) Meal breaks shall not be less than 30 minutes but shall not be counted as time worked. Provided that where an employee is called on duty during a meal time the period worked shall be counted in the ordinary working hours of duty.

(6) The provisions of this clause apply to a part time employee in the same proportion as the hours normally worked bear to a full time employee. In circumstances where less than 16 hours per week are worked an employer may pay an employee for all hours actually worked at an hourly rate based on a 38 hour week in lieu of accrual of Accrued Days Off.

(7) A roster for Accrued Days Off may allow an employee to take accrued days off before they become due.

(8) Any dispute between an employer and the Union concerning the operation of this clause shall be referred to the W.A. Industrial Commission.

7.—OVERTIME

(1) All time worked with the authority of the employer in excess of the ordinary working hours prescribed in Clause 6—Hours or Clause 18—Part-Time Employees of this award shall be overtime and shall be paid for at time and one-half for the first two hours and double time thereafter.

(2) Subject to subclause (5) of Clause 6—Hours of this award work performed at the direction of the employer outside the spread of hours or on a Saturday or Sunday shall be paid or compensated for as hereunder:

(a) one and one-half times the ordinary rate for the first two hours and double time thereafter on any day Monday to Saturday inclusive.

(b) Double time on a Sunday.

(3) In lieu of making a payment in accordance with this clause the employer may grant time off proportionate to the payment to which the employee is entitled and such time off may be taken at a time convenient to the employer, provided that such time off is in unbroken periods, according to each period of overtime worked.

(4) An employee who is recalled to work shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

8.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four consecutive weeks' leave shall be allowed to an employee by the employer after each period of 12 months' continuous employment with such employer.

(2) Prior to commencing annual leave the employee shall be paid for any period of annual leave prescribed by this clause at the ordinary rate of wage the employee received for the greatest proportion of the calendar month prior to taking such leave.

(3) Subject as hereinafter provided:

(a) If after one month's continuous service in any qualifying 12 monthly period an employee lawfully terminates 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 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 leave in accordance with subclause (7) 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 by him for the period of leave taken in accordance with subclause (7) of this clause and the amount which would have accrued in accordance with paragraph (a) of this subclause. The employer may deduct this amount from moneys due to the employee by reason of the other provisions of this award at the time of termination.

(c) In addition to any payment to which he may be entitled under this subclause, an employee 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 unless he has been justifiably dismissed for misconduct and the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(4) (a) The annual leave prescribed in this clause may be taken in two portions, if so requested by the employee, provided that no portion shall be less than two consecutive weeks.

(b) By mutual agreement between the employer and the employee, the annual leave may be further split on one additional occasion, provided that no portion shall be less than one week.

(c) When an employee requests that his annual leave be split into two or three portions the employer shall make every reasonable endeavour to accommodate the wishes of the employee.

(5) Any time in respect of which an employee is absent from work except paid sick leave or unpaid sick leave up to three months, the first 26 weeks of any absence on workers' compensation, annual leave, long service leave and compassionate leave, shall not count for the purpose of determining annual leave entitlements.

(6) Leave shall be given as soon as practicable after falling due and shall not accumulate except with the consent of the employee but in no case shall it accumulate for more than two years.

(7) Notwithstanding subclause (6) of this clause an employee may with the approval of the employer be allowed to take the annual leave prescribed by this clause before the completion of 12 months' continuous service as prescribed by subclause (1) of this clause.

(8) When an employee proceeds on the annual leave prescribed by subclause (1) of this clause there will be no accrual towards an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6—Hours of this award.

(9) Before going on annual leave each employee shall be given at least two weeks' notice of the date leave is to be taken, unless the employee and the employer agree on a lesser period.

(10) The provisions of this clause shall not apply to casual employees.

(11) Any annual leave entitlement accumulated as at 1st January 1985 shall be adjusted in hours in the ratio of 38 to 40.

9.—PUBLIC HOLIDAYS

(1) (a) Subject to the provisions of this clause, the following days shall be allowed as holidays with pay, namely:

New Year's Day, Australia Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(b) When any of the days mentioned in paragraph (a) of this subclause 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) Notwithstanding paragraph (a) hereof, the employer is not required to allow Easter Tuesday as a holiday with pay in the year 1996 and subsequent thereto, provided that, in each year the employer does not allow an employee Easter Tuesday as a holiday with pay the employer shall allow such employee an alternative, but mutually convenient, day upon which such employee shall be entitled to be absent from duty without loss of pay.

(2) 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 public holiday or, as the case may be a public half-holiday for the purposes of this award within the district or locality specified in the proclamation.

(3) Where an employee is required by the employer to work on any of the foregoing days, payment for the time worked shall be at the rate of two and one-half times the ordinary rate or alternatively payment at the rate of one and one-half times with equivalent time to that worked being taken off at a time convenient to the employer and the employee.

(4) When any of the days observed as a holiday prescribed in this clause fall on a day when an employee is on an Accrued Day Off the employee shall be allowed to take a day's holiday in lieu of the holiday on a day immediately following the employee's annual leave or at a time mutually acceptable to the employer and the employee.

(5) An employee whilst on a public holiday prescribed by this clause shall continue to accrue an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6—Hours of this award.

(6) This clause shall not apply to casual employees.

10.—LONG SERVICE LEAVE

(1) The conditions contained in the document Long Service Leave Conditions—State Government Wages Employees as consolidated by the Public Service Board in June, 1980 and amended in November, 1983 shall apply to employees covered by this award with the exception that on and from the 1st day of July, 1985 long service leave for the second and subsequent period of service shall accrue at the rate of 13 weeks' leave for seven years of continuous service.

(2) Any qualifying service prior to 1st July, 1985 for the second period of long service leave, shall be calculated on a ten year qualifying period basis but all qualifying service after 1st July, 1985 shall be calculated on a seven year qualifying period basis.

(3) When an employee proceeds on long service leave there will be no accrual towards an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this award.

(4) Any long service leave accumulated as at 1st January, 1985 shall be adjusted in hours in the ratio of 38 to 40.

11.—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 to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in paragraph (a) hereof in any accruing year shall be allowed to accumulate and may be available of in the next or any succeeding year.

(3) In order to acquire entitlement 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) 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 any absence 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 11- 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 8—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 Workers' Compensation Act nor to workers 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.

(8) (a) An employee shall be paid the wages he would have received had he not proceeded on sick leave and shall have the accrued entitlement to paid sick leave reduced by the time the employee is absent from work on account of paid sick leave.

(b) An employee shall not be entitled to claim payment for non-attendance on the ground of personal ill-health or injury nor will the employee's sick leave entitlements be reduced if such personal ill-health or injury occurs on a day when an employee is absent on an Accrued Day Off in accordance with the provisions of subclauses (1) and (2) of Clause 6.—Hours of this award.

(9) An employee whilst on paid sick leave shall continue to accrue an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 6.—Hours of this award.

(10) Any sick leave entitlement accumulated as at January 1, 1985 shall be adjusted in hours in the ratio of 38 to 40.

12.—CONDITIONS AND ALLOWANCES

The provisions of the Miscellaneous Government Conditions and Allowances Award No. A 4 of 1992 shall apply mutatis mutandis to all employees covered by this award.

13.—CONTRACT OF SERVICE

(1) Except in the case of dismissal for misconduct an employee's service shall not be terminated unless he/she has received a fortnight's previous notice or payment for such period in lieu thereof.

(2) Except by agreement with the employer no employee shall resign without first giving a fortnight's notice and in the absence of such notice the employer may withhold holiday or other pay up to the amount of a fortnight's wages.

(3) This clause shall not apply to casual employees.

(4) In the case of dismissal for misconduct wages will be paid to the employee up to the time of that dismissal.

(5) An employer may direct an employee to carry out such duties as are within the limits of the employees skill, competence and training, including work which is incidental or peripheral to the employee's main tasks or functions.

14.—HIGHER DUTIES ALLOWANCES

(1) An employee who is instructed to temporarily perform duties which carry a higher minimum rate than that which

such employee usually performs shall be entitled to the higher minimum rate while so employed.

(2) Where such employee is engaged in the higher grade of work for more than two hours on any day or shift, the employee shall be paid the higher rate for the whole day or shift.

(3) Notwithstanding the provisions of this clause payment for higher duties shall not apply to an employee required to act in another position whilst the permanent employee is on a single Accrued Day Off as prescribed by subclause (2) of Clause 6.—Hours of this award.

15.—DISPUTE SETTLEMENT PROCEDURE

(1) PREAMBLE

Subject to the provisions of the Industrial Relations Act 1979 (as amended) any grievance, complaint or dispute, or any matter raised by the Union or a respondent employer and his/her employees, 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.

(2) PROCEDURE

Where the matter is raised by an employee, or a group of employees, the following steps shall be observed:

(a) The employee(s) concerned shall discuss the matter with the immediate supervisor. If the matter cannot be resolved at this level the supervisor shall, within 48 hours, refer the matter to a more senior officer nominated by the employer and the employee(s) shall be advised accordingly.

(b) The senior officer shall, if able, answer the matter raised within five days of it being referred and if the senior officer is not so able, refer the matter to the employer for his/her attention, and the employee(s) shall be advised accordingly.

(c) (i) If the matter has been referred in accordance with subparagraph (b) above the employee(s) or the shop steward shall notify the Union Secretary (W.A. Branch) or nominee, 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 employee(s) or, where necessary the Union of its decision. Provided that such advice shall be given within 21 days of the matter being referred to the employer.

(d) Should the matter remain in dispute after the above processes have been exhausted either party may refer the matter to the Western Australian Industrial Relations Commission.

(e) Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in paragraphs (a), (b) or subparagraph (c)(ii) of this subclause.

(3) DISCIPLINARY PROCEDURE

Where the employer seeks to discipline an employee, or terminate an employee the following steps shall be observed:

(a) (i) In the event that an employee commits a misdemeanour, the employee's immediate supervisor or any other officer so authorised, may exercise the employer's right to reprimand the employee so that the employee 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 an employee three times in a period not exceeding 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 award.

