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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

## INDUSTRIAL APPEAL COURT—

JURISDICTION: WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

CORAM: FRANKLYN J (Presiding Judge).

HEARD: 20 JUNE 1997.

DELIVERED: 24 JUNE 1997.

FILE NO/S: APPEAL IAC 4 of 1997.

BETWEEN: STATE SCHOOL TEACHERS'  
UNION OF WESTERN AUSTRALIA

First Appellant (Respondent)

BRIAN LINDBERG

Second Appellant (Respondent)

AND

ROSEMARIE BANNON

First Respondent (Applicant)

ALAN CALHOUN

Second Respondent (Applicant).

Representation—

Counsel—

Appellants : Mr C P Shanahan  
Respondents : By their agent Mr J C Bartley

Solicitors—

Appellants : Dwyer Durack  
Respondents : By their agent Mr J C Bartley

Case(s) referred to in judgment(s)—

Burswood Resort (Management) Ltd v The Australian  
Liquor, Hospitality and Miscellaneous Workers Un-  
ion & Ors, unreported; IAC of WA; Library No  
960257; 13 May 1996

Re Australian Nursing Federation; Ex parte State of Vic-  
toria & Anor (1993) 112 ALR 177

Re State Public Services Federation; Ex parte Kennett,  
unreported (Dawson J); 15 September 1992

Case(s) also cited—

Australasian Society of Engineers, Moulders and Foundry  
Workers, Industrial Union of Workers (WA  
Branch) v SEC of WA (1991) 33 (17) Australian In-  
dustrial Review 307

Bailey v Federal Commissioner of Taxation (1977) 136  
CLR 214

Etherton v Public Service Board of NSW & Anor (1984)  
26 (4) Australian Industrial Law Review 69

Johnson v Miller (1937) 59 CLR 467

Kelly v Kelly (1950) 50 SR 261

McSpedden v Harnett (1942) 42 SR 116

Mobil Oil Australia Pty Ltd v FC of T (1963) 113 CLR  
475

R v Associated Northern Collieries (1910) 11 CLR 738

Robe River Iron Associates v Amalgamated Metal Work-  
ers Shipwrights Union & Ors (1986) 66 WAIG 1553

Saunders v Jones (1877) 7 Ch D 435

Turner v Dalgety & Co Ltd (1952) 69 WN 228

FRANKLYN J—

This is an application by the appellants before me expressed to be for the stay of proceedings in matter 1823 of 1996 in the Western Australian Industrial Relations Commission pending the determination of an appeal against the decision of the learned President of the Commission given in that matter on 5 May 1997.

On 16 December 1996 the respondents before me (“the respondents”) lodged an application numbered 1923 of 1996 to the President of the Western Australian Industrial Relations Commission (“the Commission”) pursuant to s66 of the *Western Australian Industrial Relations Act 1979* (“the Act”) alleging breaches by the abovenamed Union (“the Union”) of its rules and naming it and the second appellant, its Chief Executive Officer Brian Lindberg (“Mr Lindberg”), as respondents. They are the appellants before me (“the appellants”).

At all hearings in relation to the respondents’ said application, the appellants have had the benefit of counsel, originally Mr Shanahan and with him Mr R Castiglione and thereafter, generally but not always, with Mr Castiglione until the latter ceased acting as counsel and undertook the role of instructing solicitor until a new solicitor was briefed some time shortly before the hearing of 22 May 1997, to which I later refer. Save for two hearings in February 1997 the respondents have been represented at such hearings by an agent, one J C Bartley, a lay person, who continues to represent them. In the course of those proceedings, amendments and orders were made in respect of the respondents’ application and, on 21 April 1997, the respondents were ordered to file and serve a consolidated set of particulars, the matter then being adjourned to 5 May 1997. That document was duly filed and it and its contents are hereafter referred to as the “particulars”.

It is apparent from the respondents’ application as originally filed that it was deficient in its identification of the breaches relied upon. I do not propose to outline the history of the matter, save to say that there have been numerous hearings

commencing on 21 January 1997 before the learned President, throughout which there has been a continuing issue (*inter alia*) as to the adequacy of the particulars of breaches relied on by the respondents and as to the relief which might be granted.

On 5 May 1997 the question of particulars was again canvassed in detail and orders made in respect thereof by the learned President, the matter being then adjourned *sine die* to enable the appellants to instruct new solicitors. This was because Mr Bartley had announced that the respondents proposed to call Mr Castiglione as a witness. On 22 May 1997 the matter was relisted for hearing on 14 July 1997 on its merits. Also on 22 May 1997 the appellants lodged notices of appeal against the decision of the learned President given on 5 May 1997, the specific matters appealed against being identified therein as follows—

- “1. On 5 May, 1997 His Honour the President refused the application by the Appellants (Respondents) that the Respondents’ (Applicants) application for relief pursuant to section 66 of the *Industrial Relations Act 1979 (WA)* [the Act] be dismissed under section 27 of the Act.
2. On 5 May, 1997 His Honour the President ordered that the particulars filed by the Respondents (Applicants), titled ‘A Consolidated Amended Application’, stamp-dated by the Western Australian Industrial Relations Commission [the Commission] 21 April, 1997 [the Consolidated Application], as amended by His Honour’s order of the same day stand as the particulars to be answered by the Appellants (Respondents) and that the matter be listed for hearing in the Commission at the earliest opportunity.
3. On 5 May, 1997 His Honour the President decided to continue to allow Mr John Bartley to act as agent for the Respondents (Applicants) over the objection of the Appellants (Respondents).”

The grounds of appeal are extensive and occupy five and a half foolscap size pages. I do not set them out. They are largely concerned with alleged deficiencies in the particulars of the respondents’ allegations.

On 23 May 1997 the learned President delivered his reasons for decision in respect of the hearing of 5 May 1997, setting out, *inter alia*, his rulings on the particulars of the respondents’ allegations against the appellant.

By notice of motion dated 4 June 1997 the appellants filed the present motion seeking an order that the proceedings before the learned President be stayed pending determination of its appeal. That application was supported by an affidavit of one Whitney, the senior vice-president of the Union, sworn on its behalf, and an affidavit of Mr Lindberg.

By her affidavit, Ms Whitney deposes that it is sworn in support of the motion “to stay the proceedings ... and the orders of his Honour the President dated 23 May 1997 pending the determination of this appeal”. Relevantly she deposed—

- “10. The Union has already incurred substantial legal costs in defending this action due to the Respondent (Applicants) inability to particularise their claim. If the Action is permitted to proceed on 14 July 1997 then further significant legal costs will be incurred. If the appeal is successful then these funds will have been expended unnecessarily. The Union will not be able to recover the costs from the Respondents even if successful as the Commission does not have the power to award costs (except in very limited circumstances).
11. The Union is unable to instruct its solicitors concerning preparation for a hearing because of the lack of particularity in the application as amended by the President.
12. Further, the Union has relied and continues to rely upon the undertaking by the Second Respondent (Applicant) Calhoun that if readmitted to the proceedings his case would be the same as the First Respondent (Applicant) Rosemary Bannon. The case put by the Respondent (Applicants) is uncertain and continues to change creating the prospect of new witnesses and substantial new evidence which the Union will not be able to rebut. Were the Court to find in favour of

the Appellants, the Action will be dismissed. In the alternative, the Appellant (Respondents) will know the case against them and be able to employ solicitors previously briefed in the matter.”

I am told by appellants’ counsel that the reference in para 12 thereof to “be able to employ solicitors previously briefed in this matter” is intended to draw into the claim in para 10 of that affidavit the incurring of “significant legal costs” and a claim that, because of the learned President’s refusal to strike out references to Mr Castiglione (a member of the firm of solicitors acting in the proceedings for the appellant), in particular numbered 10.13 appearing at pp4-5 of the respondents’ particulars, the appellants were compelled to brief new solicitors to continue the proceedings at some additional cost. As to this, I point out that there was no suggestion that Mr Shanahan, presently and since the first hearing appearing as counsel for the appellants and clearly well acquainted with the particulars of the matter to date, will not continue to so act in the proceedings.

Mr Lindberg deposes in his affidavit that it is sworn in support of a stay of both the proceedings and the orders of 23 May 1997. Relevantly he further deposes that he cannot understand either from the respondents’ application “as amended by the President” or Mr Bartley’s opening what precise allegations are being brought against him and cannot identify any act, matter or thing which might ground any adverse finding or a finding or *mala fides* or impropriety against him.

Inconsistently with those affidavits it was appellants’ counsel’s submission before me that the appellants’ application was not directed to a stay of the order, this being in the context of a discussion as to the meaning and effect of reg 6 under the Act, which provides “an appeal to this Court does not operate as a stay of proceedings being appealed unless the court or a Judge directs otherwise”. Counsel accepted as correct, on the authority of the decision of Kennedy J in *Burswood Resort (Management) Ltd v The Australian Liquor, Hospitality and Miscellaneous Workers Union & Ors*, unreported; IAC of WA; Library No 960257; 13 May 1996 and the cases there quoted, that there is a well established distinction between the staying of an order and the staying of proceedings under the order. In that case Kennedy J held that the application before him sought a stay of the decision and the order and so did not fall under reg 6. However, whilst regretting that he did not have the benefit of full argument thereon and noting that the stay sought was consented to, he expressed the opinion that the power to so order could be found in s87(3) of the Act. I am in the same situation as was Kennedy J to the extent that I have not had the benefit of full argument on the existence of such power. The application, however, is opposed. As Kennedy J pointed out, where the power so exists and the granting of a stay of an order is opposed, it is normally not ordered. In *Re Australian Nursing Federation: Ex parte State of Victoria & Anor* (1993) 112 ALR 177, McHugh J in the High Court said at 184-185—

“It is only in exceptional circumstances that this Court will make an order sterilising the operation of an order or award of the commission before the court has determined the validity of the order or award made by the commission”.

His Honour at 185 also pointed out that the power to order a stay of proceedings is “one that is to be used sparingly and with caution (*Re State Public Services Federation: Ex parte Kennett*, unreported (Dawson J); 15 September 1992)” and that ordinarily a strong case will need to be shown before a stay will be granted.

The particulars as filed and considered on 5 May 1997 revealed considerable confusion in their numbering to such an extent that, in making orders in respect thereof, the learned President referred to specific particulars by reference to the page number on which they respectively appeared, together with their respective paragraph numbers as appearing on that page. He made such orders after hearing submissions from Mr Bartley for the respondents and Mr Shanahan for the appellants. As filed, the particulars were clearly prepared without the benefit of legal or indeed skilled advice. Also filed and before the learned President were the appellants’ answers to the particulars. The learned President made orders striking out many of the particulars and varying others by striking out portions thereof. It is quite apparent from reading the transcript of that hearing that he had difficulty in confining the appel-

lants' agent's submissions (referred to by the learned President as his "opening") to matters relevant to the particulars as filed and as ruled upon in earlier hearings and that the agent had difficulty in understanding what was and in limiting himself to relevant material. The proceedings were marked by a series of understandable objections by appellants' counsel to the agents submissions. His Honour was faced with a most difficult task.

In the course of his "opening" the respondents' agent made submissions as to the part played by Mr Castiglione in advising the Union and in matters ancillary thereto. Appellants' counsel objected on the basis that the learned President had earlier ruled that no conflict of interest existed on the part of Mr Castiglione in acting for the Union and that the agent was reviving that allegation already ruled upon. The learned President however, advised that he understood the present allegation to go to the issue of the *mala fides* of the appellants, adding that whether, as a matter of evidence, it might go to that issue was another matter. That, on my reading of the transcript, was a fair appreciation of the respondents' agent's submissions. Although the agent continued to comment on an alleged conflict of interest, the learned President made clear that he could not see its relevance. It is a reasonable assumption on a reading of the transcript that the learned President ultimately determined to allow the respondents' agent to continue his submissions without continuously pulling him up when he introduced irrelevant or immaterial matters. That is not to say, however, and indeed, in my view, the transcripts make clear, that he accepted as relevant to the matters before him all the submissions so made.

In his comprehensive reasons of 23 May the learned President set out in abbreviated form the history of the respondents' application. Those reasons reveal (*inter alia*) that in January 1997 at a directions hearing he pointed out the need to amend and, in particular, to identify the rules said to be breached, adding that difficulty with proper identification of the allegations as to breach "has been a continuous problem" throughout and had delayed the proper and expeditious disposition of the proceedings. *Inter alia*, on that occasion he gave directions and made orders. He identified the alleged conflict of interest question and pointed out that having heard substantial submissions he had dismissed that allegation on 19 February 1992. He then dealt in some detail with the multiplicity of matters which had arisen at the various hearings since institution of the proceedings by the respondents. He identified the submissions and applications raised before him that day. He made the point that he was not sitting as a court of pleadings and drew attention to his obligation under s26(1)(a) to "act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms", to s27(1)(m) which empowers him to "correct amend or waive any error defect or irregularity, whether in substance or form" and to s26(2) which provides that in granting relief or redress under the Act he is not restricted to the specific claim made or to the subject matter of the claim. His reasons, in my opinion, make clear that he gave consideration to each of the particulars the subject of objection, struck out or required variation of those when it was clear that such was required, identified others that contained argumentative and evidentiary matters but in which, in his view, a relevant matter of complaint could be identified, pointing out that it was not appropriate at that time to sift out the material which should not appear therein and allowing them to stand. He held that in his view, there was "sufficient information in the particulars to enable the respondents to be aware what is the case which they are to answer". He went on to say "that is supplemented by the opening statement of Mr Bartley". Appellants' counsel suggests that that final sentence indicates additional unwritten particulars on which the respondents are permitted to rely. In my opinion, it suggests no more than that Mr Bartley's statement helps identify the issues which arise under the allowed particulars. His Honour refused the appellants' application that he dismiss the respondents' application which was based on the inadequacy of the particulars as filed and on alleged resulting denial of natural justice. He went on to say in respect of Mr Lindberg—

"It is not at this stage certain what Mr Lindberg's status in these proceedings is (including whether he adopts the

terms of the respondent organisation's answer and counterproposal, and perhaps there will be further submissions in relation to that in due course. In my view, that statement has to be read with the learned President's comments on the ground identified by him as para 5 on p1 of the consolidated application in which he refers to "material ... which might be perceived to relate to the alleged rule 28 by the respondent's organisation [the first appellant] through Mr Lindberg".

In my view, that statement suggests no more than that the learned President will entertain submissions after hearing the evidence as to the case against Mr Lindberg, having earlier held that the particular at paragraph 5 on page 1 in respect of the alleged breach of the Union's rule 30(c)(i), whilst containing argumentative and evidentiary matters, spells out clearly enough the breach relied upon and also confirms material "which might be perceived to relate to the alleged breach of rule 28" by the Union through Mr Lindberg.

The appellants had objected to the continuance of Mr Bartley acting as the respondents' agent in the matter on the basis that, with the respondents, he was a defendant to the defamation proceedings said to have been funded by the Union, which funding gave rise to the respondents' application. It was said that Mr Bartley consequently had a conflict of interest and that this gave rise to issues of fairness. This objection had been taken at the hearing on 14 April 1997 when the learned President overruled it, having regard to the stage to which the proceedings had then advanced and, were Mr Bartley to give evidence, subject to further submissions. On 15 April Mr Bartley undertook not to give evidence and the learned President determined that he could continue as agent.

In my opinion, the learned President's reasons reflect his desire to have the respondents' application heard and determined on its merits without further delay. He has recognised the difficulties which arise when one party is represented by a legal practitioner and the other not. He gave leave for the appellants to be represented by a legal practitioner as he could see "complex legal issues" arising on which he might receive assistance from that representation. It appears clear from his reasons that he proposes to determine any relevant lack of precision in the particulars at the hearing on the merits. It follows that if anything then emerges which can reasonably be said to take either appellant by surprise or to embarrass either one of them, it or they would be entitled to an adjournment on that issue.

In my opinion, it would not be just (see s87(3)) for a stay order to be made in these proceedings, whether of the order or of the proceedings. The issues have been largely identified. Those that are not can be identified or struck out (if appropriate so to do) when the respondents' case is concluded. It is clearly in the interests of all parties and consistent with the intent of the Act that the matter be heard on its merits as soon as possible. The appellants' matters of concern can be then adequately dealt with. As the learned President has pointed out, the provisions of s26(1)(a) and (2) and s27(n) weigh against an insistence on particularity in the detail of the claim. The appellants will still have their right of appeal should there be appellable error on the learned President's disposal of the matter on the hearing on the merits. I dismiss the application.

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 4 of 1997.

IN THE MATTER OF an appeal against orders made by his Honour the President of the Western Australian Industrial Relations Commission in Matter Numbered 1823 of 1996 dated the 5th day of May 1997.

and

In the matter of an application for a Stay of the operation of that order.

B E T W E E N

State School Teachers' Union of Western Australia and  
another  
Appellants

and

Rosemarie Bannon and another  
Respondents.

BEFORE—  
JUSTICE FRANKLYN.

24 June 1997.

*Order.*

HAVING heard Mr C P Shanahan (of Counsel) for the appellants, and Mr J C Bartley for the respondents, THE COURT HEREBY ORDERS that the application for a Stay be dismissed.

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

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Natasha Lee Hester

Appellant

and

M G McKay Pty Ltd T/A Odin Tavern.

Respondent

No 608 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER A R BEECH  
COMMISSIONER C B PARKS.

13 June 1997.

*Order.*

THIS matter having been due to come on for hearing before the Full Bench on the 13th day of June 1997, and the abovenamed appellant by her agent having by letters dated the 14th and 26th days of May 1997 and the said letters having been filed herein on the 15th and 27th days of May 1997 respectively, applied to adjourn the hearing and determination of the appeal herein sine die to enable the said appeal to be discontinued, and the respondent by its agent having consented by letter dated the 27th day of May 1997 to the adjournment, and the said letters having been filed herein, it is this day, the 13th day of June 1997, ordered, by consent, that the hearing and determination of appeal No 608 of 1997 be and is hereby adjourned sine die to enable the appeal herein to be discontinued.

By the Full Bench.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian David Yarwood

Appellant

and

Trevor David Hoffman

Respondent

No 369 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
COMMISSIONER P E SCOTT.

10 June 1997.

*Reasons for Decision.*

THE PRESIDENT: This is an appeal against the whole of the decision of the Commission, constituted by a single Commissioner, made on 30 January 1997 in application No 1117 of 1995.

By an application brought pursuant to s.29 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), the applicant claimed that he was unfairly dismissed by the respondent, and also sought orders for the payment of contractual benefits.

Having heard and determined the matter, the Commission at first instance, formal parts omitted, made the following orders and declarations—

"DECLARES—

THAT section 23(3)(d) of the said Act prohibits the Commission exercising its jurisdiction to deal with the claims of Ian David Yarwood that he was unfairly dismissed from an article clerkship and that he be paid compensation therefor.

ORDERS—

THAT Trevor David Hoffman pay to Ian David Yarwood the sum of \$120.66 within 21 days from the date of this order, such being benefits due the applicant under a former contract of employment between the said parties.

THAT the application for costs by Trevor David Hoffman be adjourned to a date to be fixed."

The appellant now appeals against that decision on the following grounds (see pages 3-7 of the appeal book (hereinafter referred to as "AB"))—

"1. The learned Commissioner erred in fact and law in his finding that there was a decision by The Legal Practice Board to end the article clerk relationship that was subject to a right of appeal under s 14C of the *Legal Practitioners Act 1893*.

1.1 The learned Commissioner made an error of fact, by implication, that the Appellant's articles were cancelled pursuant to s 14C(1) of the *Legal Practitioners Act 1893* against all the evidence including—

1.1.1 a reference in fact 84 of exhibit Y14 to the Appellant being able to transfer his articles again rather than a reference to the articles having been cancelled;

1.1.2 a reference in fact 86 of exhibit Y14 to the Respondent withdrawing his application to cancel the articles;

1.1.3 confirmation by Debbie Cole, Administrative Officer of The Legal Practice Board, by letter in exhibit Y14 that fact 86 in exhibit Y14 is correct ie. that the application to cancel articles was withdrawn;

1.1.4 evidence of the Respondent at page 1233 of the transcript of evidence that his application to cancel articles was withdrawn by him;

1.1.5 affidavit of the Respondent exhibit Y5 being made in support of application to cancel articles pursuant to s 14C of the *Legal Practitioners Act 1893* with a reference to that section on the face of the affidavit; and

- 1.1.6 evidence of the Appellant at page 171 of the transcript of evidence that facts 84 and 86 in exhibit Y14 are correct.
- 1.2 The learned Commissioner erred in law in finding that the Appellant (sic) had a right of appeal from a decision of The Legal Practice Board pursuant to s 14C(2) of the *Legal Practitioners Act 1893* because that right of appeal applies only to decisions of The Legal Practice Board to cancel articles pursuant to s 14C(1) of the *Legal Practitioners Act 1893* whereas the Appellant's articles were not cancelled pursuant to s 14C(1) of the *Legal Practitioners Act 1893* but rather The Legal Practice Board gave consent pursuant to s 11 of the *Legal Practitioners Act 1893* for an assignment of articles/fresh articles to Mr Murray Posa.
2. The learned Commissioner erred in law in holding that the *Legal Practitioners Act 1893* is framed on the premise that an articulated clerk is employed by the legal practitioner to whom the clerk is articulated.
- 2.1 Here the learned Commissioner failed to consider s 10 of the *Legal Practitioners Act 1893* which provides that a clerk may be—
- 2.1.1 articulated to the Crown Solicitor but employed by the Ministry of Justice;
- 2.1.2 articulated to the Director of Legal Aid but employed by the Legal Aid Commission,
- 2.1.3 articulated to the Australian Government Solicitor but employed by the Attorney General's Department;
- 2.1.4 articulated to the Regional General Counsel but employed by the Australian Securities Commission;
- 2.1.5 articulated to a practitioner who does not practice on his own account wher (sic) The Legal Practice Board has given its written permission;
- 2.1.6 articulated to a partner of a law firm but employed by the law firm; and
- 2.1.7 articulated to a legal practitioner such as the partner of a law firm without any requirement that he be employed by either that legal practitioner or the law firm.
- 2.2 Here the learned Commissioner failed to consider that the articles of clerkship between the Appellant and the Respondent were created by a Deed but otherwise no form is prescribed by the *Legal Practitioners Act 1893* or the *Barristers Board Rules 1949* for a Deed of Articles.
3. The learned Commissioner erred in law in holding that the Respondent's act of applying to cancel the articles did not constitute a dismissal by the Respondent. Here the learned Commissioner failed to consider that—
- 3.1 the concept of a "dismissal" has an expansive meaning and includes an employer's repudiatory breach of a contract of employment; and
- 3.2 a threatened cancellation of articles was not, in itself, a threat to terminate employment but was a breach of an essential term of the employment contract between the Appellant and the Respondent.
4. The learned Commissioner erred in law in failing to hold that the Respondent's conduct toward the Appellant prior to the application to cancel articles was itself a dismissal. Here the learned Commissioner failed to consider the evidence contained in exhibit Y5 and the facts contained in exhibit Y14 as referred to in the evidence of the Appellant and the Respondent.
5. The learned Commissioner erred in law in failing to hold that the Respondent's act of applying to cancel articles without giving the Appellant a hearing constituted an unfair dismissal.
6. The learned Commissioner erred in law and in fact in holding that the Repondent (sic) could not dismiss the Applicant because the articles involved employment. Here the learned Commissioner failed to consider—
- 6.1 the statement by Debbie Cole, Administrative Officer of The Legal Practice Board, in her letter being part of exhibit Y14 that the Legal Practice Board has no involvement in the employment of articulated clerks;
- 6.2 that rather than the articles involving employment the employment relationship subsumed the articles;
- 6.3 that the *Legal Practitioners Act 1893* provides no mechanism whereby an employed articulated clerk who is dismissed can seek compensation for the dismissal; and
- 6.4 the case of *Pax Damon Leach v Bruce Duncan Russell* (unreported IRCA No 367 of 1995) concerning an employed articulated clerk who was dismissed and whose articles were cancelled by The Legal Practice Board then went to the Industrial Relations Court of Australia in order to obtain a remedy for his unfair dismissal. In particular, the learned Commissioner failed to consider page 10 of that decision where Boon JR states that the employment relationship was terminated prior to the application to cancel the articles of Mr Leach.
7. The learned Commissioner erred in fact and law, for the reasons referred to above, in declaring that s 23(3)(d) of the *Industrial Relations Act 1979* prohibits the Commission exercising its jurisdiction to deal with the claims of the Appellant that he was unfairly dismissed from an articulated clerkship and that he be paid compensation therefor."