(iv) The above procedure is meant to preserve the rights of the individual employee, but it shall not, in any way, limit the right of the employer to summarily dismiss an employee for misconduct.

(4) ACCESS TO THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

The settlement 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 commence 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 the matter for resolution in the Western Australian Industrial Relations Commission, at any time.

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) PROVISION OF SERVICES

The Union recognises that the Health Department and the teaching hospitals 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 employees may reasonably expect problems will be dealt with as expeditiously as possible by hospital management.

Accordingly, the Union 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) INDUSTRY WIDE ISSUES

In resolving issues of an industry wide nature discussions will commence at the level specified in subparagraph (2)(c)(i) above between the appropriate Union official and the Manager, Industrial Relations, Health Department or his/her nominee.

(7) DEFINITIONS

For the purpose of this clause:

"employer" means the officer nominated at each work site.

"senior officer" means an officer nominated by management.

"industry wide issues" include issues affecting more than one work site or claims seeking variations to an award.

"work site" means as agreed between the parties.

(8) BREACH OF PROCEDURE

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.

16.—UNIFORMS

(1) The employer may supply uniforms and require them to be worn at all times when considered necessary by the employer.

(2) When the employer requires a uniform to be worn, such uniform shall be supplied in accordance with subclause (1) of this clause. Provided that in lieu of providing uniforms, the employer may pay an allowance of $2.70 per week, and the employee shall wear uniforms which conform to the uniform stipulated by the employer with respect to material, colour, pattern and conditions.

(3) The employer shall pay an allowance of 87 cents per week for the laundering of uniforms.

(4) The employer shall provide to the employee, free of charge, two cardigans or jackets and a suitable hat. At all times that part of the uniform issued in accordance with this subclause shall remain the property of the employer.

(5) Laundering of jackets and cardigans issued as part of the uniform shall be the responsibility of the employee. No laundry allowance will be paid for this work.

(6) By agreement between the employer and an employee and where an employee is stationed north of 26o South Latitude cardigans and jackets need not be supplied.

17.—CASUAL EMPLOYEES

(1) An employee employed for a period of less than two weeks shall be deemed a casual employee and be paid twenty per cent over the rates specified herein for his class of work.

(2) If a casual is still required at the end of two weeks, he may be re-employed as a casual with payment in accordance with subclause (1) above.

(3) Casual employees shall be paid for all work performed on any of the days prescribed in clause 9.—Public Holidays, subclause (1) of this award at the rate of double time and one-half.

18.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this award, employees may be regularly employed to work less hours per week than are prescribed in Clause 6.—Hours of this award and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged in the proportion which their hours of work bear to the hours fixed by Clause 6.—Hours hereof for their class of work.

(2) When an employee is employed under the provisions of this clause, he shall receive payment for wages, for annual leave, for holidays and for sick leave on a pro rata basis in the same proportion as the number of hours regularly worked each week bears to forty hours.

19.—WAGES

(1) 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.

(2) 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) The weekly rate of wage payable to employees covered by this award shall include the base rate plus the arbitrated safety net adjustment expressed hereunder.

Classification	Base Rate Per Week $	First and Second Arbitrated Safety Net Adjustment $	Total Rate Per Week $
Level 1 Currently Practising Conditional Aboriginal Health Worker:			
1st year of employment	398.30	16.00	414.30
2nd year of employment	409.80	16.00	425.80
3rd year of employment	423.40	16.00	439.40
Level 2 Qualified Aboriginal Health Worker:			
1st year of employment	437.06	16.00	453.06
2nd year of employment	447.42	16.00	463.42
3rd year of employment	457.77	16.00	473.77
4th year of employment	468.04	16.00	484.04
Level 3 Senior Aboriginal Health Worker:			
1st year of employment	483.50	16.00	499.50
2nd year of employment	512.90	16.00	528.90
3rd year of employment	542.70	16.00	558.70
4th year of employment	565.50	16.00	581.50
Level 4 Manager of Aboriginal Health Work:			
1st year of employment	603.84	16.00	619.84
2nd year of employment	632.59	16.00	648.59
3rd year of employment	661.35	16.00	677.35
4th year of employment	699.69	16.00	715.69
Level 5 State Co-ordinator Aboriginal Health Work:			
1st year of employment	709.27	16.00	725.27
2nd year of employment	738.03	16.00	754.03
3rd year of employment	766.78	16.00	782.78
4th year of employment	805.12	16.00	821.12
Level 1 Ethnic Health Worker:			
1st year of employment	398.30	16.00	414.30
2nd year of employment	409.80	16.00	425.80
3rd year of employment	423.40	16.00	439.40
4th year of employment	436.11	16.00	452.11
Level 2 Ethnic Health Worker:			
1st year of employment and thereafter	455.27	16.00	471.27

The classifcation prescribed in the relevant minimum rates award on which the rate prescribed for the key classifications* in this award is based, is the wage group C10 in the Metal Trades (General) Award No. 13 of 1965.

* Level 2 Aboriginal Health Worker and
Level 2 Ethnic Health Worker

Incremental progression for all Aboriginal and Ethnic Health Workers is subject to satisfactory performance.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENTS

Honourable Minister for Health

SCHEDULE C—LIBERTY TO APPLY

Liberty is reserved to the Union to make application to vary the provisions of this award with respect to Long Service Leave during the term of the award.

SCHEDULE D—MEMORANDUM OF AGREEMENT

The following provisions relating to hours of work are agreed between the parties.

1. Termination

(a) An employee subject to the provisions of subclause (1) of Clause 6.—Hours of this award who has not taken any Accrued Days Off accumulated during a work cycle in which employment is terminated, shall be paid the total of hours accumulated towards the Accrued Days Off for which payment has not already been made.

(b) An employee who has taken any Accrued Day Off during a work cycle in which employment is terminated shall have the wages due on termination reduced by the total hours for which payment has already been made but for which the employee had no entitlement toward those Accrued Days Off.

2. Workers' Compensation

(a) 20 Day Work Cycle

(i) Where an employee is on workers' compensation for periods of less than one complete 20 day work cycle, such employee will accrue towards and be paid for the succeeding Accrued Day Off following such absence.

(ii) An employee will not accrue Accrued 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 an Accrued Day Off falls within the period, the employee will not be re-rostered for an additional Accrued Day Off.

(b) 12 Months' Work Cycle

(i) Where an employee is on workers' compensation for periods less than a total of 20 consecutive work days in a work cycle such employee will accrue towards and be paid for the succeeding Accrued Days Off following such absence.

(ii) Where an employee is on workers' compensation for periods greater than a total of 20 consecutive days in a work cycle such employees will have the period of workers' compensation added to the work cycle.

(iii) Where an employee is on workers' compensation for periods greater than 20 consecutive work days and an Accrued Day Off as prescribed in subclause (1) of Clause 6.—Hours of this award falls within the period the employee shall be re-rostered for another Accrued Day Off on completion of the 20 day work cycle following such absence.

3. Leave Without Pay

(a) 20 Day Work Cycle

An employee who is absent on any form of leave without pay during a 20 day work cycle shall not accumulate an entitlement to an Accrued Day Off for the period of such leave nor will the employee be entitled to an Accrued Day Off whilst on leave without pay.

(b) 12 Months' Work Cycle

(i) An employee who is absent on any form of leave without pay for less than a total of five days in any work cycle shall not have payment reduced when proceeding on Accrued Days Off.

(ii) An employee who is absent on any form of leave without pay for a total of five days or more in any work cycle will have such period of leave added to the work cycle.

4. Higher Duties

Payment for higher duties shall not apply to an employee required to act in another position whilst the permanent employee is on a single Accrued Day Off as prescribed by subclause (2) of Clause 6.—Hours of this award.

Dated at Perth this 27th day of October, 1980.

HEAT CONTAINMENT INDUSTRIES (REFRACTORY SPECIALTIES) AWARD.

No. 3 of 1981.

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 26th day of February, 1996.

J. CARRIGG,
Registrar.

Heat Containment Industries (Refractory Specialties) Award.

1.—TITLE

This Award shall be known as the Heat Containment Industries (Refractory Specialties) Award No. 3 of 1981 and shall replace the Refractory Workers' (Newbold General Refractories Ltd) Award No. 13 of 1972.

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

3.—SCOPE

This Award shall apply to all employees employed in the callings listed in Clause 12.—Wages hereof by Heat Containment Industries.

4.—AREA

This Award shall apply to the area of operations of Heat Containment Industries at Kwinana.

5.—TERM

The term of this award shall be for a period of one year from the date hereof. (The date of this award is 3 April 1981).

6.—DEFINITIONS

(1) "Leading Hand" shall mean an employee who is appointed as such by the employer and who in addition to his/her ordinary duties is required to supervise other employees.

(2) "Part-Time Employee" shall mean an employee who regularly works less than the ordinary hours of operation. Such an employee shall receive payment for wages, annual leave, public holidays, sick leave and long service leave on a pro rata basis in the same proportion as the number of hours worked each week bears to 38 hours.

(3) "Casual Employee" shall mean an employee other than one engaged as a full-time employee or part-time employee, who is employed for 13 consecutive weeks or less. Such employees shall be paid by the hour and the hourly rate shall be calculated as a proportion of the ordinary weekly rate prescribed in this award for a Casual Plant Attendant. They shall, in addition, be paid a loading of 20% for all hours worked.

The loading should be deemed pro rata payment for sick leave, annual leave, public holidays and long service leave entitlements and no entitlement under Clause 18, 19, 20 or 22 apply to casual employees.

7.—CONTRACT OF SERVICE

(1) Except in the case of casual employees one week's notice on either side shall be necessary to terminate the engagement or in the event of such notice not being given by the payment of one week's pay by the employer to the employee or the forfeiture of one week's pay by the employee to the employer: Provided that an employer at any time may dismiss an employee for misconduct or if after receiving one week's notice such employee does not carry out his or her duties in the same manner as he or she did prior to such notice.

(2) Notwithstanding the provisions of subclause (1) hereof during the first month of employment only one day's notice shall be necessary to terminate the services of an employee. In the event of an employer or an employee failing to give the required notice, one day's wage shall be paid or forfeited. Provided that this shall not effect the right of the employer to dismiss an employee without notice for misconduct, in which case the employee shall be paid up to the time of dismissal.

(3) The contract of service of a casual employee shall be that which is prescribed in subclause (2) hereof.

8.—HOURS

(1) Except as otherwise prescribed in this award, the ordinary working hours shall be an average of 38 hour week to be worked on one of the following bases:

(a) 38 hours within a work cycle not exceeding seven consecutive days; or

(b) 76 hours within a work cycle not exceeding 14 consecutive days; or

(c) 114 hours within a work cycle not exceeding 21 consecutive days; or

(d) 152 hours within a work cycle not exceeding 28 consecutive days.

(2) Subject to subclause (3) of Clause 8A.—Implementation of 38 Hour Week, 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 workers, shall be worked between the hours of 6.00am and 6.00pm.

8A.—IMPLEMENTATION OF 38 HOUR WEEK

(1) Except as provided in subclause (4) hereof, the method of implementation of the 38 hour week may be any one of the following—

(a) by employees working less than eight ordinary hours each day; or

(b) by employees working less than eight ordinary hours on one or more days each week; or

(c) by fixing one day of ordinary working hours on which all employees will be off duty during a particular work cycle; or

(d) 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; or

(e) except in the case of continuous shift employees where the ordinary hours of work are worked within an arrangement as provided in paragraph (c) or (d) of this subclause, any day off duty shall be arranged so that it does not coincide with a holiday prescribed in subclause (1) of Clause 19.—Holidays of this Award.

(2) Where such time off duty as prescribed in subclause (1) of this clause falls on a public holiday as prescribed in Clause 19.—Holidays, the next working day shall be taken in lieu of the time off unless and alternative day in that work cycle is agreed in writing between the employer and the employee.

(3) Each day of paid leave entitlements taken and any public holiday occurring during any cycle of work, shall be regarded as a day worked for accrual purposes.

(4) 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 in the plant or establishment concerned.

(5) Different methods of implementation of a 38 hour week may apply to various groups or section of employees in the plant or establishment concerned.

(6) Notice of Days Off Duty

(a) Except as provided in subclause (5) hereof, in cases where, by virtue of the arrangement of ordinary working hours, an employee, in accordance with paragraphs (c) and (d) of subclause (1) hereof, 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 he/she is to take off duty.

(b) In the case of an interruption to a work cycle which is beyond the control of the employer, the day off duty may be changed.

(7) (a) An employer, with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with paragraphs (c) and (d) of subclause (1) 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.

(b) An employer and employee may by agreement substitute the day the employee is to take off for another day.

(8) The provisions of this clause shall not apply to casual employees.

9.—OVERTIME

(1) 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.

(2) Work done on Saturdays after 12 noon or on Sundays shall be paid for the rate of double time.

(3) Work done on Saturdays prior to 12 noon shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(4) When an employee is required for duty during any meal time whereby his/her meal is postponed for more than one hour, he/she shall be paid at overtime rates until he/she gets his/her meal.

(5) All work performed on the holidays prescribed by Clause 19 hereof shall be paid for at the rate of double time and one half.

(6) (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he will be so required to work shall be supplied with a meal by the employer or at the discretion of the employee paid the amount specified in Clause 28 for a meal.

(b) If an employee as a result of receiving notice referred to in paragraph (a) hereof has provided himself with a meal and is not required to work overtime, he shall be paid the amount prescribed in paragraph (a) hereof in respect of the meal not being required.

(7) Rest Period

(a) 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 of successive days during week days.

(b) An employee (other than a casual employee) who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instruction of his/her employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, he/she shall be paid at double rates until he/she is released from duty for such period and he/she shall then be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(8) Notwithstanding anything contained herein:

(a) An employer may require any employee to work up to eight (8) hours overtime per week at overtime rates and such an employee shall work overtime in accordance with such requirement.

(b) The union of any employee or employees covered by this award, shall not in any way, whether directly or indirectly be a part to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(9) This clause does not apply to shift employees.

10.—SHIFT EMPLOYEES

(1) The provisions of this clause apply to employees working under Clause 11.—Shift Work only.

(2) (a) All work performed outside the rostered hours of shift shall be deemed overtime and paid at the rate of time and one half for the first two hours and double time thereafter.

(b) All rostered work performed on:

(i) Saturday shall be paid at the rate of time and one half for the first two hours and double time thereafter.

(ii) Sundays shall be paid at the rate of double time.

(iii) Holidays as prescribed in Clause 19.—Holidays of this award shall be paid the rate of double time and one half provided that these rates shall apply in lieu of the rates prescribed in subclause (2) of Clause 11.—Shift Work of this award.

(c) Time worked in excess of ordinary hours shall be paid for at ordinary rates:

(i) If it is due to private arrangements between the employees themselves; or

(ii) If it is due to the failure of a relieving employee to come on duty at the appointed time, provided that where it exceeds two hours, overtime rates shall apply; or

(iii) If it is for the purpose of effecting the customary rotation of shifts.

(d) When an employee is required for duty during the usual meal time and his/her meal time is thereby postponed for more than one hour he/she shall be paid at overtime rates until the meal time is able to be taken.

11.—SHIFT WORK

(1) Where two or more shifts in any one day are worked, the hours of shift employees shall be such as are mutually agreed upon between the employer and the union. Failing agreement, the hours of shift employees shall be fixed by the Board of Reference.

(2) Any employee employed on an afternoon or night shift will in addition to the ordinary rate prescribed in Clause 12.—Wages of this award be paid per shift an allowance of 1/5th of 15% of the rate per week prescribed.

(3) (a) Where any particular process is carried out on shifts other than day shifts 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.

(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 on any holiday.

(4) Where an employee is not required to work a shift in accordance with his/her normal roster because of any of the holidays prescribed in Clause 19.—Holidays of this award he/she shall be paid the shift loading prescribed in subclause (2) of this clause for that shift.

12.—WAGES

(1) (a) The following shall be the minimum rates of wages payable to employees covered by this Award:

Classification	Rate per Week $	Supplementary Payment $	ASNA $	Award Rate $
Plant Attendant	344.90	39.57	16.00	400.47
Casual Plant Attendant	332.80	9.02	16.00	357.82

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 current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(b) (i) The supplementary payment set out in this clause includes an $8.00 adjustment reflecting the application of the Arbitrated Safety Net Adjustment set out in the December 1993 State Wage Decision. Consistent with the requirements of that decision, the $8.00 Safety Net Adjustment is absorbable to the extent of any equivalent amount in rates of pay (whether overaward, award or enterprise agreement) in excess of the minimum rates of pay (classification rate plus supplementary payment).

(ii) The supplementary payment set out in this clause is to be paid in addition to the base rates prescribed by this clause, and the total rate prescribed by this clause is the award rate of pay prescribed by this clause for the respective classification.

(iii) The supplementary payment set out in this clause represents payment in lieu of equivalent overaward payments.

(iv) "Overaward payment" is defined as the amount (whether it be termed "overaward payment", "attendance bonus" or any term whatsoever) which an employee would receive in excess of the "award wage". Provided that such payment shall exclude overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowances and any other ancillary payments of a like nature prescribed by the award.

(2) Leading Hand:

A leading hand as defined placed in charge of not more than ten other employees shall receive per week an additional	$15.00

13.—MEAL INTERVAL

(1) Not less than 30 minutes nor more than one hour shall be allowed for a meal each day.

(2) No employee shall be compelled to work for more than five and one half hours without a break for a meal.

(3) When an employee is required for duty during any meal time whereby his/her meal time is postponed for more than one hour he/she shall be paid at overtime rates until he/she gets his/her meal.

14.—PAYMENT OF WAGES

(1) (a) Actual 38 Ordinary Hours

In the case of an employee whose ordinary hours of work are arranged in accordance with paragraph (a) of subclause (1) or paragraph (b) of subclause (1) of Clause 8A.—Implementation of 38 Hour Week, so that he/she 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 38 Ordinary Hours

In the case of an employee whose ordinary hours of work are arranged in accordance with paragraph (c) of subclause (1) or paragraph (d) of subclause (1) of Clause 8A.—Implementation of 38 Hour Week, so that he/she 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.

(2) All wages shall be paid on the job within twenty minutes of the close of the day's work at least once a fortnight or by such other arrangements as agreed between the employer and the employee.

(3) Where the normal pay day occurs during an employee's rostered day off, his/her wages shall be made available at or prior to completion of his/her shift before such day off or by such other arrangement as agreed between the employer and employee.

(4) When an employee's service is terminated for any reason, he/she shall be paid all wages due to him/her within one day of ceasing work.

15.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept a record or records containing the following particulars—

(a) full name of each employee.

(b) The nature of his/her work.

(c) The hours worked each day and each week.

(d) The wages and overtime (if any) paid each week.

(e) The age of each junior employee.

Any system of automatic recording by machine shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record and time cards 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 the official may be allowed to take extracts therefrom. The duly accredited official of the union shall be supplied upon request with the residential address of each employee.

16.—UNION NOTICES AND POSTING OF AWARD

(1) An employer shall provide a notice board of reasonable dimensions to be erected in a prominent position in his/her establishment upon which an accredited union representative shall be permitted to post formal union notices, signed or countersigned by the representative posting them. Any notice posted on such board not signed or countersigned may be removed by an accredited union representative or the employer.

(2) A copy of this award if supplied by the union shall be allowed to be posted on the notice board referred to in subclause (1) of this clause.