#### BACKGROUND

The respondent at first instance, and upon this appeal, Mr Trevor David Hoffman, was, at all material times, a legal practitioner as that is defined in the *Legal Practitioners Act 1893* (as amended).

The appellant, and applicant at first instance, Mr Ian David Hoffman, is now also a legal practitioner, but was, at the material times, an articulated law clerk. He alleged, before the Commission at first instance, that he was dismissed from his employment by Mr Hoffman after serving nine months of his article of clerkship with that gentleman. The appellant claimed that the dismissal was unfair, and sought an award of compensation against the respondent. He also sought an order for payment of contractual benefits.

The respondent asserted that the parties were not parties to a contract of employment and that there was therefore no industrial matter before the Commission.

Mr Yarwood relied then and now on a submission that there was a distinction between the relationship of articulated clerk and master and employer and employee, and that, notwithstanding that the parties may be bound by the Deed of Articles between them, a related contract of employment may be terminated and vice versa.

There seems to be no dispute as to many of the facts in these proceedings.

Following discussions, Mr Hoffman made a written offer of engagement to Mr Yarwood (see exhibit Y6—1Y2) by letter dated 21 September 1994, offering a salary and other conditions of employment. On 21 November 1994, the parties commenced an employer/employee relationship on the basis of that letter.

On 22 December 1994, the parties executed a Deed of Articles of Clerkship registered by the Legal Practice Board to operate for a period of 12 months from that date in the terms of exhibit Y18.

In or about the third week of September 1995, the appellant and respondent viewed their "working relationship" as having ended. That followed an application to the Legal Practice Board to cancel the articles of clerkship between them. That application by the respondent was withdrawn. The articles of clerkship were not cancelled, but were transferred to another practitioner.

### FINDINGS OF THE COMMISSION AT FIRST INSTANCE

The Commission at first instance made a number of relevant findings—

- (1) The relationship was that of employer/employee.
- (2) The matter before the Commission was an industrial matter.
- (3) The Legal Practitioners Act 1893 (as amended) and the articles of clerkship entered upon pursuant to that statute indicated that the contract was one of employment.
- (4) Neither the clerk nor the practitioner is empowered to unilaterally determine the relationship created by the articles.
- (5) That prerogative lies with the Board, but subject to review by the Full Court of Western Australia.
- (6) Therefore, Mr Yarwood could not terminate his employment, and Mr Hoffman could not dismiss him from employment.
- (7) The act of applying to cancel the articles of clerkship did not constitute a dismissal.
- (8) The primary remedy for an unfair dismissal, namely reinstatement, was not within the power of the Commission.
- (9) The Legal Practice Board subsequently ended the term of articles of Mr Yarwood with Mr Hoffman, and thereby terminated the employment relationship. That decision by the Board was subject to a right of appeal under s.14C of the Legal Practitioners Act 1893 (as amended), which, by the operation of s.23(3)(d) of the Act, precluded the Commission from the exercise of jurisdiction in the matter (see page 27 (AB)).

The Commission at first instance therefore found that he was precluded from the exercise of jurisdiction in relation to the alleged unfair dismissal.

### ISSUES AND CONCLUSIONS

Mr Yarwood's submissions included a number of submissions as to fact, and many of these are summarised in the grounds of appeal (see pages 3-7 (AB)). No grounds of appeal attack the order for payment of contractual benefits claimed.

This application came before the Commission at first instance pursuant to s.23 of the Act. S.23(3)(d) expressly prohibits the Commission from doing this—

- “(d) regulate the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee or any one of a class of employees if there is provision, however expressed, by or under any other Act for or in relation to a matter of that kind and there is provision, however expressed, by or under that other Act for an appeal in a matter of that kind;”

The finding that that sub-section operated depends upon a consideration of some of the provisions of the Legal Practitioners Act 1893 (as amended). The terms “articled clerk” or “articles” are not defined in that Act. Part II of that Act deals with articled clerks and articles.

Interestingly, s.13(1) of the Legal Practitioners Act 1893 (as amended) prohibits an articled clerk being engaged in any employment other than as a bona fide articled clerk. In special circumstances, the Board may decide that this can occur.

Part II of the Legal Practitioners Act 1893 (as amended) regulates the employment of articled clerks. The Part prescribes the conditions for the articling of clerks (see s.9). It prescribes who shall take, have or retain an articled clerk (see s.10). S.11 prescribes for the assignment of articles to a different practitioner or the commencement of “fresh articles”. That was the mechanism used here when Mr Yarwood's articles of clerkship ceased. S.12 prescribes that articles of clerkship and every assignment of the same shall be registered. S.14A, s.14B and s.14 C were relied upon or referred to in submissions before us.

Firstly, s.14A prescribes—

- “No service under articles shall be valid unless such service is performed in accordance with this Act and the rules made thereunder.”

It is to be noted that the provision refers to “service” Contracts of employment are contracts of service.

S.14B prescribes—

- “If an articled clerk shall for a period of one month cease to perform valid service under the articles, the practitioner to whom such clerk is articled shall forthwith make a written report to the Board thereon.”

Clearly, the practitioner does that because it is not a matter in relation to which he/she can take action.

S.14C is then the most important provision. S.14C reads as follows—

- “(1) Upon the application of an articled clerk, or of the practitioner to whom a clerk is articled, the Board may cancel the articles of such clerk upon such terms as the Board may see fit.
- (2) There shall be a right of appeal to the Full Court of Western Australia by any person aggrieved by a decision of the Board under this section.”

That section is important because it provides the only means by which articles of clerkship can be terminated, the word cancel being a form of termination. Secondly, it provides an opportunity for a practitioner or an articled clerk aggrieved by a decision of the Board to appeal to the Full Court of the Supreme Court.

The finding of the Commission at first instance that the relationship was that of an employer/employee between the principal and the articled clerk was not challenged upon appeal. The articles of clerkship are plainly an employer/employee relationship. One has only to have regard to the Deed of Articles (exhibit Y18) with the prescriptions for service and obedience to lawful directions, and the further evidence of an agreed salary and other terms of conditions of employment.

Under the Act, there can only be termination of the contract of employment by cancellation by the Board, or by the Board registering an assignment of articles or registering fresh articles. It is noteworthy that there is no provision in the Deed of Articles which enables the principal to terminate the articles of clerkship. That is plainly because there is no power in the employer so to do.

- “... the primary meaning of the verb “to cancel” when used in reference to a legal document is to revoke or repeal, but I do not doubt that it may often be used in the sense of “to annul” or “to expunge”. This is, I believe, the view taken by the Oxford English Dictionary which defines the verb in its figurative sense to mean “to annul, repeal, render void”.”

(See per Jackson SPJ in Tonkin and Others v Brand and Others [1962] WAR 2 at 17-18 (SC)).

- “It appears to me that the normal meaning of “to cancel” is to make void as from the date of cancellation, and not to make void ab initio, but that the word may sometimes bear the latter meaning.”

(See per Hale J in Tonkin and Others v Brand and Others (SC) (op cit) at page 22).

Whatever the meaning is in this case, there has not been a dismissal, if a cancellation occurs. As a matter of fact, there was no cancellation, but there was either an assignment of articles to a new principal or the creation of fresh articles with the consent of the Board.

The articles of clerkship, which is also a contract of service, and conceded to be so by Mr Yarwood, can only be terminated by cancellation by the Board, or by the Board registering an assignment of articles or registering fresh articles.

In either event, that would mark the end of his/her employment as an articled clerk by the first practitioner.

Part II of the Legal Practitioners Act 1893 (as amended) clearly demonstrates that that Act contains in its provisions for termination of employment, and, to some extent, the regulation of the duties in employment of articled clerks.

The question to be determined is whether the Commission at first instance erred in deciding that there was no jurisdiction to deal with the question of unfair dismissal, having regard to the operation of s.23(3)(d) of the Act.

The Full Bench was referred to the decision of the Industrial Appeal Court in WA Government Railways Commission v

Australian Railways Union 70 WAIG 1283 (IAC) where Their Honours considered s.23(3)(d) and its operation. Brinsden J, with whom Rowland J agreed, (and Kennedy J separately), held that s.23(3)(d) only excluded the jurisdiction of the Commission if "the other Act" (referred to in s.23(3)(d)) deals both with the provision for one of the matters expressed in the subsection and also provides for an appeal in respect of such a matter. His Honour said that he would need to find in "the other Act" not only a provision for termination of an employee as contained in s.73 of the Act, but also for an appeal in respect of such termination.

Some reliance was placed by the appellant on the notion that a Deed of Articles of Clerkship is evidence of the existence, in fact, of two contracts involved in the relationship between the articulated clerk and the employer, one being that of a contract of service or employment, the second being that of the articles of clerkship. The logical conclusion to that submission would be that the articles of clerkship would remain on foot, whilst the contract of employment was terminated, and vice versa. That seems to have been a proposition advanced in Bahemia v Logan (unreported) (a decision of the Legal Practice Board of this State, which was cited to us), by Counsel for the complainant. However, I see no merit in such a submission.

Articles of clerkship is a contract of service contained in a Deed, or at least it was in this case. There could not be a relationship which existed separate from the contract. The Act certainly does not, in its plain meaning, give rise to such a view. Articles of clerkship is a contract of service regulated in a number of respects by the Legal Practitioners 1893 (as amended). It comes into being by the registration of the Deed under the statute and is otherwise regulated in some important respects by the statute. The contract of service may be terminated by assignment to another principal/employer. It may be terminated by consent and replaced by a fresh contract, that is fresh articles of clerkship. It cannot be unilaterally terminated by either party because the contract remains on foot until s.14C of the Legal Practitioners Act 1893 (as amended) operates. If articles of clerkship are cancelled, whether on complaint of the principal or for other reasons, the relationship brought into being by and depending on the contract contained in the Deed of Articles is terminated. Articles of clerkship are plainly a contract of service regulated by a statute. There is no provision, and, as a matter of law, no right of dismissal as such. The statute provides the only means by which the contract is terminated, that is by cancellation upon application, whether cancellation renders the contract void ab initio or only as at the date of cancellation. However, put briefly, the Legal Practitioners Act 1893 (as amended) ("the other Act" for the purposes of s.23(3)(d) of the Act) contains provisions which regulate the termination of the employment of an employee, in this case the appellant. In any event, there was no cancellation of the articles of clerkship in this case. There was either an assignment of articles or a fresh articles of clerkship entered into, which can only follow a termination by consent. The Commission at first instance, insofar as it might have attributed an end to the employment relationship to a cancellation, does not seem to have accurately stated what occurred (see page 27 (AB)).

As to the question of dismissal, there would seem to me to be no provision for dismissal in the contract or under the Act, and there is likewise no provision for reinstatement, as the Commission at first instance observed.

In any event, I am not persuaded that the application to cancel the contract, later withdrawn, constituted a dismissal as that is defined in Metropolitan (Perth) Passenger Transport Trust v Gersdorf 61 WAIG 611 (IAC). Be that as it may, however, "the other Act", namely the Legal Practitioners Act 1893 (as amended), regulates the termination of the contract, whether it be for misconduct or for other reasons, and is the only instrument whereby the contract can be terminated, whether by cancellation, fresh articles or the assignment of articles of clerkship.

Further, there is a right of appeal against termination by cancellation to the Full Court. Thus, the two conditions which Brinsden J looked for in "the other Act" in WA Government Railways Commission v Australian Railways Union (IAC) (op cit) exist in the Legal Practitioners Act 1893 (as amended).

S.23(3)(d) of the Act, on the authority of that case, therefore applies.

The Commission could not therefore exercise jurisdiction under s.23 and s.29 of the Act in this matter in relation to any alleged unfair dismissal.

I have interpreted the provisions of each Act by examining the relevant sections in the context of the whole of each Act, giving the words their ordinary and natural meaning. To do so has not led to ambiguity or absurdity or to attributing a meaning to the appropriate provisions, which is repugnant to or inconsistent with the rest of the Act in each case (see Australian Boot Trade Employees' Federation v Whybrow and Co and Others [1910] 11 CLR 311 at 341-342 (HC), but see, too, Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation (1981) 35 ALR 151 at 169-170 (HC) per Mason and Wilson JJ).

For those reasons, the Commission at first instance rightly decided that it was without jurisdiction and did not err.

I would therefore dismiss the appeal.

CHIEF COMMISSIONER COLEMAN: I have had the benefit of reading the draft of the Hon President's reasons for decision. I agree with those reasons and with the order proposed.

COMMISSIONER SCOTT: I agree with the reasons for decision of His Honour, the President, and the order he proposes, and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Order accordingly.

Appearances: Mr I D Yarwood on his own behalf as appellant.

Mr T C Crossley, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ian David Yarwood

Appellant

and

Trevor David Hoffman

Respondent

No 369 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY

CHIEF COMMISSIONER W S COLEMAN

COMMISSIONER P E SCOTT.

10 June 1997.

*Order.*

THIS matter having come on for hearing before the Full Bench on the 28th day of April 1997, and having heard Mr I D Yarwood on his own behalf as appellant and Mr T C Crossley, as agent, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 10th day of June 1997 wherein it was found that the appeal should be dismissed, it is this day, the 10th day of June 1997, ordered that appeal No 369 of 1997 be and is hereby dismissed.

By the Full Bench.

(Sgd.) P. J. SHARKEY,

President.

[L.S.]

## FULL BENCH— Appeals against decision of Industrial Magistrate—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Commissioner of Health  
(Appellant)

and

The Civil Service Association of WA Inc  
(Respondent).

No. 535 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.  
SENIOR COMMISSIONER G L FIELDING.  
COMMISSIONER R N GEORGE.

24 June 1997.

### *Reasons for Decision.*

THE PRESIDENT: This is an appeal by the appellant employer against a decision of the Industrial Magistrate given on 21 February 1997 in complaint No 173 of 1996 and brought under s.84 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

The appeal is made on the following grounds—

#### "Schedule.

1. The learned Magistrate erred in law in failing to uphold the submission of the Appellant (Defendant) that there was no case to answer.

#### Particulars

- (a) The complaint before the Court alleged that the Defendant had, on 22 September 1996, or alternatively, during the period 13 September to 22 September 1996, contravened clause 13(2) of the *Public Service Award 1992* ("the Award");
  - (b) Clause 13(2) of the Award provides that: "A fortnight's salary shall be computed by dividing the annual salary by 313 and multiplying the result by 12";
  - (c) Nevertheless the complaint alleged in its terms that the Defendant "failed to pay its employee, Lawrence W Emery, his fortnightly salary as required by the provisions of Clause 13(2) Payment of Salaries for the pay period, number 59, 13/09/96—22/09/96";
  - (d) The evidence substantially relied upon by the Complainant concerned events which occurred in the period 23 September to 26 September inclusive, a period beyond that the subject of the allegation; and
  - (e) The nature of the evidence referred to at (d) above was not capable of establishing a breach of clause 13(2) of the Award, being evidence unconnected with the computation of a fortnight's salary.
2. The learned Magistrate erred in fact in finding that the Complainant's member, Mr Emery, had been underpaid his salary, in that such a finding was against the evidence or, in the alternative, against the weight of the evidence.

#### Particulars

- (a) Although Mr Emery initially stated in evidence in chief that he had not been paid for the period 23 September to 26 September 1996, he acknowledged under cross-examination that he had in fact been paid for that period. That acknowledgment was not undermined by anything said by Mr Emery in re-examination;
- (b) Assertions by the Complainant's agent, Ms Bajrovic, from the bar table to the effect that

Mr Emery had been underpaid (relevantly or at all) were unsupported by the evidence; and

- (c) Ultimately, the Complainant's agent, Mr Rea, conceded that there had been no underpayment;
3. The learned Magistrate erred in law and in fact in determining on the balance of probabilities that the Appellant had breached the Award as charged, in that—
    - (a) The evidence led was incapable of establishing a breach of clause 13(2), or in the alternative was insufficiently cogent as to justify such a finding. (The Appellant repeats particulars 1(a) to (e));
    - (b) The Magistrate's determination was based on an erroneous finding of fact, namely that Mr Emery had been underpaid his salary. (The Appellant repeats particulars 2(a) to (c));
    - (c) The Magistrate failed to have any, or any proper, regard to the fact that the period of real dispute between the parties was not a period in which the Complainant had alleged that the Award was breached; and
    - (d) The Magistrate failed to have any, or any proper, regard to the fact that the nature of the Complainant's grievance, as disclosed by the evidence, was not a matter within the scope of clause 13(2) of the Award.
  4. The learned Magistrate erred in law and acted in excess of jurisdiction in ordering pursuant to section 83(4) of the *Industrial Relations Act 1979* that the Appellant pay to Mr Emery an amount of \$710.08, said to represent an underpayment of salary, in that—
    - (a) The finding that there had been an underpayment of salary was against the evidence or, in the alternative, against the weight of the evidence. (The Appellant repeats particulars 2(a) to (c)); and
    - (b) There was no other jurisdictional basis for such an order to be made.
  5. The learned Magistrate erred in law in imposing pursuant to section 83(2)(a) of the Act a penalty of \$200 on the Appellant in that he—
    - (a) placed weight on an erroneous finding of fact, namely that Mr Emery had been underpaid his salary. (The Appellant repeats particulars 2(a) to (c));
    - (b) failed to have any, or any proper, regard to matters raised on behalf of the Appellant in mitigation, namely—
      - (i) the basis for the decision of the Albany Regional Hospital to realign certain salary periods;
      - (ii) attempts by the Appellant and his representatives to resolve the grievance amicably and without resort to litigation;
      - (iii) the lack of any culpability or blameworthiness on the Appellant's part; and
    - (c) placed weight, or in the alternative excessive weight, on considerations of punishment and/or deterrence when such considerations were inappropriate to the circumstances of the case."

#### BACKGROUND

By complaint made on 20 November 1996, the respondent organisation of employees complained that on 22 September 1996, at Albany, the Health Department of Western Australia (presumably the Commissioner of Health), being a party bound by Award No A 4 of 1989, the *Public Service Award 1992* (hereinafter referred to as "the award"), committed a breach of that award in that it "failed to pay its employee, Lawrence W. Emery, his fortnightly salary as required by the provisions of Clause 13(2) Payment of Salaries for the pay period, number 59, 13/09/96—22/09/96", contrary to clause 13(2) of the award. In the complaint, the complainant also claimed interest.

Clause 13(1) of the award reads as follows—

“(1) Salaries shall be paid fortnightly but, where the usual pay day falls on a Public Service holiday, payment shall be made on the previous working day.”

Clause 13(2) of the award reads as follows—

“(2) A fortnight’s salary shall be computed by dividing the annual salary by 313 and multiplying the result by 12.”

On 21 February 1997, the complaint was heard in the Industrial Magistrate’s Court at Perth, and His Worship, having found the complaint proven, imposed a penalty of \$200.00 pursuant to s.83(2)(a) of the Act, and ordered that the appellant pay to the respondent’s member, Mr Emery, an amount of \$710.08 which he found had been underpaid, together with costs of \$400.00 ordered to be paid to the complainant.

When the matter came on for hearing there were a number of facts agreed between the parties (see pages 47–48 of the appeal book (hereinafter referred to as “AB”)) including—

- (1) That Mr Emery was an employee of the defendant and was so employed during the period 13 September 1996 to 22 September 1996.
  - (2) That he performed duties as a Senior Social Worker, classified at level 5.4 under the terms of the award.
  - (3) That the Commissioner of Health (named as the Health Department of Western Australia after an amendment to the complaint), the defendant, was bound by the award during the relevant period, and that Mr Emery was a part-time employee, except for the period 13 September 1996 to 22 September 1996 when he was employed on a full-time basis, full-time employment being 37.5 hours per week or 75 hours per fortnight.
  - (4) That Mr Emery had received payment for pay period 58, namely 10 working days, on 12 September 1996.
  - (5) That the Health Department of Western Australia (CSA) Industrial Agreement 1996 (hereinafter referred to as “the industrial agreement”) also applied to Mr Emery’s employment with the defendant.
  - (6) That the minimum fortnightly salary payable to Mr Emery was the gross amount of \$1775.20.
  - (7) That for the relevant period, the minimum rate of payment for Mr Emery under the award was \$23.6693 per hour gross.
  - (8) That for the pay period identified as number 59, which covered hours worked between 13 September 1996 to 22 September 1996 inclusive, Mr Emery received payment for 45 hours, being a gross sum of \$1065.12. He was also paid a separate sum of \$31.32 being backpay by way of two percent pay increase pursuant to an industrial agreement.
- Pay period 59 included the period between 13 September 1996 and 22 September 1996, and he received payment for that period on 26 September 1996 (see page 13 (AB)).
- (9) That he attended work for the period 13 September 1996 to 22 September 1996. He was paid for pay period 59 on 26 September 1996 (see page 48 (AB)).

In addition, when the matter was heard, evidence was given by Mr Emery. His was the only oral evidence adduced during the hearing.

There was a difference in actual rate between those periods, pay periods 58 and 59, being \$23.2051 and \$23.6693 respectively. This was due to a pay rise having been granted. The second difference was that there was a reduction in the base hours paid from 75 hours to 45 hours. There was a further difference in that he was actually paid four days later in the second instance, that is relating to pay period 59. Mr Emery gave evidence that he received payment for 75 hours during the next period, pay period 60; that is from 27 September 1996 to 10 October 1996. That fact does not seem to have been in issue.

Mr Emery gave evidence that he did not in any way agree to the withholding of pay for four days and that he expressed that view to his employer. That evidence was not contradicted.

Three pay slips were tendered (see pages 49, 50 and 51 (AB)).

Mr Emery said at first instance in evidence that pay period 59 ended on 22 September 1996, a Sunday. He understood that period to span 10 days, and of those 10 days 10 were working days. However, he said, the pay period indicated on the slip from 13 September 1996 to 22 September 1996 referred to six working days only; at that point there was a change introduced in the payment of salaries. Mr Emery gave evidence that he received the payment for pay period 59 on Thursday, 26 September 1996, but it was for a pay period which had ended on Sunday, 22 September 1996, as spelt out on the pay slip (exhibited as part of exhibit 2).

The next payment was received on Thursday, 10 October 1996 for a period that commenced on Monday, 23 October 1996 (in fact 23 September 1996) and ended on Sunday, 6 October 1996. That encompassed 14 days in total.

It is quite clear from his evidence that Mr Emery worked from Monday, 23 September to Thursday, 26 September 1996 inclusive, and if there had been no change to the system he would have been paid for those days within the pay packet received on Thursday, 26 September 1996. There was a new pay cycle of six days created. Payment in full for fortnightly periods recommenced on 10 October 1996. However, the wages due in respect of those days was then paid in the subsequent pay cycle, being pay period 60 paid on 10 October 1996. He was paid for the 30 hours represented by the working days 23 September 1996 to 26 September 1996 on 10 October 1996, and, in fact, for the months of August, September and October 1996 had been paid for every day worked. That was his evidence.