17.—INSPECTION BY UNION

(1) An accredited representative of the union shall be permitted to interview the employees on the business premises of the employer during non-working times or meal breaks.

(2) In the case of a dispute between the union and an employer which is likely to lead to a cessation of work or to an application to the Commission and which involves the inspection of employees or of machines in the process of production on which such employees are engaged, that union representative shall have the right of inspection at any time at which the employees of the machines concerned are working, but shall not interfere in any way with the carrying out of such work, and this permission shall not be exercised without the consent of the employer more than once in any one week.

(3) The accredited representative shall notify the employer beforehand of his/her intention to exercise his/her rights under the clause.

18.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his/her 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 an employee is absent on the ground of personal ill health or injury for a period longer than his/her 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 his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of his/her 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 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 he/she 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/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she 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/she is unable to attend for work on the working day next following his/her 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/she 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.—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 20.—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 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmittee 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 provision of this clause with respect to payment do not apply to employees who are entitled to payment under the employees' Compensation and Assistance Act nor to an employee 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.

(9) An employee shall not be entitled to claim payment for personal ill health or injury, nor will his/her sick leave entitlement be reduced if such ill health or injury occurs on his/her rostered day off.

19.—HOLIDAYS

(1) The following day or days observed in lieu shall, subject to this subclause and Clause 9.—Overtime, 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.

(2) When any of the days mentioned in paragraph (1) 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.

(3) Payment shall be made for the said holidays subject to the condition that employees shall have presented themselves for work on the working days immediately preceding and succeeding the holidays specified herein and shall have worked during normal working hours as required by the employer: Any absence from duty on either or both of the days preceding or succeeding the holiday owing to illness or injury for which the employee is entitled to be paid under the terms of Clause 18.—Sick Leave of this award or by consent of the employer shall not render an employee ineligible for payment for the holiday.

(4) This clause shall not apply to casual employees.

20.—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 his/her employer after each period of 12 months' continuous service with such employer.

(b) (i) an employee before going on leave shall be paid the wages he/she would have received in respect of the ordinary time he/she would have worked had he/she 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/her as prescribed in Clause 12.—Wages of this award; and

(bb) Any other rate to which the employee is entitled in accordance with his/her 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 9.—Overtime of this award.

(c) During a period of annual leave an employee shall receive a loading calculated on the rate of wage prescribed by paragraph (b)(ii)(aa) of this subclause. The loading prescribed in this subclause shall not apply to proportionate leave on termination.

The loading shall be as follows:

(i) Day employees—

an employee who would have worked on day work had he/she not been on leave—a loading of 17½ per cent.

(ii) Shift employees—

an employee who would have worked on shift work had he/she not been on leave—a loading of 17½ per cent. Provided that where the employee would have received shift loading prescribed by Clause 11.—Shift Work had he/she not been on leave during the relevant period and such loading would have entitled him/her to a greater amount than the loading of 17½ per cent, then the shift loadings shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) of this subclause in lieu of the 17½ per cent loading. Provided further, that if the shift loadings would have entitled him/her 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)(ii)(aa) of this subclause in lieu of the shift loadings.

(2) 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.

(3) (a) If after one month's continuous service in any qualifying 12 monthly period an employee leaves his/her employment, or his/her employment is terminated by his/her employer through no fault of the employee, the employee shall be paid 2.923 hours' pay at his/her ordinary rate of wage in respect of each completed week of continuous service in that qualifying period.

(b) Where an employee is justifiably dismissed for misconduct during any qualifying 12 monthly period, the provisions of this subclause do not apply in respect of any completed month of service in the qualifying period.

(4) In addition to any payment to which he/she may be entitled under subclause (3) of this clause an employee whose employment terminates after he/she has completed a 12 month qualifying period and has not been allowed leave prescribed under this award in respect of that qualifying period shall be given payment in lieu of so much of that leave as has not been allowed unless:

(a) He/she has been justifiably dismissed for misconduct; and

(b) The misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(5) Notwithstanding anything else herein contained, an employer who observes a Christmas close down for the purpose of granting annual leave may require an employee to take his/her annual leave in not more than two periods but neither of such periods shall be less than one week.

(6) In the event of an employee being employed for portion only of a year he/she shall only be entitled subject to subclause (3) of this clause to such leave on full pay as is proportionate to his/her 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/she shall not be entitled to work on pay whilst the other employees of such employment are on leave on full pay.

(7) In special circumstances and by mutual consent of the employer, the employee and the union concerned, annual leave may be taken in not more than two periods.

(8) Any time in respect of which an employee is absent from work except time for which he/she 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/her right to annual leave.

(9) The provisions of this clause shall not apply to casual employees.

21.—BEREAVEMENT LEAVE

(1) an employee shall, on the death within Australia of a wife, husband, father, mother, grandfather, grandmother, de facto, sister, brother, 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 to be furnished by the employee to the satisfaction of his/her employer.

(2) 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 his/her roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

(3) For the purposes of this clause the pay of an employee employed on shift work shall be deemed to include the allowance set out in Clause 11.—Shift Work.

22.—LONG SERVICE LEAVE

The long service leave provisions published in Volume 58 of the Western Australian Industrial Gazette at pages one to six inclusive are hereby incorporated in and shall be deemed to be part of this award.

23.—GENERAL

(1) Hot water showers shall be provided for employees.

(2) Each establishment shall be equipped with a first aid kit which shall be kept in a suitable place readily available to all employees at all times during which work is being performed at the establishment.

(3) Any dispute arising out of this clause may be referred to the Board of Reference.

24.—PROTECTIVE CLOTHING

(1) Where the conditions of work are such that employees are unable to avoid their feet becoming excessively wet, the employer shall, on request, supply rubber boots free of charge.

(2) Where the conditions of work are such that employees are unable to avoid their clothing becoming excessively dirty or wet, they shall be supplied with suitable protective clothing free of charge.

(3) Where employees are required to work in the open whilst it is raining suitable wet gear shall be supplied by the employer free of charge.

(4) Where the conditions of work being performed require the use of gloves, they shall be supplied by the employer free of charge.

(5) Protective clothing wet gear, gloves and rubber boots supplied by the employer shall remain the property of the employer and shall be returned when required in good order and condition, fair wear and tear excepted.

(6) Any dispute arising out of this clause may be referred to the Board of Reference.

25.—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 Relations Act, 1979.

(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter or difference 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.

26.—BREAKDOWNS

The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee 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.

27.—SUPPLY AND ISSUE OF SAFETY EQUIPMENT

(1) Employees shall wear approved safety footwear and protective safety equipment as required by the employer and as agreed as suitable by the employer and the union representative. Such protective footwear and protective safety equipment shall be provided by the employer at no cost to the employee.

(2) The first issue of protective safety footwear shall be made within 21 days of commencement for casual employees and on commencement for all others and shall be replaced when agreed by the employer, the employee and the union representative as being no longer serviceable.

(3) One pair of "bib and brace" overalls shall be issued at no cost to the employee at not less than six monthly intervals, with the first issue being no longer than six months after commencement of employment.

(4) An employee may be permitted to commence work on any day after such initial issue of protective safety footwear providing that permission to do so is obtained from the employer.

(5) An employee who does not remain in the service of an employer for a period of time exceeding three calendar months shall pay to the employer the cost of such safety footwear and overalls on a proportionate basis as follows—

(a) If less than one month's service from the date of issue: 100 per cent of the cost of purchasing such safety footwear and overalls.

(b) If more than one month's but less than two month's completed service: 66 per cent of the cost of purchasing such footwear and overalls.

(c) If more than two months' but less than three month's completed service: 33 per cent of the cost of purchasing such footwear and overalls.

(d) After three months' completed service there shall be no charge providing that any employee who loses and/or damages such footwear or overalls through a negligent act shall be required to reimburse the employer the full cost of the next issued pair of footwear or overalls as the case may be.

(e) The amounts referred to in (a), (b) and (c) above may be deducted from an employee's termination payment.

28.—SPECIAL RATES

(1) (a) An employee who has been trained to render first aid and who is a current holder of an appropriate first aid qualification such as a certificate from the St. John Ambulance Association or a similar body shall be paid a weekly allowance of $5.25 if appointed by the employer to perform first aid duty.

(b) The employer shall cover any appropriate costs to enable first aid officers' qualifications to be current at all times.

(2) Meal Allowance:

The allowance to be paid in accordance with Clause 9(6) of this award shall be $5.25.

(3) Dust Money:

The sum of $1.15 per hour shall be paid to employees whilst in areas designated dusty by employer and union representatives.

29.—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 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) an employee 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) 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 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 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 (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 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 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.

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.

(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 on maternity leave or, in the case of an 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 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 her employment continues beyond the 12 months qualifying period.

30.—SETTLEMENT OF DISPUTES, CLAIMS AND GRIEVANCES

Subject to the provisions of the Industrial Relations Act, 1979 as amended, any dispute or claim or grievance arising out of the operation of this award, shall be dealt with in the following manner:

(a) The matter shall be submitted by the Shop Steward or Union representative to the Plant Manager, or other appropriate officer of the employer, or by the employer to the Union representative when appropriate.

(b) If not settled, the matter will be formally submitted by the Secretary, or other appropriate official of the Union, to the employer concerned.

(c) If the matter is still not settled it may be submitted to the Western Australian Industrial Relations Commission.

(d) Until the matter is determined in accordance with the above procedure, work shall continue normally at the

instruction of the employer concerned, unless safety is alleged to be involved, in which case the Occupational Health, Safety and Welfare Act 1984 and Regulations shall apply.

(e) No party shall be prejudiced as to final settlement by the continuance of work in accordance with this clause.

Dated at Perth this 3rd day of April, 1981.

RESPONDENT

Heat Containment Industries

HOSPITAL WORKERS (CLEANING CONTRACTORS—PRIVATE HOSPITALS) AWARD 1978.