Mr Emery’s evidence was also, however, that the pay for the period 23 September 1996 to 26 September 1996 had still been withheld as of the date of hearing.

However, he did also concede in evidence that he had received payment for those four days on Thursday, 10 October 1996.

In re-examination, he said—

“I’d been used to getting fortnightly payments on a Thursday, which includes a full 10-day pay cycle. On the 26th of September, after having worked a full 10-day cycle, I receive payment for only 45 hours; and that, in effect, was 4 days’ short for that particular fortnight.”

There is no doubt on the evidence that in that fortnight he was not paid for four days work. It was an agreed fact at first instance.

Mr Emery said in evidence that he expected that for every 10 day period in which he worked he would get payment for 75 hours, and that in the whole annual year he would, in fact, get his full entitlement to the hours worked in that particular year. His evidence was that that did not occur in 1996 because in September 1996 he was paid four days less than he was normally entitled to.

Mr Rea, for the complainant, expressly argued at first instance (see page 31 (AB)) that for each and every day he worked Mr Emery had or would receive payment. The problem was, however, that he would effectively be paid four days late.

#### NO CASE TO ANSWER

At the end of that evidence and therefore the complainant’s case, Mr Hooker, for the respondent, submitted that there was no case to answer.

His Worship, having considered submissions, then delivered his decision in which he decided that—

- (1) The issue of an underpayment was irrelevant.
- (2) There was clearly a failure to comply with clause 13(2) of the award which related back to clause 13(1) and provided a formula by which a calculation was made in clause 13(2), because clause 13(1) required that the employee be paid fortnightly.
- (3) That Mr Emery was not paid for a fortnightly period between 13 September 1996 and 22 September 1996.
- (4) That Mr Emery was paid for six working days over a 10 day period for the relevant pay period 59.
- (5) That Mr Emery continued to receive his payment each fortnight, but in the case of the pay period 59 it was not a fortnight’s salary.

- (6) That Mr Emery's salary for pay period 59 was not computed on a fortnightly basis and was not in accordance with clause 13(2) of the award.

Therefore, there was a prima facie case which went to show a failure to comply with the provisions of clause 13(2) of the award.

There were then final submissions. There was a period spanning 10 days. Mr Emery was paid for those days, but not when he expected to be paid, but later. The complainant's case was that there was a breach of clause 13(2) of the award, because in that period of 10 days, the subject of the allegation, there had been no proper computation of a fortnight's salary.

It was submitted that it was illogical to assert that clause 13(2) had been breached when the period, the "focus" of the charge, was a period of 10 days, and there was no doubt that for every working day within that period Mr Emery had been paid.

What happened after 22 September 1996, it was submitted, was of no real moment in establishing whether a breach had been proved. It was submitted that there was no wrongful computation contrary to clause 13(2) of the award.

#### DECISION OF HIS WORSHIP

His Worship decided as follows. His reasons were extempore and brief and can best be identified if I refer to them hereunder.

The employee was paid on 12 September 1996 for the fortnightly period ending 12 September 1996. He then worked 75 hours for the fortnightly period ending 26 September 1996. However, he was not paid for that fortnightly period then. He was only paid for the period 13 September 1996 to 22 September 1996 inclusive, which was less than a fortnight.

The employee was not paid therefore for the period 23 September 1996 to 26 September 1996 inclusive within that fortnightly period previously referred to.

What happened subsequently as to the payment of the employee was irrelevant. To a very large extent, the defendant's argument was based on the form of the complaint and that it therefore did not disclose a breach. However, the pith and substance of the complaint remains the same, namely that the defendant failed to pay the employee his fortnightly salary for pay period 59.

Clause 13(2) of the award could not be looked at in isolation and it was implicit that one had to look to clause 13(1).

It was therefore clear that the salary should be paid fortnightly, and, when the salary was paid fortnightly, it had to be as computed in clause 13(2). Thus, a fortnight's salary was not paid to the employee for the fortnight ending 26 September 1996 and the complaint was made out.

#### CONCLUSION

The substance of the case for the appellant was really that Mr Emery had not been underpaid his salary, that the evidence led was incapable of establishing a breach of clause 13(2), and that the evidence relied upon concerned events which occurred in the period 23 September 1996 to 26 September 1996 inclusive, a period beyond that the subject of the complaint. The complaint was, in fact, that Mr Emery was not paid an amount properly computed, if one looks at the words of the complaint, for the appropriate fortnightly period. In other words, he was not paid what was due to him.

There was very little dispute about the evidence. The pay period 59 was unilaterally truncated by the respondent to the period 13 September 1996 to 22 September 1996, because only six days work was paid for, although a fortnight's pay had been earned. For the period 22 September 1996 to 26 September 1996, which was the remainder of a 75 hour fortnight worked by Mr Emery, Mr Emery was not paid what was due. He was paid for only six days. He had been paid for the pay period of a fortnight ending on 12 September 1996 (see page 49 (AB)). He was, on his own evidence, paid the balance of his pay due for pay period 59 in pay period 60.

Whether he was, however, paid, therefore, all that he was required to be paid for pay period 60 is a question which it is not necessary to answer here.

I interpret this award by reading clause 13 in its entirety and in the context of the entire award. Awards are to be construed

in the same manner as other legal documents (see Norwest Beef Industries Ltd and Derby Meat Processing Co Ltd v AMIEU 64 WAIG 2124 (IAC)).

If one gives the words of clause 13(1), and, so far as is necessary, clause 13(2), their ordinary natural meaning, no ambiguity or absurdity thereby arises. Further, to interpret clause 13(1) and (2) by giving the words in those subclauses their natural meaning, does not place those provisions at odds with the evident purpose of the award (see AEEFEU v Minister for Health 71 WAIG 2253 at 2257(IAC) per Anderson J and see Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation [1980-1981] 147 CLR 297 (HC)).

Clause 13(1) of the award requires that an employee be paid fortnightly. However, what he is required to be paid is that salary which is computed in accordance with clause 13(2). In that Mr Emery was not paid what he had earned in a fortnight's work from the last pay period at the end of the fortnight he was not paid "fortnightly". Further, his salary was not computed for the fortnight which should have been covered by pay period 59. The amount to which he was entitled was not properly computed in accordance with clause 13(2) of the award. In that sense, he was, on 26 September 1996, underpaid in that he was not paid what he was entitled to in accordance with the award for that fortnight. There were monies owing to him at the end of a fortnight's work (pay period 59), calculated from the end of the preceding fortnight worked and paid for (pay period 58).

On the evidence, of course, that was not an underpayment which could be ordered to be paid because the amount of the underpayment was paid in the next pay period, pay period 60, on the evidence. Whether, of course, there was then an underpayment in that fortnight is a matter which the Full Bench does not have to decide here.

The breach alleged by the complaint was alleged to have been committed on 22 September 1996, to have been a breach of clause 13(2) only, and to have been a failure to pay the fortnightly salary as required by clause 13(2) for the period 13 September 1996 to 22 September 1996. In fact, as was clear from the evidence, the breach alleged related to an alleged fortnightly period 13 September 1996 to 26 September 1996. The complaint was that, for that period, the amount paid was not computed in accordance with clause 13(2). Quite plainly, there was a failure to properly compute the payment made for that period because the amount paid was not computed on the basis of clause 13(2) but on a period of six not 14 days.

The Full Bench raised with Mr Hooker, for the appellant, the operation of s.46 of the Justices Act 1902 (as amended). Under s.81CA of the Act, the Industrial Magistrate's Court, exercising general jurisdiction which that court does under s.83, this being a s.83 matter, does not exercise the powers or observe the practice and procedure provided for by the Local Courts Act 1904 (as amended), as if the proceedings were an action within the meaning of that Act. That is because it is prescribed otherwise under this Act, and under the Industrial Relations (Industrial Magistrates' Courts) Regulations 1980 (as amended), which applied to these proceedings and still apply. Under regulation 3 of the Industrial Relations (Industrial Magistrates' Courts) Regulations 1980 (as amended), proceedings before an Industrial Magistrate relating to the hearing and making of a complaint are with such modifications as circumstances require those prescribed by the Justices Act 1902 (as amended).

Regulation 3(1) reads as follows—

- "(1) Subject to the Act and to these regulations, proceedings before an industrial magistrate's court and in particular the making of a complaint, the issue of a summons, the summoning of witnesses, the fees to be paid relating to any matter, the taking of evidence, the hearing and determination of a complaint and the costs and allowances to parties and witnesses shall be, with such modifications as circumstances require, those prescribed by the *Justices Act 1902*, in respect of proceedings before justices for a simple offence."

The provisions of regulation 3(1) are to be read subject to the Act. The Act provides that the Local Court powers, practices and procedures apply except as otherwise prescribed by or under the Act "or another law". Regulation 3(1), whilst prescribing for complaints, is another law. Since the Justices Act

1902 (as amended) applies, then s.46 applies. S.46 reads as follows—

“No objection shall be taken or allowed to any complaint, or to any summons or warrant to apprehend a defendant issued upon any complaint, for any alleged defect therein, in substance or in form, or for any variance between it and the evidence in support thereof, and any such variance shall be amended by order of the justices at the hearing.”

The fact that the wrong dates were alleged (if they were wrong) is not fatal to the complaint (see *Carew v Carone* (1991) 5 WAR 1 (SC of WA) per Murray J and see also *Kalgoorlie Regional Traffic Council v Fostinelli* [1974] WAR 3 (SC) per Hale J).

Further, although a Magistrate should not amend a charge unless a party applies to him/her to do so, and should not assume even part of the function of the prosecution, he/she has jurisdiction to amend on his/her own motion (see *Higgon v O’Dea* [1962] WAR 140 (FC)).

An amendment, too, can be made at any time up to the giving of the final decision (see *Mitchell v Myers* (1955) 57 WALR 49 and *Higgon v O’Dea* (op cit) (FC)). Obviously, an amendment of the date was accepted by His Worship in his reasons. Further, the fact that no such amendment was formally entered on the records did not invalidate the finding that the charge was proven (see *Higgon v O’Dea* (op cit) (FC)). The Industrial Magistrate relied on s.46 of the Justices Act 1902 (as amended) and implicitly the pith and substance test referred to in *Surman v SA Police* (1996) 65 SASR 421 (SC). To find as he did, did not create a new offence. The appeal, in those respects, are therefore not made out.

#### UNDERPAYMENT

Because of the evidence of Mr Emery and of the submission of Mr Rea to which I have referred above, it could not be rightly found that there was an underpayment for the period relevant to the complaint at the time when the complaint was heard. The Industrial Magistrate erred in so ordering. However, there was certainly an underpayment on 26 September 1996.

#### PENALTY

I now turn to the question of penalty. The maximum imposable under s.83 of the Act is \$1000.00. There was no evidence of any previous penalty having been imposed for a similar breach or for any breach. However, an amount of \$710.08 was not paid which was required to be paid.

As to the penalty, His Worship found that the breach was not a technical breach of the award. He took account of the fact that a number of conferences took place in an effort to resolve the matter. However, he had regard to what he termed “a significant fact”, namely that, on the material date, the appellant failed to pay the employee and that the amount was held over “and continues to be held over”. In fact, on the evidence, it was not “held over” on a continuing basis, as I have observed.

However, as the learned Industrial Magistrate correctly observed—

“It seems to me to be an approach which really has no regard for the employee’s entitlement to be paid on time; and, clearly, the employee was not paid on the material date.”

The employee was therefore out of pocket until the end of the ensuing pay period.

For those reasons, His Worship decided, too, not to impose a caution. The defendant had argued, as His Worship observed, that it was submitted that there had been a technical breach of the award, that the employee was not out of pocket, and that the reason why the breach occurred was not for any other reason than to remove inefficiencies in the calculation of payments made, and also, so it was said, so that the employees would benefit from the change. His Worship took that into account, but he clearly placed weight on the employee being “out of pocket”.

It was submitted that the learned Industrial Magistrate failed to have any or proper regard to matters raised on behalf of the appellant in mitigation, namely—

- (a) the basis for the decision of the Albany Regional Hospital to realign certain salary periods;

- (b) attempts by the appellant and his representatives to resolve the grievance amicably and without resort to litigation;
- (c) the lack of any culpability or blameworthiness on the appellant’s part; and
- (d) placed weight, or, in the alternative, excessive weight on considerations of punishment and/or deterrence when such considerations were inappropriate to the circumstances of the case.

The maximum penalty which can be imposed in the case of an employer or organisation is \$1000.00. The penalty imposed was \$200.00.

It is not apparent that His Worship took into account the fact that the basis for the decision of the Albany Regional Hospital to “realign pay periods” was said on behalf of the appellant to be for the benefit of employees. However, this was a unilateral decision, insofar as one can ascertain it, and it resulted in this case in a breach of the award. It might therefore be said that the decision was not for the benefit of the employee, Mr Emery, or any other employee who found him/herself in like case.

There was no apparent consideration by His Worship of attempts to resolve the grievance amicably. However, if the attempts did not recognise that a breach occurred, as was found, I do not think that a great deal of weight can be placed upon such attempts.

It does not follow that there was a lack of culpability or blameworthiness on the appellant’s part. In particular, there was an underpayment on 26 September 1996. It was, in my opinion, in view of what occurred, open to the Industrial Magistrate to place weight upon some considerations of punishment and deterrence.

It has not been established to me that the exercise of discretion miscarried, applying the principles in *House v The King* [1936] 55 CLR 499 at 505 (HC).

I would, however, vary the decision by deleting that order requiring payment of \$710.08, there not being an underpayment having been proved to be outstanding in relation to the relevant period, on the evidence, for the reasons I have stated above.

I would uphold the appeal insofar as the order for payment of an underpayment is concerned. I would otherwise dismiss the appeal, no other ground having been made out. In reaching this decision, I have considered all of the evidence, all submissions and all of the grounds of appeal. I would vary the decision at first instance by deleting the order for the appellant (defendant at first instance) to pay the amount of \$710.08.

SENIOR COMMISSIONER G L FIELDING: I have had the advantage of reading the draft reasons prepared by His Honour the President. I agree that the appeal should be disposed of in the way he has indicated. In the circumstances, I can shortly state my reasons for so concluding.

The irregularities associated with the complaint and the variance between the complaint and the supporting evidence to which counsel for the Appellant refers undoubtedly exist. However, in my view neither the irregularities nor the variance are not fatal to the finding against which the Appellant appeals.

Section 81CA(2) of the Industrial Relations Act 1979 provides that, unless “otherwise prescribed”, the Industrial Magistrate’s Court when exercising general jurisdiction, as it was in the case in question, has the power and is to observe the practice and procedure provided for by the Local Courts Act 1904 as if the proceedings were an action within the meaning of that Act. It is otherwise prescribed by the Industrial Relations (Industrial Magistrates’ Court) Regulations 1980. Those Regulations provide, amongst other things, that subject to the Act and to the Regulations “the hearing and determination of a complaint and the costs and allowances to parties and witnesses shall be, with such modifications as the circumstances require, those prescribed by the Justices Act 1902 as amended in respect of proceedings before Justices for a simple offence” (see: Regulation 3). That being the case, regard needs to be had to the provisions of the Justices Act 1902 as amended and, in particular, to sections 46, 47 and 48, which, in essence, provide that no objection shall be taken or allowed for any defect in the complaint or variance between the complaint and the evidence in support and, further, that any such

variance shall be amended by order of the Justices at the hearing. Those provisions do not allow the complaint to be amended so as to allege a new offence or, in this case, a breach of a different nature (see: *Higgon v. O'Dea* [1962] WAR 140). What the provisions envisage is that a complaint ought not be dismissed simply because of some technical defect in form or substance which does not alter the essence of the complaint. Likewise, where there is some variance or difference between the detail of particulars of the complaint and the supporting evidence, the complaint should not be dismissed, so long as the evidence supports the gravamen or substance of the complaint.

On its face, the complaint in question is defective, although not to the extent that the Appellant contends and, in my view, not irreparably. The complaint alleges that the breach occurred "between/on" 22 September last. Clearly that is ambiguous and unsatisfactory. However, given that 22 September was the only date mentioned, the breach can only sensibly be taken as having been alleged to have occurred on that day. However, the breach, if there be one, occurred on 26 September because, as is common ground, that was the date when the monies covered by pay period Number 59 were paid and, moreover, due to be paid. In my view, the complaint could, and should, have been amended to reflect what in effect was the real allegation, that is, that the breach occurred on that date. That change would not have altered the gravamen of the complaint.

I do not consider that anything turns on the reference in the complaint to the period from 13 September to 22 September 1996, for which period Mr Emery was duly remunerated. Those dates simply serve to identify that the pay period in question was that numbered 59. It is common ground that the remuneration paid for the pay period Number 59 was confined to the period between those dates, albeit that payment for that period was not made until 26 September. The gravamen of the complaint was that Mr Emery was not paid his full fortnightly salary for the pay period numbered 59.

Similar considerations apply with respect to the Appellant's attack on the veracity of the Respondent's complaint by reason of the reference to the allegation of a breach of subclause 13(2) of the Award. The body of the complaint makes it perfectly clear what is in issue, that is, that the Appellant failed to pay Mr Emery the full fortnightly salary required by applying the formula set out in subclause 13(2) of the Award in respect of the pay period Number 59. It is clear, as counsel for the Appellant submits, that subclause 13(2) of the Award does not impose an obligation on the Respondent to pay an employee his or her salary. That obligation is imposed by subclause 13(1). However, subclause (2) cannot be read in isolation and is expressly linked to subclause (1). Subclause (1) in effect provides that salaries shall be paid at fortnightly rests and subclause (2) prescribes the proportion of the salary to be paid on each of those occasions. Thus, although the reference to "Clause 13 Subclause (2)" at the foot of the body of the complaint as being the provision breached might be inexact, it ought not be taken as being fatal to the complaint. The error or defect, if it be one, is again of the kind which, by nature of the Justices Act 1902 as amended, is not allowed to defeat the complaint.

There was clearly a variance between the complaint and the evidence tendered by the complainant in support of the complaint. However, in essence the difference related only to the date upon which the breach was said to have occurred and when it actually occurred. It was not a difference of substance, but of detail. As such, the difference was a mere variance of the kind which falls within the scope of the Justices Act 1902 as amended (see for example: *Carew v. Carone* (1991) 5 WAR 1; *O'Neill v. Lanthall* [1929] SASR 35; and see too: *Mitchell v. Myers* (1955) 57 WALR 49). An amendment to the date of the alleged breach would not have alleged a breach of a different nature or, indeed, a different breach.

The fact is that no amendment was made or even sought to be made to the complaint to overcome the variation, notwithstanding that the Act authorised the learned Industrial Magistrate to make the amendment of his own motion (see: *Higgon v. O'Dea* (*supra*). Nonetheless, I do not consider the absence of an amendment to be fatal. The Justices Act 1902 as amended, in effect, prohibits the taking of an objection which would be overcome by an amendment of the kind in question. It therefore seems to me that the failure to make the amendment should not be regarded as material. Instead, having regard

to the finding of the breach and the evidence adduced in support, the complaint should be taken as if the amendment had been made (see: *Secourable v. Sullivan* (1941) 43 WALR 90). Were it otherwise, the complaint would, in effect, fail on an objection of the kind which the Justices Act 1902 as amended says should not be taken or allowed.

It is clear, on the evidence, that Mr Emery was not paid the full amount in accordance with the formula set out in subclause 13(2) of the Award. He was paid \$710.08 less than the formula required, principally due to the fact that he was not paid for the period from 23 to 26 September. In those circumstances, except for the allegation in the complaint that the breach occurred on 22 September rather than on 26 September, a variance which was not material, the complaint was made out. It follows that, in my opinion, Grounds 1, 2 and 3 of the appeal have not been made out. The submission of Mr Hooker, as counsel for the Appellant, that the Respondent, as complainant, had an obligation to ensure that the complaint was exact in every detail is a submission which contradicts the provisions of the Justices Act 1902 as amended.

Whatever view one takes of the validity of the learned Industrial Magistrate's finding that there was a breach of the Award, as alleged by the Respondent, in my opinion he erred in ordering the Appellant to pay the sum of \$710.08 to Mr Emery as being the amount of wage underpaid had the formula set out in subclause 13(2) of the Award been applied strictly. Section 83(4) authorises the Court to order an employer to pay to a given employee the amount which the Court is satisfied the employee has been denied by reason of a breach of an award. Whilst, as at 26 September Mr Emery may have been denied his full entitlements under the Award, the uncontradicted evidence is that he was paid for the period between 23 and 26 September in the following pay period. Indeed, Mr Emery admitted that to be the case. It was the failure to make payment for that period which formed the ground of the complaint before the Court. In view of Mr Emery's admission that by the time the complaint was heard he had in fact been paid for that period, there was no longer any justification for the learned Industrial Magistrate to order that he be paid the money in question. On Mr Emery's own admission, he had already been paid for that period.

In my view, there is much to be said for the arguments advanced on behalf of the Appellant regarding the fine imposed by the Court. There seems to be little or no dispute between the parties that the breach, if any, occurred by reason of a change which removed the longstanding practice of, in effect, calculating four days in advance the remuneration to be paid to employees each fortnight. That change was seemingly made to ensure that the money paid to employees on each occasion more accurately represented what the particular employees were entitled to be paid, having regard to the requirement to pay penalty payments and the like. Moreover, the change was made after notice to, and consultation with, the Respondent, albeit without its agreement. Furthermore, the underpayment was only temporary and an incident of the change. In that sense, it could be seen as being merely a technical breach. In the circumstances, I would have thought a caution to be a sufficient sanction for the breach.

However, the imposition or otherwise of a penalty and the assessment of the penalty, if any, is essentially a matter for the discretion of the learned Industrial Magistrate. Only if the Full Bench is satisfied that that discretion has miscarried can it substitute its own opinion (see: *McCorry v. Bolivia Nominees Pty Ltd T/A Ballajura Tavern* (1992) 72 WAIG 2521). A mere difference of opinion is insufficient justification for the Full Bench to take such action. Whilst I would not have imposed a fine, I have come to the conclusion, with some diffidence, that it cannot properly be said that the learned Industrial Magistrate miscarried in the exercise of his discretion. He considered imposing a caution, but appears to have regarded the fact that the Appellant breached the Award in the face of an objection by the Respondent warranted a fine, particularly as it deprived Mr Emery of the payment of his full wages for a period. It is not the case, as the Appellant asserts, that Mr Emery was not underpaid his salary. He was underpaid for the pay period in question, albeit that the underpayment was remedied in the next pay period. Likewise, it cannot be said that the learned Industrial Magistrate did not have regard for the circumstances giving rise to the breach. He appears to have adopted the

attitude that because the Appellant breached the Award in the face of prior objections from the Respondent, thereby causing temporary loss of income to one of its members, it was more than a mere technical breach and thus deserving of a fine. That cannot be said to be an irrational view. The Appellant could, and perhaps should, have sought an amendment to the Award to allow it to take the action it did. Furthermore, it could be argued that the imposition of a fine was necessary to act as a deterrent to other agencies bound by the Award who might want to take similar action. Once this is accepted, it is difficult to question the magnitude of the fine imposed by the learned Industrial Magistrate, it being only one-fifth of the maximum.

It follows that, in my view, the appeal should be upheld. The order for the payment of the sum of \$710.08 should be quashed, but otherwise the decision of the Court should stand.

COMMISSIONER R N GEORGE: I have had the opportunity of reading the Reasons for Decision of His Honour the President and the Senior Commissioner in draft form.

I agree that the appeal in relation to the overpayment should be upheld and that the order for the payment of the sum of \$710.08 be quashed. I also agree that the appeal should otherwise be dismissed and have nothing to add.

THE PRESIDENT: For those reasons, the appeal is upheld insofar as the order for payment of an underpayment is concerned. The appeal is otherwise dismissed. The decision at first instance is varied by deleting the order for the appellant (defendant at first instance) to pay the amount of \$710.08.

Order accordingly

Appearances: Mr R Hooker (of Counsel), by leave, and with him Mr M G Lundberg (of Counsel), by leave, on behalf of the appellant.

Ms F Bajrovic and with her Mr E Rea on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Commissioner of Health  
(Appellant)

and

The Civil Service Association of WA Inc  
(Respondent).

No. 535 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.  
SENIOR COMMISSIONER G L FIELDING.  
COMMISSIONER R N GEORGE.

24 June 1997.

*Order.*

THIS matter having come on for hearing before the Full Bench on the 4th day of June 1997, and having heard Mr R Hooker (of Counsel), by leave, and with him Mr M G Lundberg (of Counsel), by leave, on behalf of the appellant and Ms F Bajrovic and with her Mr E Rea on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 24th day of June 1997, it is this day, the 24th day of June 1997, ordered and directed as follows—

- (1) THAT appeal No 535 of 1997 be and is hereby upheld in part and that the decision of the Industrial Magistrate in complaint No 173 of 1996 made on the 21st day of February 1997 be and is hereby varied by deleting the order for the appellant (defendant at first instance) to pay the amount of \$710.08.
- (2) THAT in all other respects the appeal be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

COMMISSION IN COURT  
SESSION—  
Matters dealt with—

ELECTRONICS INDUSTRY AWARD.  
No. 22 of 1985.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,  
Information, Postal, Plumbing and Allied Workers Union of  
Australia, Engineering and Electrical Division, WA Branch  
and

A.D. Engineering Pty Ltd and Others.  
No. 1793 of 1996.

Electronics Industry Award No. 22 of 1985

COMMISSION IN COURT SESSION  
SENIOR COMMISSIONER G.L. FIELDING  
COMMISSIONER J.F. GREGOR  
COMMISSIONER R.N. GEORGE.

4 July 1997.

*Reasons for Decision (extempore)*

THE COMMISSION IN COURT SESSION: We are unanimously of the view that the application, in its amended form, should be granted. It is an application to amend the Electronics Industry Award No. 22 of 1985 to insert for the first time termination and redundancy provisions. Whilst the application, in its original form, sought to insert provisions which could only be described as radical, in its amended form, the application now simply seeks to insert provisions which mirror those in the Metal Trades (General) Award 1966 and in respect of construction employees mirror the provisions contained in the Building Trades (Construction) Award 1987. These provisions, as Ms Mackie has said, can rightly be seen as Commission standards and as basic minima. That being the case, it is probably fair to say that to insert these provisions in the Award does nothing to undermine the modern day culture of enterprise bargaining, which the State Wage Fixing Principles undoubtedly cultivate.

In those circumstances, we are prepared to make the amendments in the terms of the amended application. The operative date is to be on and from the first pay period from 4 July 1997.

Appearances: Mr A.F. Lovell as agent for the Applicant.

Ms V. Paul as agent for the Respondent.

Ms E.L. Mackie as intervenor on behalf of the Chamber of Commerce and Industry of Western Australia.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,  
Information, Postal, Plumbing and Allied Workers Union of  
Australia, Engineering and Electrical Division, WA Branch  
and

A.D. Engineering Pty Ltd and Others.  
No. 1793 of 1996.

Electronics Industry Award.

No. 22 of 1985.

COMMISSION IN COURT SESSION  
SENIOR COMMISSIONER G.L. FIELDING  
COMMISSIONER J.F. GREGOR  
COMMISSIONER R.N. GEORGE.

4 July 1997.

*Order.*

HAVING heard Mr A.F. Lovell as agent for the Applicant; Ms V. Paul as agent for the Respondents and Ms E.L. Mackie as intervenor on behalf of the Chamber of Commerce and Industry of Western Australia, and by consent, the Commission in

Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Electronics Industry Award No. A 22 of 1985 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 date hereof.

BY THE COMMISSION IN COURT SESSION.

(Sgd.) G. L. FIELDING,

[L.S.]

Senior Commissioner.

Schedule.

1. (A) Clause 2.—Arrangement: Part I—General: After the number and title 36. Training insert a new number and title as follows—

37. Redundancy

(B) Clause 2.—Arrangement: Part II—Construction Work: After the number and title 12. Union Coverage insert a new number and title as follows—

13. Redundancy/Termination

2. Part I—General: Clause 36.—Training: After this clause insert a new clause as follows—

37.—REDUNDANCY

(1) Discussions Before Terminations

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their Union or Unions.
- (b) The discussion shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse affect of any terminations on the employees concerned.
- (c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(2) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (1) of this clause the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to had the employment been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary weekly rate of wage and the new lower ordinary weekly rate of wage for the number of weeks of notice still owing.

(3) Severance Pay

- (a) In addition to the period of notice prescribed in paragraph (a) of subclause (2) in Clause 6.—Contract of Service, of this Award, for ordinary termination, and subject to further order of the

Commission, an employee whose employment is terminated for reasons set out in paragraph (a) of subclause (1) of this clause shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	Severance pay
Less than 1 year	Nil
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years and over	8 weeks

“Week's Pay” means the ordinary weekly rate of wage for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

- (b) For the purpose of this clause continuity of service shall not be broken on account of—
  - (i) Any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
  - (ii) Any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by this Award or on account of leave lawfully granted by the employer; or
  - (iii) Any absence with reasonable cause, proof whereof shall be upon the employee.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, sick pay, long service leave and public holidays as prescribed by this Award shall not count as time worked.

- (c) Service by the employee with a business which 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 shall also constitute continuous service for the purpose of this clause.
- (4) Employee Leaving During Notice  
An employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.
- (5) Alternative Employment  
An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

Time Off During Notice Period

- (a) During the period of notice of termination of employment given by an employer, an employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause that employee shall for the purpose of seeking other employment shall be entitled to be absent from work during each week of notice up to a maximum of eight ordinary hours without deduction of pay.

- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.
- (7) Notice to Commonwealth Employment Service  
Where a decision has been made to terminate employees in the circumstances outlined in paragraph (a) of subclause (1) of this clause, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.
- (8) Superannuation Benefits
- (a) Subject to further order of the Commission where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (3) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.
- (b) If the superannuation benefit is greater than the amount due under subclause (3) of this clause then the employee shall receive no payment under that subclause.
- (c) Provided that benefits arising directly or indirectly from contributions made by an employer in accordance with an award, agreement or order made or registered under the Industrial Relations Act 1979 shall not be taken into account unless the Commission so orders in a particular case.
- (9) Employees With Less Than One Year's Service  
This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- (10) Employees Exempted  
This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.
- (11) 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.
- (12) 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.
- (13) Dispute Settling Procedures  
Any dispute under these provisions shall be referred to the Commission.

3. Part II—Construction: Clause 12.—Union Coverage: After this clause insert a new clause as follows—

13.—TERMINATION/REDUNDANCY

- (1) This clause shall apply where an employee becomes redundant—
- (a) "Redundancy" means a situation where an employee is terminated by his or her employer other than for reasons of misconduct or refusal of duty.

- (b) "Redundant" has a corresponding meaning.
- (2) Severance Pay—

(a) An employee, leaving his/her employer on account of a decision in accordance with subclause (1) hereof, shall be entitled to the following amount of severance pay in respect of continuous periods of service—

Period of Continuous Service	Severance pay
Less than one year	\$20.00 for each completed week of service, to a maximum of two weeks' pay
One year but less than two years	Two weeks' pay plus \$20.00 for each completed week of service, to a maximum of four weeks' pay
Two years but less than three years	Four weeks' pay plus \$20.00 for each completed week of service, to a maximum of six weeks' pay
Three years but less than four years	Seven weeks' pay
After four years and over	Eight weeks' pay

- (b) In lieu of the \$20.00 specified in paragraph (a) hereof, after 14 October 1991 and rate of accrual shall be \$25.00 for each completed week of service, with the maximum accrual as specified.
- (c) "Week's pay" shall mean the ordinary weekly rate of wage for the employee concerned as set out in Clause 10.—Wages hereof, but shall not include site, disability or travel allowances.
- (d) For the purposes of this clause, "service" shall mean employment on construction work as defined by Clause 5 of Part I of this Award but shall not include—
- (i) Service as an apprentice under the terms of this Award; or
- (ii) Service under Part I of this Award.
- (e) For the purpose of implementing this clause, employees who have been continuously employed with an employer since 22 March 1989 shall have service with the employer for that time counted in calculation of their length of service.

For all other employees who were not in the employ of their current employer on 22 March 1989, length of service shall be calculated on the time of continuous service with their current employer.

- (f) For the purpose of this clause, continuity of service shall not be broken on account of—
- (i) Any interruption or termination of employment by the employer if made merely with the intention of avoiding obligations hereunder in respect of leave of absence; or
- (ii) Any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by this Award, or on account of leave lawfully granted by the employer; or
- (iii) Any absence, with reasonable cause, proof whereof shall be provided by the employee; and

Provided that in the calculation of continuous service under this subclause, any time in respect of which an employee is absent from work, except to claim annual leave, sick pay, long service leave and public holidays as prescribed by this Award, shall not count as service for the purposes of this clause.

- (g) Where an employee remains in his/her employment with the employer and is transferred between construction sites, or between construction work and work under Part I of this

Award, the period of service on construction work shall be preserved for the purposes of calculating continuous service under the terms of this clause.

- (h) Service by the employee with a business which has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) in Clause 2 of the Long Service Leave Provisions published in Volume 66 of the Western Australian Industrial Gazette at pages 1-4, shall also constitute continuous service for the purpose of this clause.
- (i) An employee who terminates his/her employment before the completion of four weeks' continuous service with the employer shall not be entitled to the provisions of this clause.

(3) Employee Leaving During Notice

An employee whose employment is to be terminated in accordance with this clause may terminate his/her employment during the period of notice and if this occurs, shall be entitled to the provisions of this clause as if the employee remains with the employer until expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(4) Incapacity to Pay

An employer in a particular severance/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.

(5) Alternative Employment

An employee, in a particular severance/redundancy case, may make application to the Commission to have the provisions of this clause varied if the employer obtains acceptable alternative employment for an employee which shall include, but not limited to, transfer from one site to another and/or transfer to a workshop.

(6) Dispute Settling Procedures

Any dispute under these provisions shall be processed according to procedures established in Clause 11.—Grievances and Disputes hereof and in the event that the dispute is not resolved by those procedures, the matter shall be referred to the Western Australian Industrial Relations Commission.

(7) Termination/Redundancy Fund

Employers may, at their discretion, utilise a fund to meet their liabilities to their employees accrued pursuant to the term of this clause, provided that such fund shall provide a level of benefits equal to those prescribed by this clause.

## PRESIDENT— Matters dealt with—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barrett Pty Ltd  
(Applicant)

and

Western Australian Builders Labourers Painters Plasterers  
Union of Workers  
(Respondent).

No. 990 of 1997.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

16 June 1997.

### *Reasons for Decision.*

THE PRESIDENT: This is an application by Barrett Pty Ltd, a company, under s.49(11) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). By the application, the applicant company seeks a stay of the whole of the decision made by the Industrial Magistrate in the Industrial Court at Perth on 30 April 1997 in complaint No 154 of 1996 (as amended). Upon this application, the applicant company was represented by a director, Mr Ian Barrett, as agent.

The Industrial Magistrate found that the defendant (the applicant company in these proceedings) was in breach of Award No 14 of 1978 on 3 July 1996 in that the company failed to make available time records for inspection pursuant to clause 28.—Time Records and contrary to clause 28(2). His Worship imposed the maximum penalty of \$1000.00 and ordered that the defendant pay costs of \$109.70.

The applicant company has appealed against that decision to the Full Bench by appeal No 951 of 1997, which was filed in the Commission on 20 May 1997 and served on the respondent organisation, which is the respondent organisation to this application, according to the declaration of service, on 20 May 1997. According to a further declaration of service, the appeal book has also been served.

I am satisfied that an appeal was instituted within the meaning of s.49(11) of the Act, and that the applicant company, as a party to the proceedings at first instance, had and has sufficient interest to enable it to make and to be heard on this application.

The principles which apply to the determination of applications for a stay of operation of a decision of the Commission or of an Industrial Magistrate are well known. They appear in *Gawooleng Dawang Inc v Lupton and Others* 72 WAIG 1310.

The overriding principle is that a person should not be deprived readily of the fruits of his or her "judgment".

There are particular principles governing the exercise of discretion in that context, and these are as follows—

- (1) The applicant must establish that there is a serious issue to be tried.
- (2) The applicant must also establish the facts from which it can be concluded that the balance of convenience favours the applicant.

The Commission must, of course, have regard to s.6 and s.26(1)(a) and s.26(1)(c) (and sometimes s.26(1)(d)) of the Act.

What occurred in this matter was that there was a complaint by the respondent organisation made under s.83 of the Act alleging a breach of an award.

The matter came on for hearing and determination on 30 April 1997. The applicant company did not appear. The Industrial Magistrate heard evidence and determined the matter and found the breach of the award alleged proven, as I have said.

According to the transcript, which is in the appeal book, and which was referred to in these proceedings, the applicant company, although it did not appear, forwarded a facsimile communication to the Industrial Magistrate on 30 April 1997,

which was referred to in open court, seeking an adjournment of the matter. Accompanying that communication was a medical report from Dr H K W Yeung of 22 Simpson Avenue, Rockingham, Western Australia, concerning the condition of Ms Tracey Barrett, the wife of Mr Ian Barrett. Dr Yeung, in his report (see page 43 of the appeal book (hereinafter referred to as "AB")), said that because of an accident on 29 April 1997 in the evening ((ie) the day before the hearing in the Industrial Magistrate's Court, both Ms Barrett's hands were in plaster, she was unable to drive, and she could not use "her hand". Dr Yeung expressed the opinion that she was "not fit for the hearing today").

The learned Industrial Magistrate was informed by Mr Barrett's communication on behalf of the company (see pages 16-18 (AB)) that the company had only one employer and one employee, namely Mr Ian Barrett, and that the accident, being unforeseen and unfortunate, had rendered the appearance of both of them impossible. The court was also told that it had been intended that Ms Barrett was to represent the applicant company in these proceedings (the defendant at first instance). The court was also told that Mr Barrett, who was an essential witness in the matter, was providing care to her, although she is his separated wife, and an adjournment was sought. As I have said, there was no sworn evidence to this effect and no advice to this effect, even from the bar table. However, it might be said that, in the circumstances, such information and material as could be put before the court was put before the court.

In the end, His Worship, having heard submissions from Mr Giffard for the respondent organisation (then the complainant organisation), decided that he would allow the matter to proceed. It is not clear in any detail from the transcript why he made that decision (see page 18 (AB)).

It was submitted to me that on 19 March 1997 Ms Barrett had advised the Commission in the same proceedings that, to paraphrase, she had had little to do with the company for quite some time, although Mr Giffard (for the complainant (the respondent on this application)) said also, on 30 April 1997, in submissions, that Ms Barrett had represented the company on one occasion, apparently in the Industrial Relations Commission and in conciliation proceedings.

Mr Giffard did concede before the Industrial Magistrate that the respondent organisation would not be prejudiced, but that it would be inconvenienced by not "going on today". The matter was, however, not adjourned and proceeded, as I have said.

It was submitted to me by Mr Barrett that there was a serious issue to be tried because the applicant company in these proceedings had been penalised and, if no stay were granted, the order for fine and costs could be enforced before the appeal against that order was decided. This, as I understood it, would involve a pre-empting of the appeal, and it was submitted that it would be necessary for the applicant company to then take proceedings to recover the fine and costs if the appeal was successful, which would involve expense and inconvenience.

It was submitted that the adjournment should have been granted on the principle in *Myers v Myers* [1969] WAR 19 (SC).

For the respondent organisation, submissions were made that it would be deprived of the fruits of its litigation, that this matter had been proceeding for over a year, and that the balance of convenience lay with the respondent organisation.

Further, there were submissions that it had not been established that Ms Barrett's essential presence was necessary, because her involvement with the company was remote or limited. Further, it was implicit in the submissions that Mr Barrett himself could have represented the company because he had represented himself and Ms Barrett in stay proceedings on 29 April 1997. In other words, it was submitted that there was no serious issue to be tried, because the exercise of the discretion of the Industrial Magistrate had not miscarried.

There were also submissions made in detail on the applicant company's behalf as to errors which were alleged to have been made on the merits in the matter.

In my opinion, the applicant company established that the balance of convenience lay with it if the stay were not granted. It would render the appeal nugatory and enable the enforcement of an order fining the applicant company and ordering the payment of costs.

There was a serious issue to be tried as to whether the discretion of the Industrial Magistrate was properly exercised, having regard to the detriment which would be occasioned by not granting the adjournment. There was a clear admission for the respondent organisation (complainant at first instance) that the only detriment to be suffered by the respondent organisation if the adjournment were granted was inconvenience. The detriment to the applicant company (defendant at first instance) was, arguably, that it would not have the opportunity to defend the complaint and would have a penalty imposed against it, which is what occurred.

It is arguable that the discretion was wrongly exercised and there is therefore a serious issue to be tried.

It is not necessary for me to make any decision as to other grounds of appeal and whether a serious issue falls to be tried in relation to those.

I, having regard to the principles in *Gawooleng Dawang Inc v Lupton and Others* (op cit), and, in particular s.26(1)(a) and s.26(1)(c) of the Act, was of opinion that the equity, good conscience and substantial merits of the case, including the balance of convenience and the fact that there is a serious issue to be tried, lay with the applicant company. I made an order accordingly.

However, I made the order conditional upon the applicant company pressing ahead promptly with the appeal. In that context I noted, there is another appeal arising out of the same complaint which has not yet been listed for hearing.

Appearances: Mr I W Barrett, as agent, on behalf of the applicant.

Ms J Harrison on behalf of the respondent organisation.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barrett Pty Ltd  
(Applicant)

and

Western Australian Builders Labourers Painters Plasterers  
Union of Workers  
(Respondent).

No. 990 of 1997.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

12 June 1997.

*Order:*

THIS matter having come on for hearing before me on the 12th day of June 1997, and having heard Mr I W Barrett, as agent, on behalf of the applicant and Ms J Harrison on behalf of the respondent organisation, and having reserved my decision on the matter, and having determined that my reasons for decision will issue at a future date, it is this day, the 12th day of June 1997, ordered and directed as follows—

- (1) THAT the applicant herein has sufficient interest as required by s.49(11) of the Industrial Relations Act 1979 (as amended) ("the Act") and was therefore entitled to apply for the orders which appear hereunder.
- (2) THAT appeal No 951 of 1997 has been instituted within the meaning of s.49(11) of the Act.
- (3) THAT the operation of the decision of the Industrial Magistrate made on the 30th day of April 1997 in complaint No CP 154 of 1996 be and is hereby wholly stayed pending the hearing and determination of appeal No 951 of 1997, or until further order, subject to and conditional upon the listing of appeal No 951 of 1997 being effected within 21 days of the 12th day of June 1997.
- (4) THAT there be liberty to either party to apply on 48 hours written notice to the Commission and to the other party in relation to this order.

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barrett Pty Ltd  
(Applicant)

and

Western Australian Builders Labourers Painters Plasterers  
Union of Workers  
(Respondent).

No. 990 of 1997.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

6 June 1997.

*Order.*

THIS matter having come on for hearing before me on the 6th day of June 1997, and having heard Mr I W Barrett, as agent, on behalf of the applicant and Ms J Harrison on behalf of the respondent organisation, and the applicant herein having sought to have the hearing and determination of the application herein adjourned, and whereas the Commission accepted an undertaking from the respondent organisation that it would not, in the interim, seek to enforce the decision of the Industrial Magistrate in complaint No CP 154 of 1996 made on the 30th day of April 1997, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 6th day of June 1997, ordered and directed that the hearing and determination of application No 990 of 1997 be and is hereby adjourned to 9.00 am on Thursday, the 12th day of June 1997.

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robowash Pty Ltd  
(Applicant)

and

Michael Hart  
(Respondent)

No 1167 of 1997.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

4 July 1997.

*Reasons for Decision.*

THE PRESIDENT: This is an application brought under s.49(11) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") by the applicant, who was the respondent in proceedings before the Commission at first instance in application No 1661 of 1996.

The decision appealed against was given by the Commission, constituted by a single Commissioner, on 12 May 1997 and deposited in the office of the Registrar on 13 May 1997.

S.49(3) of the Act prescribes—

“(3) An appeal under this section shall be instituted within 21 days of the date of the decision against which the appeal is brought and may be instituted by ...”

The notice of appeal was filed on 4 June 1997, which was on the twenty second day after the giving of the decision, and therefore was not filed within the time prescribed by s.49(3) of the Act.

An application to extend time in which to appeal was filed on 5 June 1997.

This application under s.49(11) of the Act for a stay of the whole of the decision made at first instance was filed on 25 June 1997.

To date the application to extend time within which to appeal has not been listed for hearing. Put shortly, the notice of appeal has been filed out of time. Further, of course, there has been no order yet made extending the time within which to file the notice of appeal.

I drew the attention of the parties' representatives to the authorities to which I refer hereinafter.

Mr Randles (of Counsel), who appeared for the applicant by leave, sought to adjourn these proceedings so that he could make application to extend time in which to file the notice of appeal and to apply to have the appeal listed for hearing.

It was common ground between the parties that the respondent to this application had made application in the Industrial Magistrate's Court to enforce the order of the Commission, and the Industrial Magistrate had adjourned the application for enforcement to 30 July 1997 to await the outcome of any appeal or any application to extend time. Accordingly, nothing can occur in the matter until after that date.

The application to adjourn this application whilst those matters were pursued by the solicitor for the applicant was opposed on the basis that the appeal was out of time and nothing had been done to have the appeal listed or bring on the application to extend time within which to file the notice of appeal and on the basis of assertions from the bar table that the applicant might be wound up. However, there was no indication that that would occur in the near future. I therefore place little weight at this time on such an assertion.

S.49(11) of the Act provides as follows—

“(11) At any time after an appeal to the Full Bench has been instituted under this section a person who has a sufficient interest may apply to the Commission for an order that the operation of the decision appealed against be stayed, wholly or in part, pending the hearing and determination of the appeal.”

My concern was that there was no jurisdiction vested in me under s.49(11) of the Act because an appeal, it might be said, had not been instituted under s.49, the notice having been filed out of time. That was what I held in Tip Top Bakeries v TWU 73 WAIG 1788.

Whitehouse Hotels Pty Ltd v Lido Savoy Pty Ltd [1974] 131 CLR 333 (HC), too, is authority for the proposition that an appeal is not instituted unless a notice of appeal is filed within time and in the proper manner.

Mr Randles submitted that these cases were distinguishable from the present case because in this case at least there was an extension of time applied for. However, I do not think that that alters the situation. Until an order is made extending time, which is a matter for the Full Bench, then the appeal has not been properly instituted and cannot be said to have been instituted within the meaning of s.49(11) of the Act. That is the case with this application and the appeal on which it purports to be based. In short, an appeal not having been instituted, this application could not be made.