No. R 2 of 1977.

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 March, 1996.

J. CARRIGG,
Registrar.

Hospital Workers (Cleaning Contractors—Private Hospitals) Award 1978.

1.—TITLE

This award shall be known as the Hospital Workers (Cleaning Contractors—Private Hospitals) Award 1978 and shall replace the Cleaning Contractors (General and Window) Award No. 3 of 1968 with respect to work described in Clause 3.—Scope of this award.

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

3.—SCOPE

(1) This award shall apply to the workers described in clause 32—Wages of this award employed by cleaning contractors in hospitals and to all employers employing those workers.

(2) For the purpose of this clause, hospital includes any establishment which provides accommodation and nursing care for persons and which for that reason receives a subsidy under the provision of the Aged and Disabled Persons Homes Act, 1954 or the Mental Health Act, 1962.

(3) This award shall not apply to the workers or employers referred to in subclause (1) hereof with respect to work—

(a) not done in a hospital, or

(b) done in hospitals the subject of the Hospital Workers (Government) Award No. 21 of 1966.

4.—AREA

This award shall have effect throughout the State of Western Australia.

5.—TERM

This award shall be for a period of one year from 1st April, 1978.

6.—DEFINITIONS

(1) "Rostered Worker" means a worker for whom the ordinary hours of work may include work on Sunday.

(2) "Casual Worker" means a worker engaged and paid as such.

(3) "Nursing Care" means that type of care which falls within any of the branches of nursing set out in the Nurses Act, 1968.

(4) "Accrued Day(s) Off" means the paid days off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 7.—Hours of this award.

7.—HOURS

(1) The ordinary hours of duty shall be an average of 38 hours per week over any five days of the week, with no more than 10 hours per shift, worked over any one of the following cycles.

(a) A four week cycle of nineteen days of eight hours each with 0.4 of one hour each day worked accruing as an entitlement to take the twentieth day in each cycle as a day off and paid for as though worked.

Provided that an employee who, at the completion of a 20 day work cycle, has not accrued sufficient hours to enable him/her to take a full paid shift off duty, shall continue past the 20 day work cycle until sufficient hours have accrued to enable him/her to take a full paid shift off duty.

(b) Actual hours of 76 hours over nine days per fortnight with the tenth day to be taken as an unpaid rostered day off.

(c) Actual hours of 40 per week or 80 per fortnight with two hours of each week's work accruing as an entitlement to a maximum of twelve days off in each twelve month period.

For the purposes of paragraph (c) the Accrued Days Off shall be taken in a minimum period of one week made up of five consecutive Accrued Days Off in conjunction with a period of annual leave or at a time mutually acceptable to the employer and the employee; or

As single day absences at a time suitable to the employer and subject to 48 hours' clear notice given to the employee in accordance with Clause 8.—Rosters of this award.

Notwithstanding the provisions of paragraph (c)—

- where an employer and employee mutually agree Accrued Days Off may be taken in single day absences;
- at the request of an employee an employer may agree to an Accrued Day Off being taken in a period of

less than one day provided that the period of time off work shall be taken from the commencement of the employee's normal rostered shift or up to the conclusion of the employee's normal rostered shift.

(2) In addition to subclause (1) by agreement between the employer and the Union a work cycle of 38 hours per week or 76 hours per fortnight or any other method agreed may be worked.

(3) Any change in rostering arrangements will be designed to improve productivity, efficiency and cost effectiveness in the workplace.

(a) Any proposed roster variations for each site or subsite shall be explained to the employees concerned and to the Union who will consider them.

(b) The affected parties (i.e. site management and employees) will then consult with each other with a view to agreeing to the proposed roster.

Provided that where the majority of employees affected by the proposed change agree the Union will not unreasonably withhold its agreement.

(c) Where agreement cannot be reached, the issues will be referred to the Western Australian Industrial Relations Commission for conciliation and, if necessary, arbitration.

(4) The provisions of this clause shall apply to a part-time employee in the same proportion as the hours normally worked bear to a full-time employee.

(5) At the discretion of the employer employees may be paid a rate of pay using a divisor of 38 hours per week in lieu of Accrued Days Off under the following conditions:

(a) Where the employee works no more than 16 hours per week or two shifts per week; or

(b) At the request of the employee. The employee may withdraw the request within 14 days of submitted it to the employer after which time it shall be binding on the employee. Such agreement shall remain in force for the period of employment, provided that it can be revoked by agreement between the employer and employee.

(6) An employer and employee may by agreement substitute the Accrued Day Off the employee is to take off for another day in which case the Accrued Day Off shall become an ordinary working day.

(7) 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 Accrued Day(s) Off standing to the credit of the employee at the date of transmission from service with the transmittor 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.

(8) Any dispute between an employer and the Union concerning the operation of this clause shall be referred to the W.A. Industrial Relations Commission.

8.—ROSTERS

(1) A roster shall be posted in a convenient place where it can be readily seen by the employees concerned.

(2) Such roster shall denote the hours to be worked by each employee and shall be open for inspection by a duly accredited representative of the union at such times as the record is open for inspection.

(3) Such roster shall be posted at least forty-eight hours before it comes into operation and rosters may be altered by 48 hours notice, but this shall not prevent a part-time employee working additional shifts in accordance with subclause (5) of Clause 29.—Part-time Employees.

(4) A roster for Accrued Day(s) Off may allow an employee to take Accrued Day(s) Off before they become due.

(5) No employee shall be rostered for duty until at least eight hours have elapsed from when the previous rostered shift ended.

9.—SPREAD OF SHIFTS

(1) No more than three breaks shall be allowed in any one shift, including meal breaks and the spread of the shift shall not exceed 10 hours, provided that a spread in excess of 10 hours but not exceeding 11½ hours may apply in cases where the shorter spread cannot be worked without additional staff and/or expense.

(2) "Spread of the Shift" shall mean the period of time which elapses from the time when a worker signs on duty for the day and the time when he signs off duty on that day or the day immediately following.

10.—OVERTIME

(1) "Overtime" shall mean all time worked beyond or in excess of the ordinary rostered hours of duty prescribed in Clause 7.—Hours or Clause 29.—Part-time Employees of this award, on any day the worker is rostered on duty, and except as hereinafter provided, shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(2) In lieu of payment for overtime and by agreement between the worker and the employer, time off equivalent to the time worked may be granted when overtime is occasioned through the failure of another worker to report for duty, except where a full additional shift is required, when overtime rates shall apply.

(3) All work performed by workers on any day on which they are rostered off duty or days worked in excess of those provided in Clause 7.—Hours or Clause 29.—Part-Time Workers shall be paid for at the rate of double time.

(4) Where an employee is required to work overtime and such overtime is worked for a period of at least two hours in excess of the required daily hours of work the employee shall be provided with a meal free of cost, or shall be paid the sum of $4.30 as meal money.

This subclause shall not apply where the employee has been advised of the necessity to work overtime on the previous day or earlier.

(5) A worker who has completed his/her usual hours of duty and has left the job and who is recalled to work after the usual ceasing time, shall be paid a minimum of three hours at overtime rates and for all reasonable costs incurred in returning to work.

11.—SHIFT WORK

A loading of 15 per cent of the ordinary wage shall be paid for all time worked between 6.00 p.m. and 6.00 a.m. on any day.

12.—WEEKEND RATES

An employee shall be paid for ordinary hours worked between midnight on Friday and midnight on Sunday at the rate of time and one half.

The following provisions shall apply in lieu of the foregoing for the period on and from 1 July, 1991 pending a decision of the Western Australian Industrial Relations Commission with respect to the provisions of this clause.

An employee shall be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one half and between midnight on Saturday and midnight on Sunday at the rate of time and three quarters.

13.—SPECIAL RATES AND CONDITIONS

(1) Appliances and Materials: All appliances and materials, including towels and dusters, required in connection with the performance of the worker's duties, shall be supplied to such worker by the employer without charge.

(2) Dressing Accommodation: Suitable provision shall, where practicable, be made by the employer on the premises for workers to change their clothing. Should any dispute arise as to the suitability of the accommodation so provided, the matter shall be determined by the Board of Reference.

(3) Accommodation for Meals: Workers shall be permitted to eat their meals in a convenient and clean place protected from the weather and each worker shall leave such place in a thoroughly clean condition after use.

(4) Boiling Water: Where practicable, facilities for boiling water shall be provided by the employer.

(5) Toilets: Workers engaged in any week for the major portion of their time cleaning lavatories shall be paid an extra 90 cents per week.

(6) Broken Shift: Where a worker is required to carry out the ordinary hours of duty per day in more than one shift and where the break is not less than four hours an allowance of 70 cents per day shall be paid.

14.—RECORD

(1) Each employer bound by this award shall maintain a record containing the following information—

(a) The name and address given by each worker subject to this award.

(b) The date of birth of the worker if paid as a junior worker.

(c) The date on which each worker commenced employment with that employer.

(d) The classification and "year of employment" of the worker and whether the worker is employed full time, part time or casual.

(e) The commencing and finishing time of work each day, together with any periods between those times when the worker was not required to work.

(f) The total number of ordinary hours and the total number of overtime hours worked each day.

(g) The wages and any allowances paid to each worker each pay period and any deductions made therefrom.

(2) (a) The record shall be kept at one establishment and in date order so that the inspections referred to in subclause (3) of this clause may be made with respect to any period in the 12 months preceding the date of inspection.

(b) The employer may, if it is part of normal business practice, periodically send the record or any part of the record to another person, provided that the provisions of this paragraph shall not relieve the employer of the obligations contained elsewhere in this clause.

(3) (a) Subject to this clause, the record shall be available for inspection by any officer of the union or other authorised representative of the union between the hours of 9.00 a.m. and 5.00 p.m. Monday to Friday inclusive, at such time and date as requested by the union.