As to the question of adjourning these proceedings, it would seem to me that the matter might be more adequately dealt with without major detriment to the applicant if a fresh application were filed and served. It may also be that such an application might only be properly filed and served after any order giving leave to extend time.

It is not clear to me that a subsequent order might validate an application which was made at a time when the appeal had not been properly instituted, although that is a matter which remains open to argument.

In any case, within the principles in Myers v Myers [1969] WAR 19 (SC of WA), to refuse the adjournment does not result in a serious injustice to the applicant, who can make a fresh application for a stay if and when time is extended and the appeal can then be said to have been instituted. It would seem to me that given the effluxion of time and the non-pursuit of the application to extend time that no injustice is done by bringing some certainty to these matters by dismissing an application which presently is a nullity.

An application for a stay can only be made "At any time after an appeal to the Full Bench has been instituted under this section" (s.49 of the Act). No appeal has been validly instituted at this time. The application is therefore a nullity.

The application for adjournment and the application for a stay were dismissed.

Appearances: Mr A J Randles (of Counsel), by leave, on behalf of the applicant.

Mr T Houweling, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

Robowash Pty Ltd  
(Applicant)

and

Michael Hart  
(Respondent)

No 1167 of 1997.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

3 July 1997.

*Order.*

THIS matter having come on for hearing before me on the 3rd day of July 1997, and having heard Mr A J Randles (of Counsel), by leave, on behalf of the applicant and Mr T Houweling, as agent, on behalf of the respondent, subject to the filing of a warrant by 10.00 am on the 4th day of July 1997, and having determined that my reasons for decision will issue at a future date, it is this day, the 3rd day of July 1997, ordered and directed as follows—

- (1) THAT the application by the applicant to adjourn the hearing and determination of the application herein be and is hereby dismissed.
- (2) THAT application No 1167 of 1997 be and is hereby dismissed.

(Sgd.) P. J. SHARKEY,

[L.S.]

President.

## AWARDS/AGREEMENTS— Application for—

**AUSTRALIAN RED CROSS (WESTERN  
AUSTRALIAN DIVISION) ENTERPRISE  
AGREEMENT 1996.**  
No. AG 83 of 1997.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services  
Union of Employees, WA Clerical and Administrative  
Branch

and

Australian Red Cross (Western Australian Division)  
Headquarters and Others.

No. AG 83 of 1997.

Australian Red Cross (Western Australian Division)  
Enterprise Agreement 1996.

COMMISSIONER P E SCOTT.

12 June 1997.

*Order.*

HAVING heard Ms C Murphy on behalf of the Applicant, Mr G Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch and Mr D Kelly on behalf of The

Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Australian Red Cross (Western Australian Division) Headquarters Enterprise Agreement 1996 in the terms of the following Schedule be registered on the 17th day of April 1997.

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

[L.S.]

Schedule.

WESTERN AUSTRALIAN RED CROSS (WA)  
ENTERPRISE AGREEMENT 1996

1.—TITLE

This Agreement shall be known as Australian Red Cross (Western Australian Division) Headquarters Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope and parties bound by the Agreement
4. Date and Term
5. Relationship to Existing Award
6. Purpose of Agreement
7. Dispute Settlement Procedure
8. Wages
9. Classification/Industry Parity
10. Overtime
11. Sick Leave/Wellness Days
12. Compassionate Leave
13. Special Leave
14. Family Leave
15. Long Service Leave
16. Redundancy Leave
17. Commitment to Productivity Development
18. Staff Training and Development
19. No Disadvantage Clause
20. Number of employees covered by this Agreement
21. Signatories to Agreement

3.—SCOPE AND PARTIES BOUND TO AGREEMENT

This is an agreement binding upon Australian Red Cross (Western Australian Division), 110 Goderich Street, East Perth, employees at 44/46 and 50 Short Street, East Perth, (excluding Blood Transfusion Transport), Canteen and Kiosk employees, employee at Lady Lawley Cottage, 8 Gibney Street, Cottesloe, Albany, Geraldton and Bunbury Shops and the Australian Municipal, Administrative, Clerical and Services Union of Employees, Western Australian Clerical and Administrative Branch (ASU), the Shop Distributive and Allied Employees Association of Western Australia, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and the Automotive, Food, Metal, Engineering, Printing & Kindred Industrial Union of Workers, Western Australian Branch in relation to employees employed by Australian Red Cross (Western Australian Division) Headquarters Administration covered by the Award detailed in Clause 5 and eligible to be members of the relevant unions.

4.—DATE AND TERM

1. This Agreement shall commence from the 18th November 1996 and remain in force for a period of two years.

2. The parties undertake to commence negotiations to renew the terms of the Agreement three months prior to the expiration of the Agreement.

5.—RELATIONSHIP TO EXISTING AWARD

This Agreement shall be read and interpreted in conjunction with the Clerks' (Commercial, Social and Professional Services) Award No. 14 of 1972, the Shop and Warehouse (Wholesale/Retail Establishments) Award 32 of 1976, the Restaurant Tearoom and Catering Workers Award No. 48 of 1978 and the Printing Award A9/1969 provided that where

there is an inconsistency between this Agreement and the respective Award, this Agreement shall take precedence to the extent of any inconsistency.

#### 6.—PURPOSE OF AGREEMENT

1. The purpose of this Agreement is to enable the parties to develop and implement working arrangements that increase flexibility in the organisation and further improve productivity and efficiency at the enterprise.

2. The Agreement provides salary increases that recognise and reward the contribution of staff in achievement of productivity improvements. It also provides for the adoption of different work practices as well as recognising future efficiencies to be delivered through the implementation of the Agreement.

3. The parties to this Agreement are committed to ensuring that the organisation and staff are best placed to meet present and future operational demands.

#### 7.—DISPUTE SETTLEMENT PROCEDURE

Where a dispute concerning the operation of this Agreement arises, the following steps shall be taken—

1. As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the appropriate supervisor, the employee or employees concerned and where the employee(s) so request(s), the relevant workplace representative.
2. If the dispute is not resolved, the issue or claim shall be considered jointly by the appropriate senior representative of the employer, the employee or employees concerned and where the employee(s) so request(s), the union relevant workplace representative who shall attempt to settle the dispute.
3. If the dispute is not resolved the issue or claim shall be considered jointly by the employer, the employee or employees concerned and where the employee(s) so request(s), an official of the union who shall attempt to settle the dispute.

Where the above procedures are being followed, work shall continue normally.

Notwithstanding anything contained in this clause the respondents shall be free to exercise their legal rights if the dispute is not settled within seven days of notification.

4. If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

#### 8.—WAGE INCREASES

In recognition of the Agreement and the potential of the agreed changes to increase productivity and efficiency the parties have agreed to the following increases in wages to be phased in over a two year period as detailed below—

- 4% from the first pay period commencing on or after 18 November 1996
- 3% from the first pay period commencing on or after 18 November 1997

These increases are detailed in Appendices B and C and are based on employees' rates of pay as of 4/7/96 (see Appendix A).

#### 9.—CLASSIFICATION/INDUSTRY PARITY

The established Red Cross Committee will, during the term of this Enterprise Agreement, review and establish guidelines on industry standards with a view to establishing wage parity in the next Agreement.

#### 10.—OVERTIME

All overtime worked by employees on pay levels below 6.1 shall be paid as per the award. All employees on pay level 6.1 and over shall not be paid overtime penalties for any overtime worked. Payment may be offered either as time in lieu or cash at the discretion of management for all levels.

Accrued time-in-lieu must be cleared as soon as practicable by agreement with both parties.

#### 11.—SICK LEAVE/WELLNESS DAYS

In return for the forfeiture of the two (2) public holidays after New Year and Easter employees may access two (2) of

the twelve accrued sick days per year at any time and for personal reasons. These two days will be known as Wellness days and will not accrue and if not taken in the prescribed time (one year) will be forfeited. Wellness days will take effect from 1-1-97.

#### 12.—COMPASSIONATE LEAVE

1. An employee shall, on the death of the spouse, defacto spouse, father, mother, brother, sister, child, step-child or guardian of dependent children of the employee be entitled to leave up to and including the day of the funeral of such relation; such leave, for a period not exceeding two days in respect of any such death, shall be without loss of any ordinary pay which the employee 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 employee shall give the employer notice of his/her intention to take such leave as soon as reasonably practicable after the death of such relation, and in respect of a death overseas of a prescribed relative, the employee shall provide to the employer such evidence that he/she is attending the funeral.
- (b) Satisfactory evidence of such death shall be furnished by the employee to the employer.
- (c) The employee 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 Award or otherwise.

#### 13.—SPECIAL LEAVE

Leave without pay and/or single days of annual leave may be granted by the employer where an employee requests such special leave for urgent personal business.

#### 14.—FAMILY LEAVE

1. (i) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement which occurs after the date of this order for absences to provide care and support for such persons when they are ill.

(ii) The employee shall, if required, establish by production of a medical certificate and/or statutory declaration, the illness of the person concerned.

(iii) The entitlement to use sick leave in accordance with this subclause is subject to—

- (1) the employee being responsible for the care of the person concerned; and
- (2) the person concerned being either—
  - (A) a member of the employee's immediate family; or
  - (B) a member of the employee's household.
- (3) the term "*immediate family*" includes—
  - (A) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to an employee, means a person who lives with the employee as the husband or wife of that person on a bona fide domestic basis although not legally married to that employee; and
  - (B) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild, or sibling of an employee or the spouse of the employee.

(iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

#### 2. UNPAID LEAVE FOR FAMILY PURPOSE

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

## 3. ANNUAL LEAVE

(i) Notwithstanding the provision of this clause, an employee may elect, with the consent of the employer, to take annual leave in single day periods not exceeding five (5) days in any calendar year at a time or times agreed between them.

(ii) An employer may agree to defer payment of the annual leave loading in respect of such leave, until at least five (5) consecutive annual leave days are taken.

## 4. MAKE-UP TIME

An employee may elect, with the consent of their employer, to work "make-up time" under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Award

## 5. GRIEVANCE PROCEDURES

In the event of a dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provisions of this agreement.

## 15.—LONG SERVICE LEAVE

The long service leave provisions set out in Volume 59 of the "Western Australian Industrial Gazette" at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award except that the date of 1st April 1958 in paragraph (2) of sub-clause (2) is to be amended to read 24th December 1958.

However, employees may access pro-rata leave after the first ten (10) years of service with the employer.

## 16.—REDUNDANCY

Where the employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Organisation shall notify both the employees, who may be affected by the proposed changes and the Union.

Entitlements in the event of Redundancies are as follows—

- (1) For less than five (5) years service, two (2) weeks' notice shall be given and two (2) weeks pay for each completed year up to and including four (4) years.
- (2) For five (5) completed years and more, four (4) weeks' notice and two (2) weeks per completed year up to and including four (4) years and one (1) weeks pay for each completed year thereafter. There will be no ceiling on the number of years.

## 17.—COMMITMENT TO PRODUCTIVITY DEVELOPMENT

It is agreed by all parties to the development of a quality assurance system (ISO 9000 Series) and any job restructuring or redesign. As a result of job redesign or restructuring, a worker is required by the employer to exercise a higher degree of responsibility or higher skill level, then the worker may, by agreement, move to a higher pay level.

## 18.—STAFF TRAINING &amp; DEVELOPMENT

A commitment by management to provide access to work related training other than the professional development courses as currently practised. Courses and training will be identified and agreed to at the time of annual appraisal. Should specific training be identified as a result of the introduction of new technology/equipment, then management will provide such training.

## 19.—NO DISADVANTAGES

Nothing contained in this agreement will cause any employee of the Australian Red Cross (Western Australia) to be disadvantaged by such changes.

## 20.—NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

This Agreement shall apply to approximately 100 employees.

## APPENDIX "A"

## ADMINISTRATIVE SALARY SCALE AS FROM 04 JULY 1996

Reviewed on 01 July 1996—HQ & LLC only

Award	Level	Per Annum	Per Week	Per Hour	
Clerks' (Commercial, Social and Professional Services) Award	1.1	19,905.60	382.80	10.07	
	1.2	20,623.20	396.60	10.44	
	1.3	21,226.40	408.20	10.74	
	2.1	21,772.40	418.70	11.02	
	2.2	21,985.60	422.80	11.13	
	2.3	22,292.40	428.70	11.28	
	3.1	22,682.40	436.20	11.48	
	3.2	22,942.40	441.20	11.61	
	ABOVE AWARD	4.1	23,344.00	448.92	11.81
		4.2	23,944.00	460.46	12.12
	(Administration)	4.3	24,548.00	472.08	12.42
	(Clerical)				
	(Co-ordination)	5.1	25,248.00	485.54	12.78
	(Fundraising)	5.2	25,948.00	499.00	13.13
	5.3	26,648.00	512.46	13.49	
	5.4	27,448.00	527.85	13.89	
ADMINISTRATORS	6.1	28,248.00	543.12	14.30	
	6.2	29,048.00	558.62	14.70	
	6.3	29,848.00	574.00	15.11	
	6.4	30,748.00	591.31	15.56	
MANAGEMENT	7.1	31,648.00	608.62	16.02	
	7.2	32,548.00	625.92	16.47	
	7.3	33,448.00	643.23	16.93	
	7.4	34,448.00	662.46	17.43	
	8.1	35,448.00	681.69	17.94	
	8.2	36,448.00	700.92	18.45	
	8.3	37,448.00	720.15	18.95	
	8.4	38,548.00	741.31	19.51	
	9.1	39,648.00	762.46	20.06	
	9.2	40,748.00	783.62	20.62	
	9.3	41,848.00	804.76	21.18	
	9.4	43,048.00	827.85	21.79	

## APPENDIX "B"

## ADMINISTRATIVE SALARY SCALE AS FROM 18 NOVEMBER 1996

(+4%)

Award	Level	Per Annum	Per Week	Per Hour	
Clerks' (Commercial, Social and Professional Services) Award	1.1	20,701.82	398.11	10.47	
	1.2	21,448.13	412.46	10.86	
	1.3	22,075.46	424.53	11.17	
	2.1	22,643.30	435.45	11.46	
	2.2	22,865.02	439.71	11.58	
	2.3	23,184.10	445.85	11.73	
	3.1	23,589.70	453.65	11.94	
	3.2	23,860.10	458.84	12.07	
	ABOVE AWARD	4.1	24,277.76	466.88	12.28
		4.2	24,901.76	478.88	12.60
	(Administration)	4.3	25,529.92	490.96	12.92
	(Clerical)				
	(Co-ordination)	5.1	26,257.92	504.96	13.29
	(Fundraising)	5.2	26,982.80	518.96	13.66
	5.3	27,713.92	532.96	14.03	
	5.4	28,545.92	548.96	14.45	
ADMINISTRATORS	6.1	29,377.92	564.84	14.87	
	6.2	30,209.92	580.96	15.29	
	6.3	31,041.92	596.96	15.71	
	6.4	31,977.92	614.96	16.18	
MANAGEMENT	7.1	32,913.92	632.96	16.66	
	7.2	33,849.92	650.96	17.13	
	7.3	34,785.92	668.96	17.61	
	7.4	35,825.92	688.96	18.13	
	8.1	36,865.92	708.96	18.66	
	8.2	37,905.92	728.96	19.19	
	8.3	38,945.92	748.96	19.71	
	8.4	40,089.92	770.96	20.29	
	9.1	41,233.92	792.96	20.86	
	9.2	42,377.92	814.96	21.44	
	9.3	43,521.92	836.96	22.03	
	9.4	44,769.92	860.96	22.66	

APPENDIX "C"  
ADMINISTRATIVE SALARY SCALE AS FROM 18  
NOVEMBER 1997

(+3%)

Award	Level	Per Annum	Per Week	Per Hour	
Clerks' (Commercial, Social and Professional Services) Award	1.1	21,322.88	410.06	10.79	
	1.2	22,091.57	424.84	11.18	
	1.3	22,737.72	437.26	11.50	
	2.1	23,322.59	448.51	11.80	
	2.2	23,550.97	452.90	11.92	
	2.3	23,879.62	459.22	12.08	
	3.1	24,297.39	467.26	12.30	
	3.2	24,575.90	472.61	12.44	
	ABOVE AWARD	4.1	25,006.09	480.88	12.65
		4.2	25,648.81	493.24	12.98
(Administration) (Clerical)	4.3	26,295.82	505.68	13.30	
(Co-ordination)	5.1	27,045.66	520.11	13.69	
(Fundraising)	5.2	27,792.28	534.66	14.07	
	5.3	28,545.34	548.95	14.45	
	5.4	29,402.30	565.43	14.88	
ADMINISTRATORS	6.1	30,259.26	581.90	15.32	
	6.2	31,116.22	598.39	15.75	
	6.3	31,973.18	614.87	16.19	
	6.4	32,937.26	633.41	16.67	
MANAGEMENT	7.1	33,901.34	651.94	17.16	
	7.2	34,965.42	672.41	17.69	
	7.3	35,829.50	689.03	18.14	
	7.4	36,333.60	709.63	18.67	
	8.1	37,971.90	730.23	19.22	
	8.2	39,043.10	750.83	19.76	
	8.3	40,114.30	771.42	20.30	
	8.4	41,292.62	794.09	20.90	
	9.1	42,470.94	816.75	21.49	
	9.2	43,649.26	839.41	22.09	
	9.3	44,827.58	862.06	22.69	
	9.4	46,113.02	886.79	23.34	

21.—SIGNATORIES TO THIS AGREEMENT

.....(signed).....  
Signed for and on behalf of:  
Australian Red Cross  
(Western Australian Division)  
15th April 1997  
Date

.....(signed).....  
Carole Murphy  
DEPUTY PRESIDENT  
for and on behalf of the  
Australian Municipal,  
Administrative, Clerical &  
Services Union of Employees,  
West Australian Clerical &  
Administrative Branch  
15.4. 1997  
Date

.....(signed).....  
Joseph Bullock  
SECRETARY  
for and on behalf of the  
Shop, Distributive & Allied  
Employees Association of  
Western Australia  
15/4/97  
Date

.....(signed).....  
Helen Creed  
SECRETARY  
for and on behalf of the  
Australian Liquor,  
Hospitality & Miscellaneous  
Workers Union, Miscellaneous  
Workers Division, Western  
Australian Branch  
15/4/97  
Date

.....(signed).....  
Witness  
15.4.1997  
Date

.....(signed).....  
Witness  
COMMON SEAL  
15.4.97  
Date

.....(signed).....  
Witness  
COMMON SEAL  
15.4/97  
Date

.....(signed).....  
Witness  
COMMON SEAL  
15/4/97  
Date

.....(signed).....  
Gary Bucknall  
SECRETARY  
for and on behalf of the  
Automotive, Food, Metals,  
Engineering, Printing &  
Kindred Industries Union of  
Workers, Western Australian  
Branch  
15th April 1997  
Date

.....(signed).....  
Witness  
COMMON SEAL  
15.4.1997  
Date

**FIRE AND RESCUE SERVICE OF WESTERN AUSTRALIA TECHNICAL SERVICES ENTERPRISE AGREEMENT 1997.**  
**No. AG 100 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fire and Rescue Service of WA

and

The Automotive, Food, Metals, Engineering, Printing and  
Kindred Industries Union of Workers—Western Australian  
Branch and Another.

No. AG 100 of 1997.

Fire And Rescue Service of Western Australia Technical  
Services Enterprise Agreement 1997.

COMMISSIONER P E SCOTT.

11 June 1997.

Order.

HAVING heard Mr S Weir and with him Mr D Ferguson on  
behalf of the Applicant and Mr G Sturman on behalf of The  
Automotive, Food, Metals, Engineering, Printing and Kindred  
Industries Union of Workers—Western Australian Branch, and  
by consent, the Commission, pursuant to the powers conferred  
on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Fire And Rescue Service of Western Australia  
Technical Services Enterprise Agreement 1997 in the terms of the following Schedule be registered on the  
1st day of May 1997.

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

[L.S.]

Schedule.

1.—TITLE

This agreement shall be known as the Fire And Rescue  
Service of Western Australia Technical Services Enterprise  
Agreement 1997.

2.—ARRANGEMENT

1. Title.
  2. Arrangement.
  3. Scope of the Agreement.
  4. Parties to the Agreement
- Part I.—Framework
5. Definitions
  6. Date and Period of Operation of the Agreement
  7. No Further Claims
  8. Relationship to Parent Award
  9. Single Bargaining Unit
  10. Agreed Principles
  11. Working Together
  12. Effective Communication and Consultation
  13. Notification of Change
  14. Maintaining Customer Service
  15. Learning Organisation
  16. Productivity Improvement

## Part II.—Conditions of Employment

17. Wages
18. Engagement
19. Part Time Employees
20. Casual Employees
21. Labour Hire Personnel
22. Responsibility Allowance
23. Hours of Service
24. Overtime
25. Annual Leave
26. Family Leave
27. Bereavement Leave
28. Parental Leave
29. Study Assistance
30. Development Assistance
31. Signatures of Parties to the Agreement
  - Schedules
  - Schedule A. Productivity Initiatives
  - Schedule B. Wages

## 3.—SCOPE OF THE AGREEMENT

This agreement shall be binding on the Western Australian Fire Brigades Board and all employees employed at the O'Connor Depot who are members of or eligible to be members of the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers, Western Australian Branch or Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch. The agreement applies to approximately 17 employees.

## 4.—PARTIES TO THE AGREEMENT

The parties to the agreement are—

- The Western Australian Fire Brigades Board.
- 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.

## Part I.—Framework

## 5.—DEFINITIONS

## Unions—

Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers, Western Australian Branch and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

## Award—

Fire Brigade Employees (Workshops) Award 1983 (No A 6 of 1981)

## Commission—

The Western Australian Industrial Relations Commission Employer—

The Western Australian Fire Brigades Board

## Fire and Rescue Service of WA (FRS)—

The Western Australian Fire Brigades Board.

## 6.—DATE AND OPERATION OF THE AGREEMENT

This Agreement shall come into operation upon the date of registration with the Commission and will remain in force for twelve (12) months from the date of registration with the Commission.

Three months prior to the expiry of the agreement, the parties agree to commence negotiations for a new agreement.

## 7.—NO FURTHER CLAIMS

(1) The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement or provided for in a National or State Wage Case Decision.

(2) This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

## 8.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read in conjunction with the Fire Brigade Employees (Workshops) Award 1983 (No A 6 of 1981). The agreement shall apply to the extent of any inconsistencies.

## 9.—SINGLE BARGAINING UNIT

(1) This agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Board and the Unions

## 10.—AGREED PRINCIPLES

(1) The parties to this agreement and employees covered by its terms are committed to achieving the strategic vision of the Fire and Rescue Service of WA which is—

“To be recognised as a leader in emergency services.”

(2) To ensure the realisation of this vision, the following principles have been observed—

- (a) provision of quality services to customers is vital to the safety of the Western Australian community and to the success of the Fire and Rescue Service of WA;
- (b) flexibility in working arrangements and continuing innovation and work practises is a necessary precondition to achieving the highest quality customer service;
- (c) the Fire and Rescue Service of WA is a ‘learning organisation’ and is committed to ensuring that employees are encouraged to upgrade their skills and knowledge through opportunities for further study and to gain experience acting in higher level positions wherever possible;
- (d) family responsibilities are an important consideration of quality of working life and flexible working arrangements will ensure that employees are able to better meet these responsibilities;
- (e) the Fire and Rescue Service of WA is a professional organisation which is managed and lead in a businesslike manner. Best practice and respecting community standards in the area of conditions of employment is of vital importance.

## 11.—WORKING TOGETHER

(1) The employer, employees and the unions are committed to approaching issues in a cooperative and consultative manner which will ensure resolution of problems and grievances while maintaining customer service.