(b) The officer of the union or other authorised representative of the union shall be permitted reasonable time to inspect the record and, if required, take an extract or copy of any of the information contained therein.

(c) The employer shall permit each worker to inspect the record as it relates to that worker either at the time of payment of wages or at such other time as may be mutually convenient. The employer shall not unreasonably withhold the record from inspection by the worker.

(4) (a) If, for any reason, the record is not available for inspection at the time and date requested, the union and the employer or his agent may fix a mutually convenient time for the inspection to take place.

(b) If a mutually convenient time cannot be fixed, the union may advise the employer in writing that it requires to inspect the record in accordance with the provisions of this award and shall specify the period contained in the record which it requires to inspect.

(c) Within 10 days of the receipt of such advice:

(i) employers who normally keep this record at a place more than 35 kilometres from the G.P.O. Perth shall send a copy of that part of the record specified to the office of the union, and,

(ii) employers who normally keep the record at a place less than 35 kilometres from the G.P.O. Perth shall make the record available to the union at a time specified by the union.

(d) In the event of a demand made by the union which the employer considers unreasonable, the employer may apply to the Industrial Commission for direction. An application to the Industrial Commission made by an employer for direction will, subject to that direction, stay the requirements contained elsewhere in this subclause.

(5) In addition to the foregoing, the employer shall maintain for the duration of the employees employment, a record in respect of each employee showing:

(a) Name and classification.

(b) Total hours worked each week.

(c) Number of days worked each week.

(d) Total wages paid each pay period.

(6) Records required to be kept by this clause shall be passed on to any succeeding employer in the event that the business is sold or transmitted.

14A.—COMPASSIONATE LEAVE

(1) A worker shall, on the death within Australia of a wife, husband, de facto wife or de facto husband, father, father-in-law, mother, mother-in-law, 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 worker in two ordinary working days. Proof of such death shall be furnished by the worker to the satisfaction of the employer.

Provided that 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 worker concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

(2) An employee shall not be entitled to claim payment for compassionate leave on a day when that employee is absent on an Accrued Day(s) Off in accordance with the provisions of subclauses (1) and (2) of Clause 7.—Hours of this award.

(3) An employee, whilst on compassionate leave prescribed by this clause shall continue to accrue an entitlement to an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

15.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided a period of six consecutive weeks' leave shall be allowed to an employee by her employer after each period of twelve months' continuous employment with such employer.

(b) Notwithstanding the provisions of paragraph (a) of this subclause an employee employed regularly in a non-client related position who is not required to be available to work on any public holiday named in clause 15A.—Public Holidays of this award, shall be provided a period of four consecutive weeks' leave after each period of 12 months continuous employment with such employer.

Provided that such an employee shall be paid in accordance with subclause (3) of Clause 15A.—Public Holidays of this award for all public holidays.

(c) Where pursuant to paragraph (3) of subclause 2.—Long Service of the Long Service Leave provisions published in Volume 64 of the Western Australian Industrial Gazette at pages 1 to 4 the period of continuous service which a worker has had with the transmittor (including any such service with any prior transmittor) is deemed to be service of the worker with the transmittee then that period of continuous service shall be deemed to be service with the transmittee for the purposes of this subclause.

(2) Prior to commencing leave each worker shall be paid for that period of leave as follows:

(a) At the wage the employee would have received had she/he not proceeded on leave. In the case of rostered employees that wage shall include the shift work and the weekend penalties that employee would have received had he/she not proceeded on leave.

Where it is not possible to calculate the shift and weekend penalties the employee would have received the employee shall be paid the average of such payments made each week over the four weeks prior to taking the leave; or

(b) At the rate of wage shown in Clause 32.—Wages of this award for her/his class of work and in addition be paid a loading of 17.5% of that wage for 2/3rds of any leave due in each year and for the remaining

1/3rd of the leave due in each year be paid according to paragraph (a) of this subclause, whichever is the greater.

(c) Provided that employees to whom subclause (5) of this clause applies may be paid a loading of 17.5% for 5/7ths of any leave due in each year in lieu of the 2/3rds of any leave due in each year.

(d) Provided further that the 17.5% loading prescribed by this subclause shall not be paid on proportionate annual leave on termination.

(3) (a) Except as provided in part (b) of this subclause if after one month's continuous employment, a worker lawfully terminated by the employer through no fault of the worker, the worker shall be paid 4.62 hours' pay at the rate prescribed by subclause (2) of this clause in respect of each complete week of continuous service for which annual leave has not already been taken.

Provided that workers to whom subclause (5) of this clause applies, shall be paid for such additional days leave as have accrued due under that subclause at the date of such termination.

(b) A worker who is dismissed for a misconduct which occurred after the completion of a twelve month qualifying period, but before she has taken leave in respect of that qualifying period shall be given payment in lieu of that leave.

(4) (a) The annual leave prescribed in subclause (1) of this clause may be split into more than one portion:

(i) Where the 12 accrued days off are taken in conjunction with annual leave, by the employer once per annum provided that no portion is less than two weeks.

(ii) By agreement between the employer and employee.

(b) Any dispute arising out of this clause in relation to splitting or not splitting an employee's annual leave entitlement, if not resolved by agreement between the employer, the employee and the Union, shall be referred to the W.A. Industrial Relations Commission for determination.

(5) (a) Shift workers (i.e., workers who rotate afternoon and/or night shift with day shift as defined hereunder) shall be granted an additional week's leave; provided that for workers whose shifts are not subject to regular rotation, one working day's additional leave (with a maximum of five working days) for each thirty-five shifts actually worked on afternoon and/or night shift shall be granted provided further that workers who have completed one hundred and fifty-five shifts on afternoon and/or night shift shall be granted the additional week.

Afternoon shift means a shift commencing between 12.00 noon and 6.00 p.m.

Night shift means a shift commencing between 6.00 p.m. and 4.00 a.m.

This subclause shall apply to employees engaged before 12 April, 1990 who were in receipt of additional annual leave days as prescribed by this subclause on a no reduction basis, and shall remain in force until 12 April, 1997.

(b) Shift employees who in every roster rotate afternoon and/or night shift with day shift shall be granted an additional week's leave. Provided that for employees whose shifts are not subject to regular rotation one day's additional annual leave shall be accrued for each thirty afternoon or night shifts worked to a maximum of 5 annual leave days each twelve months.

Afternoon shift means a shift commencing between 12.00 noon and 6.00 p.m.

Night shift means a shift commencing between 6.00 p.m. and 4.00 a.m.

This subclause shall apply to all new employees engaged on or after 12 April 1990.

(6) Any time in respect of which an employee is absent from work, except time for which that employee is entitled to claim paid sick leave or the first calendar month of any absence on workers' compensation, or time spent on annual leave or long service leave as prescribed by this award shall not count for the purpose of determining annual leave entitlements.

(7) Before going on annual leave each worker shall be given at least two weeks' notice of the date such leave is to commence.

(8) The provisions of this clause shall not apply to casual workers.

(9) (a) The annual leave prescribed by this clause may be given and taken before the completion of 12 months continuous service as prescribed by subclause (1) of this clause.

(b) If the services of an employee terminate 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 (3) of this clause the employee shall be liable to pay the amount representing the difference between the amount received by him for the period of leave taken in accordance with this subclause and the amount which would have accrued in accordance with subclause (3) of this clause. The employer may deduct this amount from moneys due to the employee by reason of the other provisions of this award at the time of termination.

(10) When an employee proceeds on the first four weeks' of the annual leave prescribed by subclause (1) of this clause there will be no accrual towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award. Accrual towards an Accrued Day(s) Off shall continue during any other period of annual leave prescribed by this clause.

15A.—PUBLIC HOLIDAYS

(1) A worker who works on any public holiday named herein shall be paid a loading of fifty percent (50%) of the ordinary wage for the time worked in ordinary hours on that day.

(2) For the purposes of this clause the following days shall be public holidays: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(3) An employee who is not required to work on any public holiday named in this clause or day observed in lieu thereof, shall be entitled to a day's leave and shall be paid the ordinary rate of wage the employee would receive for the usual hours worked on that day.

16.—PAYMENT FOR 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 1/6th 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 10 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 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. Provided that where an employee has had two absences on paid sick leave adjacent to other days off duty within a period of twelve months the employer may request in writing that any further absences adjacent to days off be accompanied by such certificate.

Provided that this request shall remain in force until the employee has completed a continuous period of twelve months without such absence.

(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 an 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 15—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 15—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 transmittor 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) An employee shall not be entitled to claim payment for non-attendance on the ground of personal ill-health or injury nor will the employee's sick leave entitlements be reduced if such personal ill-health or injury occurs on a day when an employee is absent on an Accrued Day Off in accordance with the provisions of subclauses (1) and (2) of Clause 7.—Hours of this award unless such illness is for a period of seven consecutive days or more and in all other respects complies with the requirements of subclause (5) hereof.

(10) An employee whilst on paid sick leave shall continue to accrue an entitlement to an Accrued Day Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

16A.—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 as a State Government employee and/or was employed under Part II of Award No. 8 of 1978, 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 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 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 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 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.

(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 12 months' qualifying period.

(12) Effect of Maternity Leave on Accrued Day(s) Off

(a) When an employee proceeds on maternity leave there will be no accrual towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

(b) When an employee proceeds on maternity leave the employer may pay an employee the amount of hours accrued towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

(13) 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 entitlement to maternity leave as prescribed by this clause standing to the credit of the employee at the date of transmission from service with the transmittor 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.

17.—UNIFORMS

(1) Where the employer requires a uniform to be worn, a supply of four such uniforms shall be made available for use by each employee but such uniforms shall at all times remain the property of the employer.

(2) In lieu of the provision of uniforms, the employer may pay an allowance of $2.30 per week.

(3) The term "uniform" shall include all items of clothing and footwear which are specified by the employer according to type or colour or according to the exclusion of ordinary clothing or footwear, to be worn.