(2) Key elements in improving customer service and in developing a skilled and committed workforce include—

- (a) ensuring effective communication and consultation;
- (b) employees being made aware of changes particularly where they have significant effect; and
- (c) resolving problems in a cooperative manner without disruption to customer service.

## 12.—EFFECTIVE COMMUNICATION AND CONSULTATION

(1) Effective communication and consultation will be achieved through information sharing.

(2) Information sharing includes such matters as—

- (a) the strategic direction, the key objectives and the role of employees in achieving them;
- (b) the key measures of performance including cost and quality benchmarks; and
- (c) the results of customer and employee surveys.

(3) The focus of communication and consultation will be continuous improvement, identifying barriers to productivity, quality and efficiency and improving customer service.

## 13.—NOTIFICATION OF CHANGE

(1) If the employer decides to take action that is likely to have a significant effect upon an employee, or make an employee's position redundant, the employee and his/her union(s) will be informed by the employer in writing, as soon as possible after the decision has been made, of the action or the redundancy, and will have the opportunity to discuss with the employer—

- (a) the likely effect of the action or the redundancy in respect of the employee;

(b) measures that may be taken by the employer or the employee to avoid or minimise the significant effect.

(2) The employer is not required, when providing information or holding discussions under subclause (1) of this clause to disclose information that may harm the employer's business or reputation.

#### 14.—MAINTAINING CUSTOMER SERVICE

(1) The parties to this agreement and the employees recognise that commitment to the following dispute resolution procedures is essential in providing a base for uninterrupted customer service.

(2) Wherever possible disputes will be resolved by the parties directly affected.

(3) Where in any case a dispute cannot be resolved by the affected parties, it is to be processed according to the following procedure—

##### Stage 1

The matter is to be discussed between the employee(s) and the relevant line manager with a view to improving communication and achieving immediate resolution.

##### Stage 2

If not settled at stage 1, the matter is to be discussed between the employee(s), the line manager and the relevant director or branch manager.

##### Stage 3

If not settled at stage 2, the matter is to be discussed further involving a representative from the Employee Relations section. At this point, the employee(s) may elect to be accompanied by a representative from the union or another by another employee.

##### Stage 4

If the matter is still not resolved either party may refer the matter to the Commission for conciliation or arbitration.

(4) The employer and employee are committed to resolving disputes in accordance with the clause.

#### 15.—LEARNING ORGANISATION

The parties to this agreement are committed to the Fire and Rescue Service of Western Australia being a learning organisation. The employer recognises that to become a learning organisation it has to have employees with the skills to support its strategic direction.

To this end the employer is committed to supporting employees to develop and acquire new skills which are relevant to the business needs of the organisation consistent with the provisions of clause 32 of this agreement.

Employees are required to demonstrate their commitment to learning by undertaking an acceptable formal study load in their own time.

#### 16.—PRODUCTIVITY IMPROVEMENT

The parties have examined the productivity improvement that has occurred within the Fire And Rescue Service of Western Australia from January 1995 until the date of registration of this agreement. Those improvements have been assessed and shared between the employer, Government and employees. The share allocated to employees has been discounted by the two arbitrated safety net adjustments and the remainder has contributed to the wage increase payable to employees contained within Schedule B of this agreement.

#### Part II.—Conditions of employment

#### 17.—WAGES

The wages payable to employees shall be those contained within Schedule B of this agreement.

#### 18.—ENGAGEMENT

Employees may be engaged on a full time, part time, casual and fixed term basis.

#### 19.—PART TIME EMPLOYEES

(1) Part time employees are employees who are engaged to work less than 38 hours per week.

(2) A employee engaged on a part time basis shall be paid a proportion of the appropriate full time wage dependent upon time worked.

(3) A part time employee shall be entitled to the same leave and conditions as are prescribed for full time employees on a proportionate basis.

(4) A part time employee may have their regular days varied between Monday to Friday by the employer following consultation with the employee.

#### 20.—CASUAL EMPLOYEES

Within the current full time employee allocation, the employer is committed to maintaining permanent full time employment for its employees

(1) Casual employees are engaged on an hourly basis. They are paid an hourly rate, based on the appropriate classification and the number of hours for which they are engaged, plus an additional 20% in lieu of paid and unpaid leave and allowances payable under this agreement or the award.

(2) On the first day of employment, a casual employee shall be notified by the employer of the expected duration of employment.

(3) The notice period for a casual employee shall be one (1) hour.

#### 21.—LABOUR HIRE PERSONNEL

Within the current full time employee allocation, the employer is committed to maintaining Permanent full time employment for its employees

(1) If any concern is raised by the workforce regarding the use of labour hire personnel, it shall be dealt with in accordance with the provisions contained within clause 14—Maintaining Customer Service of this agreement.

#### 22.—RESPONSIBILITY ALLOWANCE

(1) Responsibility allowance will be recorded in personal records and recognised as experience.

(2) When an employee commences acting, all previous acting for a period of 5 consecutive working days or more at the equivalent level or higher during the preceding 18 months will aggregate as qualifying service for the purpose of achieving the next increment.

(3) Provided the period of approved leave is 4 weeks or less, an employee who has been acting for a continuous period of 12 months or more up to the commencement of the leave, shall continue to receive payment of the responsibility allowance during the period of such leave.

(4) An employee who has been acting in a position for less than twelve months shall continue to receive payment of responsibility allowance during periods of approved leave provided that—

- (a) the period of leave is 4 weeks or less;
- (b) no other employee acts in the position whilst the employee is on leave;
- (c) the employee resumes acting in the position immediately on his/her return from leave.

#### 23.—HOURS OF SERVICE

(1) The ordinary hours of work will be worked between the hours of 7.00 am and 7.00 pm, Monday to Friday with an unpaid meal break of a minimum of 30 minutes to be taken between 12 noon and 2.00pm.

(2) It has been agreed that a roster shall operate for a period of 6 months over the high demand fire season and will ensure work coverage from 7.30 am to 7.00 pm Tuesday to Friday of each week.

(3) A roster technician will cover all hours—

- (a) outside the rostered working hours on any day;
- (b) on weekends or public holidays.

(4) The hours shall be worked in each branch or section as determined by the employer in consultation with the employees.

#### 24.—OVERTIME

(1) Employees will work reasonable overtime when required and authorised by the employer

(2) Employees will be entitled to payment of overtime for all hours worked, at the direction of the employer, which are—

- (a) on weekends or public holidays;
- (b) all hours worked outside the rostered working hours on any day

(3) All overtime shall be paid as per the award.

(4) Employees recalled to duty for a period of no less than five (5) hours will be entitled to a meal allowance of \$5.35.

#### 25.—ANNUAL LEAVE

(1) Annual leave loading shall be annualised and incorporated into the wage and paid weekly as contained in Schedule B.

#### 26.—FAMILY LEAVE

(1) An employee with responsibilities in relation to either members of their family or members of the household who need their care and support, will be entitled to use, in accordance with this clause, up to 5 days per annum without loss of pay to provide care and support for such persons when they are ill.

(2) Any entitlements to carers leave may be deducted from—

- (a) accrued sick leave entitlements up to a maximum of 5 days per annum;
- (b) annual leave entitlements;
- (c) leave in lieu the employee has accrued.

(3) Carers leave will be available on an hourly basis.

(4) The entitlement to carers leave in accordance with this clause is subject to—

- (a) the employee being responsible for the care of the person concerned; and
- (b) the person concerned being 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.

(5) The employee shall, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

(6) In normal circumstances an employee shall not take carers leave under this clause where another person has taken leave to care for the same person.

(7) The employee shall, wherever possible, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee (where applicable), the reasons for taking such leave and the estimated length of absence. If it is not possible for the employee to give prior notice of such absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(8) An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family or household member who is ill.

#### 27.—BEREAVEMENT LEAVE

(1) An employee is entitled to paid bereavement leave of up to 2 days on the death of—

- (a) the spouse or de facto spouse of the employee;
- (b) the child or step child of the employee;
- (c) the parent or step parent of the employee;
- (d) the grandparent of the employee;
- (e) any other person who, immediately before that person's death lived with the employee as a member of the employee's family.

(2) The 2 days need not be consecutive.

(3) Bereavement leave is not to be taken during a period of any other kind of leave.

#### 28.—PARENTAL LEAVE

(1) Eligibility for Parental Leave

(a) 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.

(b) Where the employee applying for the leave is the partner of a pregnant spouse, one weeks leave may be taken at the

birth of the child concurrently with parental leave taken by the pregnant employee.

(c) Subject to paragraph (1) (b) of this clause, where both partners are employed by the employer, the leave shall not be taken concurrently except under special circumstances and with the approval of the employer.

(d) An employee adopting a child under the age of 5 years shall be entitled to 3 weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks. Where both parents are employed by the employer, the three week leave period may be taken concurrently.

(e) An employee seeking to adopt a child shall be entitled to 2 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 days leave. The employee may take any paid leave entitlement in lieu of this leave.

(2) Other Leave Entitlements

(a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or any part of the period of parental leave.

(b) An employee on parental leave is not entitled to paid sick leave and other paid absences except where otherwise provided in this clause.

(c) 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.

(d) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy 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.

(3) Notice and Variation

(a) The employee shall give not less than 4 weeks notice in writing to the employer of the date the employee proposes to commence parental leave stating the period of leave to be taken.

(b) An employee seeking to adopt a child shall not be in breach of paragraph (3) (a) as a consequence of failure to give the stipulated period of notice, if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.

(c) An employee who has proceeded on parental leave may, during that period of leave, elect to reduce or extend the period stated in the original application provided 4 weeks written notice is provided.

(4) Transfer to a Safe Job

(a) 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 at the same classification until the commencement of parental leave.

(b) If a transfer to a safe position is not possible, the employee may take leave for such period as is certified necessary by a registered medical practitioner.

(5) Replacement Employee

Prior to engaging a new employee, the employer 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.

(6) Return to Work

(a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than 4 weeks prior to the expiration of the period of parental leave.

(b) An employee on return from parental leave shall be entitled to the same position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to subclause (4) of this clause, the employee is entitled to return to the position occupied immediately prior to the transfer.

(c) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level.

(d) An employee may, subject to the approval of the employer, 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.

(7) Effect of Leave on Employment Contract

(a) An employee employed on 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 the contract.

(b) 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.

(c) An employee on parental leave may resign at any time during the period of leave by written notice in accordance with the award.

#### 29.—STUDY ASSISTANCE

(1) An employee may be granted time off with pay for study purposes and fees assistance subject to the discretion of the employer.

(2) Approval of time off and fees assistance will be subject to—

- (a) the course being of benefit to the organisation;
- (b) the course being relevant to current needs;
- (c) the course being relevant to the employee's future career in the Fire and Rescue Service of Western Australia;
- (d) the course being relevant to the position occupied by the employee;
- (e) the employee making satisfactory progress with his/her studies; and
- (f) the employee demonstrating personal commitment to learning and studying by undertaking an acceptable formal study load in his/her own time and/or financial contribution.

(3) Notwithstanding the above, the granting of study leave and fees assistance will be subject to operational requirements and at the discretion of the employer

#### 30.—DEVELOPMENT ASSISTANCE

An employee may be granted a secondment or placement in another organisation subject to the discretion of the employer where the placement or secondment is of direct benefit to the needs of the Fire and Rescue Service of Western Australia and relevant to the current and future career prospects of the employee within the organisation.

#### 31.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories—

Signed for and on behalf of—

The Fire and Rescue Service of Western Australia

Full Name: Robert James Mitchell

Signature (Signed)

Date 11/4/97

Signed for and on behalf of—

Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers, Western Australian Branch,

Full Name: (Signed) COMMON SEAL

Signature (Signed) John Sharp-Collett, State Secretary

Date 8/4/97

Signed for and on behalf of—

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

Full Name James Murie

Signature (Signed) COMMON SEAL

Date 10/4/97

#### SCHEDULE A

##### Productivity Initiatives

The productivity initiatives specified below are initiatives that will be implemented from 1 April 1997 and provide for a 2% percent wage increase to employees.

#### Productivity Initiatives

##### Flexibility

1. Increased flexibility in outsourcing and determining specialised work.

2. The introduction of minor servicing on appliances at the stations.

##### Responsibility

3. Individual responsibility for part identification, store paperwork and requisitioning.

4. Greater accountability for work requiring less supervision and therefore greater responsibility.

5. Technical input at the engineering level for future purchases through the development of specifications for new appliances and standard servicing procedures.

6. The introduction of a team based working environment

7. The identification and support of warranty requirements

8. Consultative groups to develop new ways to improve efficiency

#### SCHEDULE B

##### Wages

1. The wage increases shall be paid on the following basis.

(a) An increase of 6.5% will be payable from 1 April 1997.

2. The wage expressed in this schedule includes provision for annual leave loading. The annual leave loading will be recalculated each time there is a wage increase.

Classification	Existing Total Wage Per Week (All Purpose)	Enterprise Bargaining Component		Total Wage Per Week
		6.5% wage increase	1.3% leave loading	
Tradesperson				
C8				
1	646.87	42.05	8.41	697.33
2	652.07	42.38	8.41	702.93
3-8	677.77	44.05	8.81	730.63
> 8	705.27	45.84	9.17	760.28
C9				
1	584.56	38.00	7.60	630.15
2	589.76	38.33	7.67	635.76
3	594.86	38.67	7.73	641.26
C10				
1	557.38	36.23	7.24	600.85
2	562.58	36.57	7.31	606.46
3	567.68	36.90	7.38	611.96
Engineering Employee				
C11	459.10	29.84	5.97	494.91
1	464.30	30.18	6.04	500.52
2	469.40	30.51	6.10	506.10
3				
C12				
1	402.09	26.14	5.23	433.46
2	407.29	26.47	5.29	439.05
3	412.39	26.80	5.36	444.55

3. A C8, C9 OR C 10 Tradesperson who is not required to be on availability will have his/her total wage per week reduced by \$46.94.

**GARLAND ELLAS TAYLOR PTY LTD ENTERPRISE  
BARGAINING AGREEMENT.**

No. AG 116 of 1997.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Garland Ellas Taylor Pty Ltd

and

Communications, Electrical, Electronic, Energy,  
Information, Postal, Plumbing and Allied Workers Union of  
Australia, Engineering and Electrical Division, WA Branch.

No. AG 116 of 1997.

Garland Ellas Taylor Pty Ltd Enterprise Bargaining  
Agreement.

4 July 1997.

*Order.*

HAVING heard Ms V. Paul as agent for the Applicant and Mr P.J. Carter as agent for Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 21st day of May, 1997 entitled Garland Ellas Taylor Pty Ltd Enterprise Bargaining Agreement be registered as an industrial agreement.

(Sgd.) G. L. FIELDING,

[L.S.] Senior Commissioner.

\_\_\_\_\_

Schedule.

GARLAND ELLAS TAYLOR PTY LTD  
ENTERPRISE BARGAINING AGREEMENT

1.—TITLE

This Agreement will be known as the Garland Ellas Taylor Pty Ltd Enterprise Bargaining Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Application of Agreement
7. No Extra Claims
8. Objectives of Agreement
9. Dispute Procedure
10. Consultative Processes
11. Training
12. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
13. Monitoring of Agreement
14. Wages
15. Date and Signatures

3.—AREA AND SCOPE

Subject to clause 6 below, this Agreement will apply to Garland Ellas Taylor Pty Ltd (GET), its employees who are members or eligible to be members of the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch (Union), employed in the classifications set out in Clause 14—Wages, and the Union and will operate within the State of Western Australia.

It is estimated that the number of employees who will be bound by this Agreement upon registration is 27.

4.—PARTIES BOUND

This Agreement is made between Garland Ellas Taylor Pty Ltd and the Union.

5.—DATE AND PERIOD OF OPERATION

This Agreement will operate from 1 January 1997 and will remain in force until 31 December 1997 or its earlier cessation in accordance with clause 6.

6.—APPLICATION OF AGREEMENT

(1) Specific Sites and Projects

- (a) Where the parties to this Agreement are also parties to a written agreement which applies to a specific project the parties agree to discuss whether the provisions of this Agreement will apply to that project in lieu of the specific project agreement.
- (b) If it is agreed that the specific project agreement applies then the conditions of this Agreement will not apply.
- (c) This Agreement will not apply to certain contracts entered into by GET as determined from time to time and agreed to by the parties to this Agreement.
- (d) Where a specific project or site agreement is applicable to work undertaken by GET and the Union are a party to that specific project or site agreement, the specific project or site agreement will take precedence over this Agreement.
- (e) Where a specific project or site agreement is applicable to work GET are contracted to carry out, and GET and the Union are not a party to that specific project or site agreement, it is agreed that the parties will discuss the application of this Agreement to that work.
- (f) Where the parties are unable to agree upon the applicability or otherwise of this Agreement to the work, both parties acknowledge the other party's legal rights to protect their respective interests.
- (g) Both parties have the option of suspending this Agreement effective immediately, provided that the suspension will only extend to the application of this Agreement to the work on the specific project or site.

(2) If it is agreed that meaningful productivity increases can be achieved, but this Agreement cannot be implemented in full, then wage increases available from this Agreement may be introduced on a "pro rata" basis. The increases available from this Agreement will be a maximum of those contained in Clause 14—Wages.

(3) The parties agree that if, following a review of this Agreement by the parties and the Consultative Committee, agreement is reached that this Agreement places and continues to place GET and its employees at a competitive disadvantage, and productivity and flexibility have not improved then GET have the option of reverting to work under the Electrical Contracting Industry Award R22 of 1978 (Award).

(4) No part of this Agreement is to be used by the Union, GET, or its employees as evidence or example before any industrial tribunal or proceedings not directly concerned with work covered under this Agreement.

(5) No part of this Agreement is to be otherwise used by the Union, GET, or its employees as evidence or example before any industrial tribunal or any other contractor.

(6) Pursuant to this Agreement and its measures to achieve gains in productivity, efficiency and flexibility, GET will provide the rates of pay prescribed in Clause 14—Wages which will be paid in lieu of the minimum weekly rate provided for in the Award.

(7) This Agreement will operate in conjunction with the Award. Where any inconsistency exists between this Agreement and the Award, this Agreement will take precedence to the extent of the inconsistency.

(8) The parties agree that registration of this agreement in the Western Australian Industrial Relations Commission will not prejudice either the Union or GET's right to claim, pursue and achieve an award or enterprise bargaining agreement in the Australian Industrial Relations Commission.

7.—NO EXTRA CLAIMS

(1) The employees and the Union will not pursue any extra claims in relation to the Award, with the exception of future State Wage Decisions, for the life of this Agreement.

(2) Consistent with the Arbitrated Safety Net Adjustment Principle any future safety net adjustment will be absorbable to the extent of any equivalent amount in rates of pay paid pursuant to this Agreement. Future safety net adjustments will not increase the wage rates contained at Clause 14—Wages.

### 8.—OBJECTIVES OF AGREEMENT

(1) The parties acknowledge their commitment to the principles of enterprise bargaining.

(2) The parties agree that as a result of this Agreement, GET need to achieve productivity improvements to continue to hold a competitive edge within the market place by—

- (a) heightening awareness and acceptance of accountability levels of all in the contracting process within GET's operations;
- (b) encouraging GET's employees to accept responsibility in helping manage the total project performance including that of subcontractors;
- (c) developing concepts of best practice, continuous improvement and quality control to enhance productivity and efficiency;
- (d) developing a co-operative and harmonious working environment in the enterprise;
- (e) developing better employee management practices that promote shared concepts of skill formation, learning, teamwork, participation, flexibility and communication;
- (f) introducing best practice procedures in workplace safety and health and personnel management;
- (g) developing and following procedures to eliminate lost time and make better use of available working time, eg, start and finish at the designated workplace at normal start and finish times;
- (h) establishing measures to ensure ordered relations exist between GET and the Union on GET's work sites.
  - (i) enhancing job satisfaction;
  - (j) improving GET's competitiveness to help improve job security.

(3) It is agreed that the measures in this Agreement, properly implemented and carried out, will assist in the achievement of those objectives.

### 9.—DISPUTE PROCEDURE

(1) The Union undertakes to comply with the procedures contained in Clause 27—Grievance Procedure and Special Allowance of the Award without exception when any question, dispute or difficulty arises between the Union and GET in relation to the Award or this Agreement.

### 10.—CONSULTATIVE PROCESSES

(1) Effective participation and acceptance of accountability levels in the construction process, and achievement of the common goal and objectives of this Agreement, are enhanced by genuine consultation between GET and its employees.

(2) A Consultative Committee (the Committee) may be established within GET. The composition and size of Committee will be determined by the parties.

(3) The Committee will initially be chaired by GET's State Manager or nominee. A representative of the Union may attend meetings. A representative of the Electrical Contractors' Association of WA (ECA) and/or CCI may attend the meetings.

(4) The role of the Committee is to act as a forum for consultation, guidance and advice between GET and its employees on matters such as monitoring and reviewing—

- (a) implementation of this Agreement and its objectives;
- (b) determination of benchmarks, best practice and continuous productivity improvement;
- (c) the skills formation programme and ancillary training;
- (d) the productivity improvement programme;
- (e) communication between GET and its employees;
- (f) fostering a consultative and co-operative environment and setting and accepting appropriate levels of accountability and responsibility.

(5) The Consultative Committee is a consultative and advisory group and it is recognised by all parties that final and overall accountability for company performance rests with GET.

(6) At the expiration of this agreement the Committee shall disband.

### 11.—TRAINING

(1) GET acknowledge the changing pace of technology in the electrical contracting industry and the need for employees to understand those changes and have the necessary skill requirements to keep GET at the forefront of the industry.

(2) The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of GET, a commitment to training and skill development is required. Accordingly, the parties commit themselves to—

- (a) developing a more highly skilled and flexible workforce; and
- (b) providing employees with career opportunities through appropriate training to acquire the additional skills as required by GET.

(3) It is agreed that a training programme be developed consistent with—

- (a) the current and future skill needs of GET;
- (b) the size, structure and nature of GET;
- (c) the need to develop vocational skills relevant to GET and the electrical contracting industry.

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

#### (1) Award Matters

It is agreed between the parties that all work performed for GET will be performed in accordance with this Agreement and with the Award as varied by this Agreement and, if applicable, in conjunction with other industry agreements.

#### (2) Flexibility of Hours, Breaks and RDO's

(a) It is agreed that employees will be flexible in the following areas—

- (i) where it is agreed between GET and the majority of affected employee(s) GET may reschedule ordinary working hours;
- (ii) the spread of hours may be altered by agreement between GET and the majority of employees in the plant or section(s) concerned;
- (iii) agreement to reschedule ordinary working hours and to alter the spread of hours will not unreasonably be withheld;
- (iv) flexibility of rest periods and meal intervals which may be staggered or otherwise arranged at a time and in a manner to suit the convenience of GET in conjunction with the provisions in paragraph (1)(e) and (f) of Clause 11—Hours, of the Award;
- (v) flexibility of rostering employees' days off.

(b) It is agreed that when GET wish to reschedule an RDO, GET will endeavour to provide reasonable notice to the employee(s). RDO's may be substituted by agreement in accordance with the Award, which agreement will not unreasonably be withheld.

#### (3) Maintenance of Workplace

All employees are committed to ensure their workplace is maintained in a clean and safe condition.