(4) Protective Clothing: Where an employee is required by the employer to work in the rain, suitable protective clothing shall be provided free of charge by the employer.

(5) Liberty is reserved to the parties to apply as to the amount of the allowance as prescribed in subclause (2) of this clause.

(6) Subject to the provisions of subclause (5) of this clause no claim shall be made to amend the provisions of this clause before July 1, 1988.

18.—LAUNDRY

(1) All clothing forming part of a uniform shall be laundered free of cost to the worker.

(2) Where the uniform of any worker cannot be laundered at the hospital an allowance of 40 cents per week shall be paid to the worker.

19.—HEIGHT MONEY

(1) A cleaner shall not be required to work from the top of a ladder more than 3.05 metres long which rests on ground or floor level.

(2) Where it is necessary to go wholly outside a building to clean windows, an employee shall, if such cleaning be 15.5 metres or more from the nearest horizontal plane, be paid an allowance of $1.40 per day.

(3) Where an employee is required to clean windows from a swinging scaffold or similar device, he/she shall be paid 25 cents per hour extra for every hour or part thereof so worked.

20.—PAYMENT OF WAGES

(1) Wages shall be paid by cheque, direct transfer or cash at the employer's discretion following consultation with the employees.

(2) (a) (i) Where the employer requires the employee to establish an account for the purpose of receiving his/her wages the employee shall pay the costs associated with the establishment and maintenance of such accounts.

(ii) The employer may require such an account to be established at a major bank or building society.

(b) In respect of transfer fees associated with the transfer of funds from the employer's bank to any other bank or financial institution, such fees shall be paid by the employer.

(3) In the case of payment by cheque the employer shall arrange encashment facilities at a branch of a bank in close proximity to the place of work. Where it is impractical for the worker to cash the cheque on pay day, reasonable access to the facility shall be allowed by the employer during working time.

(4) If, for reasons within the control of the employer, wages are not available at the nominated time and the worker is kept waiting for a period exceeding 30 minutes, overtime rates shall apply, provided that in the case of a worker rostered for duty on that day, the 30 minute period shall commence from the employee's finishing time.

(5) No deduction shall be made from a worker's wages unless the worker has agreed to such deduction in writing, or the deduction is authorised by the award.

(6) Each worker shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

(a) the rate of wage
(b) the hours worked, including overtime
(c) the gross wage
(d) the net wage
(e) any allowances paid
(f) any deductions made
(g) the composition of any annual leave payment
(h) the composition of any termination payment.

(7) Wages shall be paid fortnightly, provided that by agreement between the employer and the Union, wages may be paid at other intervals.

(8) Subject to subclause (9) hereof, upon termination of employment, the employer shall pay to the worker all moneys earned by or payable to the worker before the worker leaves the hospital or the same shall be forwarded to the worker by post on the next working day following termination.

(9) Where the worker terminates his or her employment without notice as required by Clause 21.—Contract of Service of this award, the employer shall forward as soon as reasonably possible all moneys earned by or payable to such worker to that worker by post.

(10) If a worker fails to collect his or her wages on the appointed day, such wages shall thereafter be available for collection (at previously notified times) during office hours.

(11) Accrued Days Off which accrue prior to the first pay period commencing on or after the 14th July, 1988 shall be paid as follows:

(a) An employee who regularly performs shift or weekend work shall be paid for accrued days off, including shift or weekend penalties, when those days are taken as leave for the hours worked during which the leave was accumulated and shall be paid at the rate applicable at the time the leave is taken.
(b) An employee who performs shift or weekend work irregularly shall be paid for accrued days off the average of shift or weekend penalties paid in the preceding month.

(12) Accrued Days Off which accrue from the first pay period commencing on or after the 14 July, 1988 shall be paid at the ordinary rate of wage, exclusive of penalties, which an employee would normally receive for his/her class of work.

21.—CONTRACT OF SERVICE

(1) The contract of service period shall be—

(a) one hour for casual employees
(b) two weeks for all other employees

(2) An employee may be engaged on a probationary period of not longer than three months, during which time it will be possible for either the employer or employee to terminate the contract of service with one day's written notice.

(3) The contract of service may be terminated by either the employer or employee by giving—

(a) notice of one hour for casual employees
(b) written notice of two weeks for all other employees

(4) Where an employee does not give the required period of notice of termination of services the wages payable for the contract of service period may be forfeited at the discretion of the employer.

(5) The employer may pay the wages payable for the contract of service period in lieu of notice of termination being given by either the employer or employee.

(6) The services of an employee may be terminated for serious misconduct without prior notice. In such circumstances the employer is required to pay all monies owing up to the date of dismissal.

(7) (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 provided that such duties are not designed to promote de-skilling.

(b) An employer may direct, pursuant to paragraph (a) of this subclause, an employee to carry out such duties and use such tools and equipment as may be required provided 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) of this subclause shall be consistent with the responsibility of the employer to provide a safe and healthy working environment in accordance with the provisions of the Occupational Health, Safety and Welfare Act, 1987 and Regulations.

22.—HIGHER DUTIES

(1) An employee who is capable of performing and does perform all duties of a position which carries a higher rate of pay than that which he or she usually performs shall be entitled to the higher rate whilst so engaged.

(2) Provided that payment for higher duties shall not apply to an employee required to act in another position whilst the permanent employee is on a single accrued day off as prescribed by subclause (2) of Clause 7.—Hours of this award.

23.—FARES, TRAVELLING TIME AND TRANSPORT

(1) Where a worker is required outside his usual working hours by the employer to work at a place other than the usual place of employment the employer shall pay the worker any reasonable travelling expenses and any excess time occupied beyond the time and fares usually incurred by the worker to reach his usual place of employment.

(2) (a) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedules set out hereunder. Notwithstanding anything contained in this subclause, the employer and the employee may make any other arrangements as to car allowance not less favourable to the employee.

(b) 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.

(c) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June next following.

Rates of hire for use of employee's own vehicle on employer's business.

Schedule 1—Motor Vehicle Allowance

Area and Details	Engine Displacement (in Cubic Centimetres) Over 2600cc	Over 1600cc - 2600cc	1600cc & under
	Rate per kilometre		
Metropolitan Area	49.4	43.5	37.9
South West Land Division	50.5	44.6	38.9
North of 23.5° South Latitude	56.2	50.0	43.5
Rest of the State	52.2	46.0	40.0

Schedule 2—Motor Cycle Allowance

Distance Travelled During a Year on Official Business	Rate ¢/km
Rate per kilometre	17.1

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

24.—LONG SERVICE LEAVE

(1) The Long Service Leave provisions published in Volume 65 of the Western Australian Industrial Gazette at pages 1 to 4 both inclusive, are hereby incorporated and shall be deemed part of this award.

(2) When an employee proceeds on long service leave there will be no accrual towards an Accrued Day(s) Off as prescribed in subclauses (1) and (2) of Clause 7.—Hours of this award.

25.—NO REDUCTION

Nothing contained in this award shall operate to reduce the wage of any worker who at the date of this award is being paid a higher rate of wage than the minimum prescribed for his or her class of work.

26.—NOTICES

Subject to the approval of the hospital, space shall be provided in the workers' dining rooms or other appropriate place for the purpose of posting union notices and a copy of this award.

27.—UNDER-RATE WORKERS

(1) Any worker who by reason of old age or infirmity is unable to earn the minimum rate of wage prescribed herein for his or her class of work, may be paid such lesser wage as may be agreed upon, in writing, between the Union and the employer.

(2) In the event of no agreement being arrived at the matter shall be referred to the Board of Reference for decision.

(3) In the event of the matter being referred to the Board of Reference and pending the Board's decision, the worker may be employed at the proposed lesser rate.

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 52 of the Industrial Arbitration Act 1974.

(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.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained herein, an employer shall be at liberty to employ part-time employees.

(2) Part-time employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which they are engaged only in the proportion which their ordinary weekly hours bear to forty.

(3) Part-time employees shall be allowed annual leave and sick leave in the same manner as full time employees. Payment for such leave shall be in the same ratio as their ordinary weekly hours, averaged over the qualifying period, bear to forty.

(4) (a) The laundry and uniform allowances prescribed in this award shall be paid pro rata to part time employees in the proportion that the hours worked each week bear to 40.

(b) A part-time employee working 3 shifts or less each week shall be supplied with one uniform per shift each week.

(5) Notwithstanding the provisions of Clause 10.—Overtime of this award, a part-time employee may work shifts additional to the rostered shifts at ordinary rates, subject only to the normal rostering parameters of a full-time employee, where the employee has previously indicated a willingness to work extra shifts or where the extra shift was arranged prior to the completion of the employee's previous shift. Provided that a part-time employee shall not be required to work an extra shift.

30.—CALCULATION OF PENALTIES

Where an employee works hours which would entitle that employee to payment of more than one of the penalties payable in accordance with Clause 10.—Overtime, Clause 11.—Shift Work, Clause 12.—Weekend Work and Clause 15A.—Public Holidays, only the highest of any such penalty shall be payable.

31.—REPRESENTATIVE INTERVIEWING EMPLOYEES

(1) An accredited representative of the Union shall be entitled to enter the hospital and interview an employee subject to the following:

(a) On arrival at the hospital the union representative shall seek permission to enter the premises from the senior person in charge of the hospital.

(b) Agreement between the union representative and the employer, and subject to the approval of the hospital, shall be sought as to where and subject to what conditions the employee may be interviewed or work inspected.

(2) Failing agreement on the foregoing, the following shall apply:

On giving prior notice in writing or by telephone to the employer or his appointed representative, or failing that person being available, the most senior person in charge of the establishment, and subject to the approval of the hospital, an accredited representative of the Union shall be entitled to enter the business premises of the employer to interview an employee during the recognised meal period at the place at which the meal is usually taken, provided that this right shall not be exercised without the consent of the employer more than once in any one week, however the employer does not have the right to refuse the first occasion in any one week provided prior notice has been given. If access has not been gained in accordance with the provisions of this clause then the union representative shall leave immediately upon a request from the employer or, his appointed representative or senior person in charge.

32.—WAGES

(1) The minimum weekly rate of wage payable to employees covered by this award shall be the Base Rate plus the Arbitrated Safety Net Adjustment (ASNA) Payment expressed hereunder:

	Base Rate	ASNA Payment	Minimum Weekly Rate
	$	$	$
(a) Cleaner:			
1st year of employment	369.80	16.00	385.80
2nd year of employment	374.30	16.00	390.30
3rd year of employment and thereafter	378.30	16.00	394.30
(b) Window Cleaner:			
1st year of employment	378.30	16.00	394.30
2nd year of employment	382.60	16.00	398.60
3rd year of employment and thereafter	387.10	16.00	403.10

(c) Junior Hospital Workers:

The minimum rate of wage payable to junior hospital employees shall be the following percentage of the prescribed wage during the first year of employment for an adult employee doing the same class of work.

	%
Under 17 years of age	50
Under 18 years of age	70
Under 19 years of age	80
At 19 years of age	100

(d) Casual employees shall be paid a loading of 25% over the rates specified.

(2) General Conditions:

(a) Leading Hands: In addition to the rates herein prescribed a leading hand shall be paid per week—

	$
(i) If placed in charge of not less than three and not more than 10 other workers	14.20
(ii) If placed in charge of more than 10 and not more than 20 other workers	21.40
(iii) If placed in charge of more than 20 other workers	28.50

(b) Where the term "year of employment" is used in this clause it shall mean all service whether full time or

part time and regardless of the class of work with that employer.

Such service shall be calculated in periods of calendar years from the date of commencement of work with the employer and shall be by automatic progression subject to satisfactory service.

(c) In determining the year of employment of a worker 19 years of age or over employment while under the age of 19 years shall not be counted in determining the year of employment at or over 19 years of age.

(d) The hourly rate shall be calculated by dividing the weekly rate herein by 40.

(e) The hourly rate for an employee working an average of 38 hours per week shall be calculated by dividing the weekly rate herein expressed by 40.

(f) The hourly rate for an employee actually working 38 hours shall be calculated by dividing the weekly rate herein expressed by 38.

(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. 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.

(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. The 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.

33.—EFFECT OF 38 HOUR WEEK

(1) Termination

(a) An employee subject to the provisions of subclause (1) of Clause 7.—Hours of this award who has not taken any Accrued Day(s) Off accumulated during a work cycle in which employment is terminated, shall be paid the total of hours accumulated towards the Accrued Day(s) Off for which payment has not already been made.

(b) An employee who has taken any Accrued Day(s) Off during a work cycle in which employment is terminated shall have the wages due on termination reduced by the total hours for which payment has already been made but for which the employee had no entitlement toward those Accrued Day(s) Off.

(2) Workers' Compensation

(a) 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 Accrued Day Off following such absence.

(ii) An employee will not accrue Accrued Day(s) Off for periods of workers' compensation where such period of leave exceeds one or more complete 20 day work cycle.

(iii) Where an employee is on workers' compensation for less than one complete 20 day work cycle and an Accrued Day Off falls within the period, the employee will not be re-rostered for an additional Accrued Day Off.

(b) 12 Months' Work Cycle

(i) Where an employee is on workers' compensation for periods for less than a total of 20 consecutive work days in a work cycle such employee will accrue towards and be paid for the succeeding Accrued Day(s) Off following such leave.

(ii) Where an employee is on workers' compensation for periods greater than a total of 20 consecutive days in a work cycle such employee will have the period of workers' compensation added to the work cycle.

(iii) Where an employee is on workers' compensation for greater than 20 consecutive work days and an Accrued Day Off as prescribed in subclause (1) of Clause 7.—Hours of this award falls within the period the employee shall be re-rostered for another Accrued Day Off on completion of the 20 week work cycle following such absence.

(3) Leave Without Pay

An employee who is absent on any form of leave without pay shall not accumulate an entitlement to an Accrued Day Off for the period of such leave nor will the employee be entitled to an Accrued Day Off whilst on leave without pay.

(4) Pay Out of Entitlements

An employee whose hours are worked in accordance with Clause 7(1)(a) and who, after 12 months employment, is to take the full six consecutive weeks annual leave prescribed by Clause 15.—Annual Leave of this award may by mutual written agreement, be paid at the time of taking such annual leave, for any Accrued Day(s) Off then standing to the credit of that employee. Such payment will be in full discharge of any liability on the employer arising pursuant to Clause 7.—Hours of this award. An employee shall not otherwise be paid for Accrued Day(s) Off without actually taking them as days off.

34.—PAYROLL DEDUCTION OF UNION DUES

(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 procuration form, that form shall be used. The procuration form on the Union Application for Membership form shall be deemed to comply with the requirements of this subclause.

(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 payclerk.

(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 subclauses (5) and (8) 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 subscriptions 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.

(8) Notwithstanding the above—

(a) deductions shall be at the employers' discretion.

(b) deductions shall only be made if the employer and the Union can agree on a commission rate.

(c) the employer may stop deductions in the event of Union commencing industrial action.

(d) an exemption from the provisions of this clause shall be granted to an employer who notifies the Industrial Registrar that they object to the provisions of this clause being applied to them and forward a copy of such notice to the Union.

(e) an existing employer wishing exemption from the provisions of this clause shall notify the Industrial Registrar as provided in subclause (1) hereof within 3 months of the coming into operation of this clause.

35.—DISPUTE SETTLEMENT PROCEDURES

(1) Subject to the provisions of the Industrial Relations Act, 1979 (as amended) any grievance, complaint or dispute, or any matter raised by the Union or a respondent and employees, shall be settled in accordance with the procedure outlined in this clause.

(2) These procedures have been developed by agreement between the parties. The Union recognises the right and responsibility of Private Health Employers to provide uninterrupted and efficient services to the Community. The employer recognises the rights and responsibilities of the Union to represent its members in compliance with its rules.

(3) The procedure is also intended to provide effective and speedy means for resolution of employee difficulties and problems.

(4) Depending on the issues involved, the size of the organisation and the union membership of the employees concerned, a procedure involving the following stages of discussion shall apply. These are:

(a) discussions between the employee/s concerned and the immediate supervisors;

(b) discussions involving the employee/s concerned, (and an elected on site union representative if requested), the employer representative or senior officer;

(c) senior officer to resolve issue, if unable to refer to Senior Management. Employee may notify Union at this stage if desired;

(d) discussions involving union officials and/or site union representatives and senior management representative(s).

(5) 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.

(6) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved the parties may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

(7) Where the employer seeks to discipline an employee, or terminate an employee the following steps shall be observed:

(a) In the event that an employee commits a misdemeanour, the employee's immediate supervisory or any other staff member so authorised, may exercise the employer's right to reprimand the employee so that the employee understands the nature and implications of their conduct.

(b) 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.

(c) Should it be necessary, for any reason, to reprimand an employee three times in a period not exceeding twelve months' continuous service, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with the provisions of this award.

(d) The status quo (i.e. the conditions applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedure outlined above.

(8) In resolving issues of an industry wide nature discussions which may be initiated at the level specified in 4(d) above between the appropriate Union official and the Employer, shall then be referred to the Health Care Management Committee of the Confederation of W.A. Industry by either or both parties.

(9) For the purposes of this procedure:

"employer" means the relevant officer nominated at each work site.

"senior officer" means an officer nominated by management.

industry wide issues" include issues affecting more than one work site or claims seeking variations to an award.

"work site" means as agreed between the parties.

(10) The parties to this award are committed to implementing a new wage and classification structure.

To allow this to occur in an orderly and efficient manner the parties agree that when the award is varied to insert a new wage and classification structure, the disputes settling procedure clause will be varied to provide a mechanism for dealing with claims by existing employees on the appropriateness of their classification in the new structure.

(11) The parties acknowledge that this procedure formed part of the package which justified the payment of the increases available under the Structural Efficiency Principle.

(12) 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 12(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.

36.—INTRODUCTION TO CHANGE

(1) Where an employer has made a definite decision to introduce major changes that are likely to have significant effects on employees, the employer shall notify employees who may be affected, and their Union.

(2) As soon as practicable the employer shall enter into discussions with employees on issues involved in the changes.

(3) The employer shall discuss with the Union any matters raised in relation to the changes.

37.—STRUCTURAL EFFICIENCY IMPLEMENTATION TASKS

(1) The parties to this award are committed to co-operating positively to increasing efficiency and quality of care in the industry and, to enhancing the career opportunities and job security in the industry in accordance with the structural efficiency principle outlined in the Commission in Court Session Decision in Matter No 704 of 1991.

(2) At the private health industry level a formal consultative mechanism between representatives of the employers and representatives of the Union shall be established to consider measures raised by the employers or Union that are consistent with the objectives of subclause (1) of this clause.

(3) The Industry Consultative Committee referred to in subclause (2) of this clause shall determine its own procedures and terms of reference and will meet within two months of this clause being ratified by the Western Australian Industrial Relations Commission.

(4) The Industry Consultative Committee will meet at least six times per year and more often where agreed between the parties.

(5) The Industry Consultative Committee shall give priority to the following issues:

- the implementation of a new wage and classification structure;
- an examination of skills in the industry;
- minimum rates adjustments; and
- the drafting of an appropriate award clause on enterprise consultation, as soon as reasonably practicable, and consistent with the relevant State Wage Principles.

(6) Nothing in this clause shall limit the rights of any of the parties to the award to conciliation and/or arbitration in the Western Australian Industrial Relations Commission.

38.—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.

Dated at Perth this 4th day of April, 1978.

SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award:

The Federated Miscellaneous Workers' Union of Australia, W.A. Branch.

SCHEDULE B—RESPONDENT

Powerclean (1976)