#### (4) Overtime

(a) Overtime will be worked in accordance with Clause 12—Overtime of the Award. In particular the employees agree to strictly adhere to sub-paragraphs (2)(f)(i) and (ii) of Clause 12—Overtime—

“(2)(f)(i) *An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.*

(2)(f)(ii) *The union party to this award, or 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.*”

- (b) Overtime may be worked on an RDO weekend as required by GET. GET will endeavour to give employees who are required to work on an RDO weekend such prior notice as is reasonable in all the circumstances.
- (c) GET will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at GET's discretion, provided that this will not disadvantage GET in any way.
- (d) In conjunction with the roster system GET will select the employees required to work overtime according to the needs of GET and the particular project.
- (e) When overtime has been scheduled and an employee has committed himself or herself to work overtime, such commitment must be honoured. Where an employee has a valid reason to be absent, in accordance with Award provisions, the employee is obligated to advise GET, as soon as possible prior to overtime commencement of that fact and the reasons therefore, so that alternative arrangements may be made.

(5) Place of Start and Finish Work

It is agreed that all employees will be dressed and ready to start work at their normal start time at the designated workplace and work will finish at their normal finish time and place. On construction work the workplace will be deemed to be the nearest GET compound or smoko shed.

(6) Footwear

It is agreed that employees who have been issued with safety footwear will have such safety footwear replaced on a fair wear and tear basis. There will be no automatic reissue of footwear where an employee is placed on a new site.

(7) Uniforms and Clothing

- (a) It is agreed that employees issued with GET uniforms and clothing, in accordance with company policy as amended from time to time, will wear such items during all work hours and each employee will maintain his or her uniform and clothing in a respectable condition as approved by GET.
- (b) It is agreed that employees who have been issued with clothing will have such clothing replaced on a fair wear and tear basis. There will be no automatic reissue of clothing where an employee is placed on a new site.

(8) Care of GET Property

- (a) It is agreed that employees will treat all property, plant and equipment owned or hired by GET with due care and respect to ensure replacement is kept to a minimum. All property, plant and equipment will be returned to the designated storage area each day.
- (b) A tradesperson or apprentice will replace or pay for any tools supplied by the company if lost through his or her negligence.
- (c) It is agreed that all employees are committed to reducing the cost of maintenance and minimising theft and time spent looking for equipment not returned to its designated storage area.

(9) Company Vehicles

Where an employee is provided the use of a company vehicle to conduct company business that employee will ensure that—

- (a) the vehicle is kept clean, free of rubbish and washed;
- (b) the vehicle's oil and fuel requirements are regularly checked to maintain the vehicle in a ready-for-use condition; and
- (c) any defects that come to the employee's attention are reported to GET immediately.

(10) Care of Consumables

It is agreed that all employees are committed to ensure maximum usage of GET's materials and consumables is achieved and will exercise due care and precaution to prevent wastage. All employees are committed to identifying further ways in which wastage can be reduced.

(11) Quality Management

It is agreed that employees will co-operate fully with the development and implementation of GET's quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by GET. Employees are committed to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(12) Daily Labour Reports

It is agreed that employees will take an active role in the production reporting and production strategy meetings by punctually and correctly filling in GET's daily labour reports.

(13) Co-operation Between Employees and Supervisors

- (a) It is agreed that employees will assist in the management of efficiency and production of sites by advising the supervisory staff at the earliest available opportunity if—
  - (i) it is anticipated that a material shortfall may occur, and if a shortfall does occur;
  - (ii) faulty hand tools are on site;
  - (iii) production is likely to be delayed or is delayed by other trades;
  - (iv) work is not being installed in accordance with the specifications or with SAA Wiring Rules.
- (b) Employees will take an active role to ensure that sufficient quantities and correct types of materials are available at the job site to maximise time at the workforce.
- (c) Employees will take an active role in tool box meetings to eliminate safety hazards.

(14) Use of Expertise and Duties

- (a) It is agreed that employees who have undertaken the appropriate training or obtained the appropriate licence to operate plant and equipment, such as cherry pickers, boom lifts and hiab trucks, will exercise these skills or use such licenses when required to by GET.
- (b) Employees' duties will include any work for which the employee has requisite qualifications required in connection with the electrical contracting industry.
- (c) The parties agree to use their best endeavours to avoid demarcation disputes.

(15) Qualified Personnel

GET supervisory personnel and foremen may work on the tools for the purposes of demonstration and tuition or extreme situations affecting safety on site.

(16) Rest Period

- (a) A rest period of 10 minutes will be allowed in accordance with the following—
  - (i) Subject to the provisions of this paragraph, a rest period of 10 minutes from the time of ceasing to the time of resumption of work will be allowed each morning.
  - (ii) The rest period will be counted as time off duty without deduction of pay and will be arranged at a time and in a manner to suit the convenience of the employer.
  - (iii) Refreshments may be taken by an employee during the rest period but the period of 10 minutes will not be exceeded under any circumstances.
  - (iv) An employer who satisfies the Commission that any employee has breached any condition expressed or implied in this paragraph may be exempted from liability to allow the rest period.
- (b) This arrangement may be altered to suit the convenience of GET.
- (c) Smoking is not permitted in GET offices, including site offices, toilet facilities, lunchrooms, motor vehicles and other GET facilities.

(17) Unauthorised Absences

- (a) GET will—
  - (i) arrange an employee's ordinary hours of work which will average 38 hours per week; and

- (ii) select the method of implementation of the 38 hour week.
- (b) An employee agrees to present himself or herself for duty and remain on duty during the ordinary hours of work.
- (c) GET will be under no obligation to pay for any hours not worked during those ordinary hours unless it is an authorised absence in accordance with—
  - (i) Award provisions; or
  - (ii) an instruction from GET that the employee may leave site without loss of pay.

**(18) Safety Disputes**

- (a) Where a GET employee is affected by a safety dispute an employee will comply with GET's instructions to either—
  - (i) continue work when the area in which the employee is working is not affected by the condition giving rise to the dispute; or
  - (ii) accept a transfer to work in an area of the site not affected by the condition giving rise to the dispute; or
  - (iii) accept a transfer from one site to another site; or
  - (iv) leave the site without loss of pay.
- (b) An employee who does not comply with GET's instructions agrees to forfeit wages for time not worked.

**(19) Inclement Weather (Wet or Hot)**

- (a) Where a GET employee is affected by inclement weather an employee agrees to comply with GET's instructions to either—
  - (i) continue work when the area in which the employee is working is not affected by inclement weather; or
  - (ii) accept a transfer to work in an area of the site not affected by the inclement weather; or
  - (iii) accept a transfer from one site to another site not affected by inclement weather; or
  - (iv) leave the site without loss of pay.
- (b) Where GET requires an employee to traverse open ground GET will provide the employee with protective clothing. Such clothing will remain the property of GET and will be returned to GET. Employees will take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.
- (c) An employee will not be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and it is not safe for work to continue.
- (d) An employee who does not comply with GET's instructions agrees to forfeit wages for time not worked.

**(20) All Other Disputes**

- (a) Where a GET employee is affected by any other dispute an employee agrees to comply with GET's instructions to either—
  - (i) continue work when the area in which the employee is working is not affected by the condition, situation or grievance giving rise to the dispute; or
  - (ii) accept a transfer to work in an area of the site not affected by the condition, situation or grievance giving rise to the dispute; or
  - (iii) accept a transfer from one site to another site; or
  - (iv) leave the site without loss of pay.
- (b) An employee who does not comply with GET's instructions agrees to forfeit wages for time not worked.

**(21) Movement of Material**

It is agreed that employees will, where reasonably safe to do so, and in compliance with WorkSafe Western Australia's requirements, load and unload materials, plant and equipment from delivery vehicles and move such materials, plant and equipment as required without impediment.

**(22) New Technology**

It is agreed that employees will fully utilise all new technological advances implemented by GET including, but not limited to, technological advances in relation to materials, methods, plant and equipment.

**(23) Work on Ladders**

It is agreed that employees will work on ladders where they are required to do so and such work complies with the Occupational Safety and Health Act and Regulations.

**(24) Client Satisfaction**

- (a) The employees will take an active role in ensuring client satisfaction and acknowledge that client relationships are important to the growth of GET and its ability to offer continuing employment to its employees. All employees agree to treat customers with courtesy and respect and to consider the customers' interests in their actions.
- (b) GET and its employees recognise that a commitment to complete the project work on time and on budget is essential to the ongoing viability of the company and the prospects of long term employment of employees.

**(25) Tools**

- (a) Employees will supply, as a minimum, and maintain the tools listed or tools comparable to those listed in the Award. The employee agrees to maintain such tools in good working order at all times.
- (b) GET may from time to time request inspection of an employee's tools. If GET are of the opinion that the employee's tools are not in good working order, GET can instruct the employee to replace such tools. The employee agrees to abide by any GET instruction to replace tools.

**(25) Provision of a Tool Kit for Apprentices**

- (a) On completion of an apprentice's probationary period with GET, GET may elect to provide a tool kit to that apprentice.
- (b) The tool kit will consist of those tools GET requires the apprentice to own.
- (c) The apprentice will refund GET the total cost of the tool kit, which cost will be deducted from the apprentice's wages in a manner to suit GET provided that the manner is not unreasonable, having regard to the apprentice's wage.
- (d) The total cost of the tool kit will be refunded within a twelve month period. In the event that the contract of service is terminated, the total cost of the tool kit will immediately become due and payable by the apprentice, and will be deducted by GET from any monies owing by GET to that apprentice and any balance may be pursued by GET.

**(26) Commissioning Allowance**

A tradesperson will not receive a commissioning allowance for miscellaneous pre-commissioning. A tradesperson will not receive a commissioning allowance unless that tradesperson is appointed by GET to the position of a commissioning tradesperson for a defined period.

**(27) Injured Workers Rehabilitation**

GET is actively involved in ensuring any injured employee is rehabilitated back into the workforce at the first reasonable opportunity. To ensure this policy is maintained, employees who suffer an injury may be required to consult a medical practitioner nominated by GET. This provision will not prevent an employee from consulting and being treated by his or her own personal medical practitioner in the first instance.

**(28) Payment of Wages**

Employees will be paid by electronic funds transfer or, where GET and the employee agree, the employee may be paid by cash or cheque.

**13.—MONITORING OF AGREEMENT**

The parties to this Agreement will continually monitor the development of the Agreement and will review the effect of this Agreement three months prior to its expiration.

If it is felt by the employees that the interpretation of this Agreement places them at a disadvantage then the parties will reconvene to resolve the issue.

#### 14.—WAGES

(1) The following weekly wage rates will apply from the first full pay period to commence on or after GET, subject to registration of this Agreement in the Western Australian Industrial Relations Commission and the successful implementation of the principles contained within this document.

	Beginning of 1st full pay period to commence on or after ...1.../3.../97	Beginning of 1st full pay period to commence on or after ...1.../7.../96	Beginning of 1st full pay period to commence on or after ...1.../1.../97	Beginning of 1st full pay period to commence on or after ...1.../7.../96
Electrical Installer	\$542.43	\$562.77	\$583.87	\$605.77
Electrical Fitter	\$542.43	\$562.77	\$583.87	\$605.77
Electronics Tradesperson	\$636.71	\$660.59	\$685.36	\$711.06
Electrician Special Class	\$570.06	\$591.44	\$613.62	\$636.63
Instrument Fitter/Electrician	\$578.84	\$600.55	\$623.07	\$646.43
Grade 2				
Instrument Fitter/Electrical	\$562.51	\$583.60	\$605.49	\$628.20
Grade 1				
Linesperson Grade 1	\$542.43	\$562.77	\$583.87	\$605.77
Cable Jointer	\$542.43	\$562.77	\$583.87	\$605.77
Linesperson Grade 2	\$521.88	\$541.45	\$561.76	\$582.82
Electrical Assistant	\$459.59	\$476.83	\$494.71	\$513.26
Apprentices				
1st Year	\$211.55	\$219.48	\$227.71	\$236.25
2nd Year	\$276.64	\$287.01	\$297.78	\$308.94
3rd Year	\$363.43	\$377.06	\$391.19	\$405.87
4th Year	\$428.52	\$444.59	\$461.26	\$478.56

(2) Apprentices will be paid wages at the appropriate percentage shown in the Award, ie. 39%, 51%, 67%, 79%, of the Electrical Installer's rate referred to in subclause 14(1) above.

(3) The above weekly wage rates are paid in lieu of the rate of wages and safety net adjustment payment pursuant to subclause 2 of the First Schedule—Wages, of the Award, and are exclusive of allowances and other special payments payable pursuant to the Award.

*Note: These wage rates are based on 15% over 2 years (compounded) at 4 x 3.75% increases.*

#### 15.—DATE AND SIGNATURES

FOR AND ON BEHALF OF GARLAND ELLAS TAYLOR PTY LTD

A. J. Taylor (signed)

SIGNED

Director

TITLE

13 MAY 97

DATE

THE COMMON SEAL OF THE COMMUNICATIONS, ELECTRICAL, ELECTRONICS, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED WORKERS' UNION OF AUSTRALIA, ENGINEERING AND ELECTRICAL DIVISION, WA BRANCH was hereto affixed in the presence of—

P. Carter (signed)

SIGNED

ORGANISER

TITLE

19-5-97

DATE

P. Vasuki (signed)

WITNESSED

Les McLaughlan (signed)

WITNESSED

Common Seal

Affix Seal

### HOSPITAL SALARIED OFFICERS MT HENRY HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997. No. PSA AG 3 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Board of Management, Mt Henry Hospital

and

Hospital Salaried Officers Association of Western Australia (Union of Workers).

No. PSA AG 3 of 1997.

11 June 1997.

*Order.*

#### REGISTRATION OF AN INDUSTRIAL AGREEMENT No. PSA AG 3 OF 1997

HAVING heard Mr D. Pretsel on behalf of the first named party and Mr C. Panizza on behalf of the second named party; and

WHEREAS an agreement has been presented to the Public Service Arbitrator for registration as an Industrial Agreement; and

WHEREAS the Public Service Arbitrator is satisfied that the aforementioned agreement complies with s.41A, s.49A and s.49B of the Industrial Relations Act, 1979;

NOW THEREFORE the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement titled the Hospital Salaried Officers Mt Henry Hospital Enterprise Bargaining Agreement 1997, filed in the Commission on 9 June 1997 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C. B. PARKS,

Public Service Arbitrator.

[L.S.]

#### AGREEMENT

##### 1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Mt Henry Hospital Enterprise Bargaining Agreement 1997.

##### 2.—ARRANGEMENT

- Title
- Arrangement
- Purpose of Agreement
- Application and Parties Bound
- Term of Agreement
- No Extra Claims
- Objectives, Principles and Commitments
- Framework and Principles for further Productivity Bargaining
- Awards, Agreements and Workplace Agreements
- Rates of Pay and their Adjustment
- Resources for Productivity Negotiations
- Dispute Avoidance and Settlement Procedures
- Hours
- Part-Time Employees
- Medical Imaging Technologists
- Public Holidays
- Long Service Leave
- Sick Leave
- Family, Bereavement and Personal Leave
- Allowances
- Overpayments
- Salaries
- Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

##### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of

Mt Henry Hospital along with allowing the benefits from those improvements to be shared by employees, Mt Henry Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Mt Henry Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Mt Henry Hospital.

(3) This Agreement is entered into in accordance with the Hospital Salaried Officers—Western Australian Government Health Industry Enterprise Bargaining Framework Agreement 1996.

#### 4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the HSOA's Public Sector Awards employed by the Board of Management of Mt Henry Hospital, (hereinafter referred to as Mt Henry Hospital) subject to the extent to which it employs employees covered by the Hospital Salaried Officers Award No. 39 of 1968.

(2) The estimated number of employees bound by this Agreement at the time of registration is 30 employees.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter referred to as the Award) and shall replace the provisions of that Award where expressly stated herein.

(4) This Agreement amends, consolidates and replaces the Hospital Salaried Officers Mt Henry Hospital Enterprise Bargaining Agreement No. PSA AG 69 of 1996.

#### 5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 31 December 1997, provided that this Agreement, including allowances and salaries, may be varied or replaced prior to its expiry in order to implement any agreement arising out of this Agreement or the Hospital Salaried Officers—Western Australian Government Health Industry Enterprise Bargaining Framework Agreement 1996.

(2) The parties to this Agreement agree to re-open negotiations at least six months prior to the expiry of this Agreement.

#### 6.—NO EXTRA CLAIMS

(1) Subject to the agreed award consolidation and the mandatory core items for the first salary increase as outlined in Clause 13(1) of the Hospital Salaried Officers—Western Australian Government Health Industry Enterprise Bargaining Framework Agreement 1996, this Agreement is in settlement of Application Number P59/94.

(2) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Industry or Health Service level for productivity improvements which occurred prior to 1 January 1996.

#### 7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

(1) The parties agree that the objectives of this Agreement are to—

- (a) improve the productivity and efficiency of Mt Henry Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Mt Henry Hospital;
- (c) ensure high quality patient services in a safe, healthy and equitable work environment;
- (d) ensure high quality of employment and jobs; and
- (e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Mt Henry Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Mt Henry Hospital operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;

(c) developing and pursuing changes on a co-operative basis; and

(d) ensuring that Mt Henry Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Mt Henry Hospital, Management and Employees bound by this Agreement are committed to—

(a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—

- (i) is simply the best way of doing things;
- (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;

(iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;

(iv) is outcome rather than simply activity based;

(v) provides the processes, structures, rights and obligations which are essential to ensure that the full capacity for innovation of employees is fully and effectively used;

(vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and

(vii) are to be based on the following principles—

- customer/patient focus
- management commitment
- employee participation
- leadership
- information analysis
- policies and plans
- appropriate standards
- hospital/health service performance
- cost effectiveness
- working smarter

(b) Support the clinical, teaching, research and organisation goals of the health service and contribute to the achievement of those goals as active members of the health service community.

(c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.

(d) Actively contribute to the achievement of health service budgets.

(e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.

(f) Co-operate with the development and implementation of strategies to achieve length of stay targets.

(g) Participate in a Multidisciplinary approach to patient care.

(h) The principles of public sector administration, in particular to the principles contained in Sections 7., 8. and 9. of the Public Sector Management Act 1994.

In addition, Mt Henry Hospital is committed to facilitating and encouraging the participation and commitment of employees.

#### 8.—FRAMEWORK AND PRINCIPLES FOR FURTHER PRODUCTIVITY BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate an amendment to this Agreement with Mt Henry Hospital, a representative from Mt Henry Hospital will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

These discussions should include process issues such as what sort of bargaining mechanism will be established, what consultative process can be used or needs to be put in place, possible initiatives to be considered and the time frame.

Negotiations will be conducted in a manner and time frame agreed by the parties to this Agreement.

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within Mt Henry Hospital.

(c) The agenda should include but not be limited to—

- (i) changes in work organisation, job design and working patterns and arrangements;
- (ii) examination of terms and conditions of employment to ensure they are suited to Mt Henry Hospital's operational requirements;
- (iii) identification and implementation of best practice across all areas of service delivery;
- (iv) (i), (ii) and (iii) can be achieved by means including but not limited to—
  - (aa) new training and skills development programs as and where required;
  - (bb) the optimum use of human and capital resources including new technology;
  - (cc) quality assurance and continuous improvement programs;
  - (dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and
  - (ee) active occupational health and safety risk reduction, training and rehabilitation programs.

(2) In negotiating further salary increases in return for productivity improvements, the parties should ensure that the following issues have been addressed and/or applied—

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of Mt Henry Hospital in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions.

Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) Sharing Gains from Productivity Improvement

The parties accept that there is no precise formula for the sharing of gains from productivity improvements, but in any agreement, in addition to employee benefits, there must be a clear and specific return to Mt Henry Hospital and/or the Government. Productivity improvements may be related to work practices or arrangements, subject to acceptance that where capital expenditure requires changes in work methods and/or the number of employees and the changes are of a nature that enhances the investment, it shall qualify as a productivity improvement, provided that there is a net quantifiable benefit to Mt Henry Hospital.

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which Mt Henry Hospital takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by Mt Henry Hospital and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or

productivity improvement made by Mt Henry Hospital can be returned to the employees.

(c) Identifying Productivity Increases

To assist in such a review a model for identifying productivity increases is contained in Attachment 5 of the Hospital Salaried Officers—Western Australian Government Health Industry Enterprise Bargaining Framework Agreement 1996. The model is included as a guide only and it is expected that it will be modified to meet the needs of Mt Henry Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Mt Henry Hospital could result in increases greater than the targeted amount, however there are practical limits on how much can be paid and when the increases can be paid for specific operational improvements.

## 9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

Consistent with the Industrial Relations Act 1979 (WA) and the State Wage Principles, this Agreement shall provide the whole of the employees' wage increases for the life of the Agreement.

(2) Subject to the Industrial Relations Act 1979 (WA) and the State Wage Principles, the parties reserve their rights to seek to amend this Agreement to provide for further salary increases in return for productivity improvements at the Health Service.

(3) Choice between this Agreement and Workplace Agreements—

(a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;

(b) To facilitate the making of an informed and free choice—

(i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.

(ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.

(iii) The employee shall be provided with—

(aa) a copy of an agreed summary of this Agreement; and

(bb) a copy of a summary of the Workplace Agreement.

(iv) At the request of an employee, the employee shall be provided with;

(aa) access to a copy of this Agreement and the Workplace Agreement;

(bb) any other relevant documentation, such as information on salary packaging; and

(cc) information on where they can obtain further advice and on how to contact the Union.

For its part, the Union undertakes to advise all employees on the matter of choice whether or not they are members of the Union.

(c) If agreement on any aspect of this clause is not able to be reached the dispute settlement procedure set out in Clause 12 of this Agreement is to be followed.

(4) By agreement between the employer and the employee, an employee who has signed a Workplace Agreement prior to the registration of this S.41 Industrial Agreement can revisit the Workplace Agreement in light of this Agreement.

(5) All staff transferred or redeployed to Mt Henry Hospital from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject to the discretion of Mt Henry Hospital.

(6) All promotional positions and new staff recruited by Mt Henry Hospital from outside the Public Sector may be provided with the choice of a Workplace Agreement or S41 Industrial Agreement, subject to the discretion of Mt Henry Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Mt Henry Hospital shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, Mt Henry Hospital is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

#### 10.—RATES OF PAY AND THEIR ADJUSTMENT

##### (1) Targeted Outcome

It is agreed that—

- (a) The minimum targeted outcome is an increase in salaries of 10% which includes the initial salary increase flowing from this Agreement and any subsequent increases negotiated by Mt Henry Hospital and the HSOA.
- (b) It would be in exceptional circumstances where the targeted outcome would not be achieved.

##### (2) Wage Adjustments

This Agreement shall provide for salary increases as outlined in Clause 22.—Salaries of this Agreement payable as follows—

- (a) A first increase of 5%, payable from 1 January 1996;
- (b) A second increase of 2% from 1 July 1996; and
- (c) A further 3% targeted minimum increase, provided sufficient productivity improvements are negotiated by Mt Henry Hospital and the HSOA and this Agreement is amended to reflect such agreement, payable no earlier than 1st January 1997 unless otherwise agreed at the Health Service Level. This increase is to be negotiated in accordance with the provisions of the Hospital Salaried Officers—Western Australian Government Health Industry Enterprise Bargaining Framework Agreement 1996 and provided in accordance with Clause 8(2) of this Agreement.

##### (3) The Minimum Increases

- (a) The increases outlined above are in addition to the 1st and 2nd Arbitrated Safety Net Adjustments. However, if the third Arbitrated Safety Net Adjustment referred to by the Western Australian Industrial Relations Commission in its December 1994 State Wage Case Decision becomes available during the period of this Agreement, it shall be absorbed into this Agreement to the extent to which this Agreement provides a salary increase in excess of the amount provided by the third Arbitrated Safety Net Adjustment.
- (b) Payment of the increases will be made having regard to—
  - (i) the continued commitment of the parties to the objectives of this Agreement and the implementation of the initiatives and reforms included within it;
  - (ii) whether the reforms agreed have been implemented or whether they are in the process of being implemented;
  - (iii) whether the targets included in an agreement as a measure of increased productivity, efficiency or effectiveness, have been met; and
  - (iv) whether the agreed consolidation and registration of the Hospital Salaried Officers Award is completed by 1 July 1996.

#### 11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Mt Henry Hospital.

(2) (a) To assist in meeting these obligations, Mt Henry Hospital will assist by providing appropriate resources having regard to the operational requirements of Mt Henry Hospital and resource requirements associated with developing amendments to this Agreement aimed at achieving further salary increases in return for productivity improvements;

(b) It is accepted that employees of Mt Henry Hospital who are involved in the enterprise bargaining process will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with Mt Henry Hospital and shall not unreasonably affect the operation of Mt Henry Hospital;

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur and to assist in the achievement of agreement.

(e) The parties accept that the process of bargaining in good faith includes disclosing relevant information, as appropriate for the purposes of the negotiations and confidentiality and privacy in the negotiation process will be respected at all times.

(f) The parties accept that on occasions the nature of certain information may prejudice a party's position or not assist in the resolution of the matter. Subject to the rights of the parties to invoke Clause 12.—Dispute Avoidance and Settlement Procedures of this Agreement, a decision on whether or not to exchange or divulge information will be a matter for the relevant party to decide, provided that information shall not be unreasonably withheld;

(g) Where information of a commercial or sensitive nature is exchanged, the parties agree not to use or divulge that information outside of the negotiating forum.

(3) No officer or employee will be discriminated against as a result of activities conducted in accordance with this clause.

#### 12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) The objective of this Clause is to provide a set of procedures for dealing with any questions disputes or difficulties arising under this Agreement and for dealing with any questions, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty between the parties as to the application of Government policy and the Wage Principles and/or their effect upon this Agreement, the Health Department and/or the Department of Productivity and Labour Relations (DOPLAR) are to provide advice to Mt Henry Hospital in an attempt to resolve the matter.

(3) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of the HSOA (or his/her nominee) from intervening to assist in the process—

- (a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the Mt Henry Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Mt Henry Hospital or his/her nominee, as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or the Chief Executive Officer of Mt Henry Hospital (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) and the Chief Executive Officer of Mt Henry Hospital

(or his/her nominee) shall confer on the matters notified by the parties within five working days and—

- (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
- (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(4) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

### 13.—HOURS

This clause replaces Clause 13.—Hours of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) The ordinary hours of work shall be an average of thirty eight per week and shall be worked by one of the following arrangements—

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Commission.
- (v) In addition to the above arrangements, where the employee and the employer so agree in writing, shifts of not more than 12 hours may be worked.

(b) Subject to the following, where the employer and an employee or group of employees agree in writing, shifts of up to 12 hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed 76 per fortnight.

- (i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;
- (ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;
- (iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;
- (iv) The arrangement may allow for additional time off in lieu of penalty rates;
- (v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;
- (vi) Any proposed arrangement or agreement which extends beyond these parameters must be referred to the Industrial Relations Commission for ratification.

(c) Where the employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the Union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and union shall occur consistent with the Introduction of Change clause of the Hospital Salaried Officers Award No. 39 of 1968.

(d) The operation of working arrangements prescribed in paragraph (a) above, shall be consistent with the working arrangements prescribed in this clause.

#### (2) Ordinary Hours

Subject to the Award clauses other than those expressly replaced by this Agreement, the spread of ordinary hours will be from 6.00am to 6.00pm Monday to Friday inclusive with a meal break of not less than 30 minutes nor more than 60 minutes to be taken between 12.00noon and 2.00pm, provided that an employee may with prior approval of their supervisor be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes.

#### (3) Other Working Arrangements

(a) The ordinary hours of duty observed may be varied in accordance with subclause (1)(a)(iv) so as to make provisions for—

- (i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.
- (ii) the performance of shift work including work on Saturdays, Sundays or Public Holidays; and
- (iii) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break unless agreed in writing between the employee and the employer.

(b) Notwithstanding the above, where it is considered necessary to provide a more economic operation, the employer may authorise the operation of alternative working arrangements in the hospital/health service, or any branch or section thereof.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital/health service is being enhanced by its operation.

Such alternative working arrangements shall be in accordance with subclause (1)(a) and (d).

#### (4) Flexitime Arrangements

##### (a) Flexitime Roster

- (i) The authorisation of a flexitime roster shall be the responsibility of the employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.
- (ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected employees no later than three days prior to the settlement period commencing.
- (iii) The roster shall be prepared in consultation with the affected employees, subject to the employer retaining the right to determine arrangements to suit the operational needs of the department.
- (iv) Subject to four weeks notice being given to affected employees, the employer may withdraw authorisation of a flexitime roster.

##### (b) Hours of Duty

- (i) The ordinary hours of duty may be an average of 7 hours 36 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 152 hours.
- (ii) For the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

##### (c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees may select their own starting and finishing times within the following periods—

6.00 am to 9.30 am

11.00 am to 2.30 pm (Minimum half an hour break)

3.30 pm to 6.00 pm

##### (d) Core Periods

Core periods may be set by agreement between the employer and the employee.

##### (e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.

- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.
- (f) Flexileave
- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.
- (g) Settlement Period
- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.
- (h) Credit Hours
- (i) Credit hours in excess of the required 152 hours to a maximum of 7 hours 36 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 7 hours 36 minutes at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.
- (i) Debit Hours
- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period.  
Such debit hours shall be carried forward to the next settlement period.
- (ii) For debit hours in excess of 4 hours, an employee shall be required to take leave without pay for the period necessary to reduce debit hours to those specified in subparagraph (i) of this subclause.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.
- (j) Maximum Daily Working Hours  
Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.
- (k) Study Leave  
Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.
- (l) Overtime
- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
- (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
- (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
- (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (5) Nine Day Fortnight
- (a) Hours of Duty
- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.
- (b) Lunch Break  
A meal break shall be allowed and taken in accordance with the standard provisions of this clause.
- (c) Special Rostered Day Off  
Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.
- (d) Leave and Public Holidays.  
For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 44 minutes notwithstanding the following—
- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.
- (e) Overtime  
The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with

subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

To be read in conjunction with Clause 34.—Part-time Employees of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Part-time workers aged 21 years or more shall be paid at a rate pro-rata to the rate prescribed for the class of work for which they are engaged in the proportion to which their fortnightly hours bear to 76 hours per fortnight.

(2) When a part-time worker as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

(3) Provided that relevant prior service and experience shall be taken into account when determining at what increment within a specified salary level a part-time employee is appointed.

15.—MEDICAL IMAGING TECHNOLOGISTS

This provision replaces Clause 12. of the Hospital Salaried Officers Award No. 39 of 1968.

Notwithstanding anything contained elsewhere in this Agreement or in the Hospital Salaried Officers Award No. 39 of 1968, Medical Imaging Technologists who were prior to this Agreement employed on a thirty-five hour and four week annual leave basis shall as a result of the registration of this Agreement, be employed on a thirty-five and a half (35.5) hour week and four week annual leave basis.

16.—PUBLIC HOLIDAYS

This provision replaces subclause 16(1)(a) of the Hospital Salaried Officers Award No. 39 of 1968.

(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 any of the days named in this subclause.

(2) With effect from 1 April 1996 employees covered by this Agreement shall not be eligible to receive the two floating holidays otherwise provided for by Operational Instruction 657/95 and Circular to Ministers No. 1 of 1994 issued by the Office of The Premier. Provided that the holiday employees become eligible to receive on 2 January 1996 may be taken in accordance with the above mentioned Circular before 1 January 1997.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968 with effect from 1st April 1996.

(1) An employee shall be entitled to thirteen weeks paid long service leave on the completion of ten years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of ten years of continuous service completed by the employee.

(2) Notwithstanding subclause (1), an employee in employment with an employer respondent to the Hospital Salaried Officers Award NO. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

(3) Upon application by an employee, the employer may (subject to subclause (4) of this Agreement), approve of the taking by the employee—

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

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

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

- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.

(5) Any holiday occurring during the period in which an employee 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.

(6) Long service leave shall be taken as it falls due at the convenience of the employer but within three years next after becoming entitled thereto: Provided that the employer may approve the accumulation of long service leave not exceeding twenty six weeks.

(7) (a) An employee who—

- i) at or before the 1<sup>st</sup> April 1996 was employed by Mt Henry Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- ii) commenced employment with Mt Henry Hospital after the 1<sup>st</sup> April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

may, by agreement with the employer, take pro-rata long service leave provided that the employee has completed at least three years continuous service with Mt Henry Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Mt Henry Hospital and who—

- i) at or before the 1<sup>st</sup> April 1996 was employed by Mt Henry Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- ii) commenced employment with Mt Henry Hospital after the 1<sup>st</sup> April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

shall, in addition to any accrued long service leave be paid pro-rata long service leave, provided that the employee has completed at least three years continuous service with Mt Henry Hospital immediately prior to his/her resignation.

(8) For the purposes of subclause (7), the Western Australian Public Sector Health Industry shall mean the Minister for Health, the Commissioner of Health and all Public Sector Hospitals, Health Services and Agencies constituted under the Hospitals and Health Services Act 1927.

(9) Where an Employee has been redeployed at the direction of a Western Australian Public Sector Employer, 3 years continuous service for the purposes of subclauses (7) of this Clause shall be calculated including the service with such previous employer or employers.

(10) An employee who resigns having not qualified to be paid pro-rata long service leave in accordance with subclause (8) shall, subject to subclause (12), be entitled to payment for accrued long service leave only.

(11) An employee who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of the offence for which the employee is dismissed provided that an employee who is dismissed through no fault of his/her own and who having completed at least 15 years continuous service, calculated in accordance with the provisions of this Clause, and having completed at least three years continuous service, calculated in accordance with the provisions of this Clause, with Mt Henry Hospital immediately prior to dismissal shall,

in addition to any accrued long service leave be paid pro-rata long service leave.

(12) 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 employee 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 employee has completed not less than twelve months' continuous service.
- (b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.
- (c) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

(13) 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 employee at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(14) Long service leave accrued prior to the issue of the Hospital Salaried Officers Award No. 39 of 1968 shall remain to the credit of each employee.

(15) Subject to the provisions of subclauses (6), (10), (11), (12) and (16) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;
- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
  - (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
  - (ii) payment pursuant to subclause (11) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

(16) The expression "continuous service" in this clause includes any period during which an employee is absent on full pay or part pay, from his/her duties with any employer party to the Award, but does not include—

- (a) any cumulative period exceeding two weeks in any one anniversary year during which the employee is absent on leave without pay;
- (b) Any service of the employee who resigns or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which the employee is dismissed when such prior service has actually entitled the employee to long service leave, including pro-rata long service leave, under this clause.

(17) Portability

(a) Where an employee was, immediately prior to being employed by Mt Henry Hospital, employed in the service of—

- The Commonwealth of Australia, or
- Any other State Government of Australia, or
- Any Western Australian State public sector or state government employer,

and the period between the date when the employee ceased previous employment and the date of commencing employment by a respondent to this Agreement does not exceed one week, that employee shall be entitled to long service leave determined in the following manner—

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and
- (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.

(b) Nothing in this clause confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employee's favour prior to the date on which the employee commenced with Mt Henry Hospital.

(18) At the request of the employee and with the agreement of the employer, an employee faced with pressing personal needs, may be paid in lieu of taking a portion of long service leave.

#### 18.—SICK LEAVE

This provision replaces subclause (7) of Clause 18.—Sick Leave of the Hospital Salaried Officers Award No. 39 of 1968.

The basis for the cumulative accrual of sick leave shall be—

	Leave On Full Pay Working Days
(a) On date of employment of the employee	5
(b) On completion by the employee of six months' service	5
(c) On completion by the employee of twelve months' service	10
(d) On completion of each additional twelve months' service by the employee	10

Provided that where an employee has accrued sick leave on half days pay prior to the date upon which this Agreement comes into effect those accrued half days shall be converted to the equivalent of full days sick leave and shall remain to the employee's credit until such time as they may be taken.

#### 19.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

This clause replaces Clause 17.—Short Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Family Leave

(a) In this subclause "family member" means the employee's spouse, defacto spouse, child, step child, parent, step parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.

(b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.

(c) Family leave is not cumulative from year to year.

(d) Medical certificate requirements are as per those for Sick Leave under the Award.

(e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

(a) An employee shall on the death of—

- (i) the spouse of the employee;
- (ii) the child or step-child of the employee;
- (iii) the parent or step-parent of the employee;
- (iv) the brother, sister, step brother or step sister; or
- (v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during any other period of leave.

(d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—

- (i) the death that is the subject of the leave sought; and
- (ii) the relationship of the employee to the deceased person.

(e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.

(b) Use of Annual Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

20.—ALLOWANCES

(1) Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 22.—Salaries of this Agreement.

21.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or \$50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) the employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

22.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968 (Third ASNA referred to in Clause 10(3)(a) of this Agreement is absorbed).

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 1 January 1996 until the expiry of this Agreement.

(2) Minimum Salaries are detailed as follows. The rates of pay have been adjusted to reflect the increase in Clauses 10(2)(c) and 10(3)(b) of the Agreement, and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate		Award Rate	Award Rate	Award Rate
	Salary P/Annum	Salary P/Annum	effective 1 Jan 1996	effective 1 July 1996	effective 1 January 1997
			+ 2 ASNA of \$835 p.a.	+ 2 ASNA + 5% EB + 2%	+ 2 ASNA + 5% + 2%
LEVEL 1					
under 17 years of age	10,452	10,881	11,425	11,654	12,237
17 years of age	12,206	12,707	13,342	13,609	14,289
18 years of age	14,248	14,833	15,574	15,886	16,680
19 years of age	16,491	17,168	18,026	18,387	19,306
20 years of age	18,520	19,280	20,244	20,649	21,681
1st year of full-time equivalent adult service	20,343	21,178	22,237	22,682	23,816
2nd year of full-time equivalent adult service	20,997	21,832	22,924	23,382	24,551
3rd year of full-time equivalent adult service	21,647	22,482	23,606	24,078	25,282
4th year of full-time equivalent adult service	22,295	23,130	24,287	24,772	26,011
LEVEL 2	22,946	23,781	24,970	25,469	26,742
	23,597	24,432	25,654	26,167	27,475
	24,346	25,181	26,440	26,969	28,317
	24,864	25,699	26,984	27,524	28,900
	25,629	26,464	27,787	28,343	29,760
LEVEL 3	26,533	27,368	28,736	29,311	30,777
	27,236	28,071	29,475	30,064	31,567
	27,975	28,810	30,251	30,856	32,399
	29,154	29,989	31,488	32,118	33,724
LEVEL 4	29,771	30,606	32,136	32,779	34,418
	30,696	31,531	33,108	33,770	35,459
	31,647	32,482	34,106	34,788	36,527
	32,998	33,833	35,525	36,235	38,047
LEVEL 5	33,702	34,537	36,264	36,989	38,838
	34,669	35,504	37,279	38,025	39,926
	35,664	36,499	38,324	39,090	41,045
	36,688	37,523	39,399	40,187	42,196
LEVEL 6	38,660	39,495	41,470	42,299	44,414
	40,124	40,959	43,007	43,867	46,060
	42,204	43,039	45,191	46,095	48,400
LEVEL 7	43,317	44,152	46,360	47,287	49,651
	44,727	45,562	47,840	48,797	51,237
	46,188	47,023	49,374	50,362	52,880
LEVEL 8	48,323	49,158	51,616	52,648	55,280
	50,073	50,908	53,453	54,522	57,248
LEVEL 9	52,721	53,556	56,234	57,358	60,226
	54,563	55,398	58,168	59,331	62,298
LEVEL 10	56,580	57,415	60,286	61,491	64,566
	59,824	60,659	63,692	64,966	68,214
LEVEL 11	62,415	63,250	66,413	67,741	71,128
	65,050	65,885	69,179	70,563	74,091
LEVEL 12	68,663	69,498	72,973	74,432	78,154
	71,104	71,939	75,536	77,047	80,899
	73,888	74,723	78,459	80,028	84,029
CLASS 1	78,098	78,933	82,880	84,537	88,764
CLASS 2	82,308	83,143	87,300	89,046	93,498
CLASS 3	86,516	87,351	91,719	93,553	98,231
CLASS 4	90,726	91,561	96,139	98,062	102,965

- (a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.
- (b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1,2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Salaries.—Specified Callings and Other Professionals are detailed as follows. The rates of pay have been adjusted to reflect the increase in Clauses 10(2)(c) and 10(3)(b) of the Agreement, and represent full and final settlement of wage adjustments provided for in this Agreement.

- (a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the union and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, or any other professional calling as agreed between the Union and employers, shall be entitled to Annual Salaries as follows—

LEVELS	Award Rate		Award Rate		Award Rate	
	of \$835 p.a.	effective 1 Jan 1996	effective 1 July 1996	effective 1 January 1997	effective 1 January 1997	effective 1 January 1997
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
LEVEL 3/5	26,533	27,368	28,736	29,311	30,777	
	27,975	28,810	30,251	30,856	32,399	
	29,771	30,606	32,136	32,779	34,418	
	31,647	32,482	34,106	34,788	36,527	
	34,669	35,504	37,279	38,025	39,926	
LEVEL 6	36,688	37,523	39,399	40,187	42,196	
	38,660	39,495	41,470	42,299	44,414	
	40,124	40,959	43,007	43,867	46,060	
LEVEL 7	42,204	43,039	45,191	46,095	48,400	
	43,317	44,152	46,360	47,287	49,651	
	44,727	45,562	47,840	48,797	51,237	
LEVEL 8	46,188	47,023	49,374	50,362	52,880	
	48,323	49,158	51,616	52,648	55,280	
	50,073	50,908	53,453	54,522	57,248	
LEVEL 9	52,721	53,556	56,234	57,358	60,226	
	54,563	55,398	58,168	59,331	62,298	
LEVEL 10	56,580	57,415	60,286	61,491	64,566	
LEVEL 11	59,824	60,659	63,692	64,966	68,214	
	62,415	63,250	66,413	67,741	71,128	
LEVEL 12	65,050	65,885	69,179	70,563	74,091	
	68,663	69,498	72,973	74,432	78,154	
	71,104	71,939	75,536	77,047	80,899	
CLASS 1	73,888	74,723	78,459	80,028	84,029	
CLASS 2	78,098	78,933	82,880	84,537	88,764	
CLASS 3	82,308	83,143	87,300	89,046	93,498	
CLASS 4	86,516	87,351	91,719	93,553	98,231	
CLASS 4	90,726	91,561	96,139	98,062	102,965	

- (b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—
  - (i) Employees, who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment;
  - (ii) Employees, who have completed an approved four academic year tertiary qualification,

relevant to their calling, shall commence at the second year increment;

- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

- (c) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.
- (d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean—

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.
- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—
  - (i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or
  - (ii) not having a University degree but possessing a diploma recognised by the employer, has had five year's experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

(5) The rates of pay in this Agreement 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.

(6) The rates of pay in this Agreement 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 in so far 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.

(7) The first and second arbitrated safety net increases have, for the purposes of this agreement been offered against past productivity improvements.

## 23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration, that being the \_\_\_\_\_ day of \_\_\_\_\_ 1997.

Michael Hartland common seal affixed  
(signed by M. Hartland) 6/6/97  
(Signature) (Date)  
President, for and on behalf of the Hospital Salaried Officers  
Association of Western Australia (Union of Workers)  
Daniel P Hill common seal affixed  
(signed by DP Hill) 6/6/97  
(Signature) (Date)  
Secretary, for and on behalf of the Hospital Salaried Officers  
Association of Western Australia (Union of Workers)  
Eric Dillon  
(signed by E Dillon) 6/6/97  
(Signature) (Date)  
Co-ordinator, Industrial Relations, HDWA, for and on behalf  
of the Board of Management or the Hon. Minister for Health  
as the Board of Management of Mt Henry Hospital.

ATTACHMENT 1—MODEL FOR IDENTIFYING  
PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Mt Henry Hospital as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity Improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, how the work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi-skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.
- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.

- Culture and Environment: Management culture and organisational culture may need to be examined in

light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

MINISTRY OF JUSTICE GAOL OFFICERS  
ENTERPRISE AGREEMENT 1997.  
No. AG 118 of 1997.WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon Attorney General  
and

Western Australian Prison Officers'  
Union of Workers.

No. AG 118 of 1997.

COMMISSIONER J F GREGOR.

6 June 1997.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 118 of 1997

HAVING heard Mr D. R. Seal on behalf of the Honourable Attorney General and Mr R. Stingemore on behalf of the Western Australian Prison Officers' 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 document titled Ministry of Justice Gaol Officers Enterprise Agreement 1997, filed in the Commission on 29 May 1997, be and is hereby registered as an Industrial Agreement.

(Sgd.) J.F. GREGOR,  
Commissioner.

[L.S.]

## 1.—TITLE

This Agreement will be known as the Ministry of Justice Gaol Officers Enterprise Agreement 1997.

## 2.—ARRANGEMENT

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### 3.—PARTIES BOUND BY THIS AGREEMENT

(1) This Agreement shall be binding upon the following parties

- (a) Attorney General
- (b) Western Australian Prison Officers' Union of Workers.

(2) This Agreement will cover 1242 employees upon registration.

### 4.—DEFINITIONS

"WAPOU" shall mean the Western Australian Prison Officers' Union of Workers.

### 5.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate on and from 5 May 1997 and shall remain in force until 31 December 1997 and will not continue in force after this date unless agreed by the parties.

(2) Six months prior to the date of expiration of this Agreement the parties will join with the parties to the Ministry of Justice Enterprise Agreement 1995 (hereafter called Agreement 1995) to commence negotiations for the replacement of this Agreement and Agreement 1995 with one agreement to cover all employees in the Ministry of Justice.

(3) In the event of the parties fail to negotiate a further Agreement to replace the Gaol Officers Industrial Agreement as from 1 January 1998 then the Gaol Officers Enterprise Bargaining Agreement will not remain in force after 31 December 1997.

### 6.—RELATIONSHIP TO AWARDS AND AGREEMENTS

This Agreement shall be read in conjunction with existing Awards and Agreements which apply to the parties bound by 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 Awards and Agreements consist of—

- (a) Gaol Officers Award No 12 of 1968
- (b) Gaol Officers Industrial Agreement No 64 of 1994.

### 7.—NO EXTRA CLAIMS

There will be no extra claims for salary adjustments other than those in the agreed pay schedules during the term of this Agreement or in accordance with the State Wage Principles.

### 8.—CONSULTATION TO ACHIEVE AGREEMENT

To achieve this Agreement two levels of consultation were undertaken in the Ministry of Justice.

A Single Bargaining Unit representing Western Australian Prison Officers Union and management of the Ministry of Justice was formed for the purpose of negotiation of terms.

An education process involving joint awareness sessions on enterprise bargaining to employees and regular news bulletins was established.

### 9.—MINISTRY OF JUSTICE MISSION AND GUIDING PRINCIPLES

The Parties to this Agreement are committed to implementing the Ministry of Justice Mission in accordance with its seven guiding principles.

The Mission of the Ministry of Justice is—

To ensure access to a fair and cost effective system of justice which protects the rights of individuals and is responsive to community needs.

The Guiding Principles of the Ministry of Justice which will be used to shape the implementation of changes under this Agreement are—

- Judicial Independence
- Respect and protection of the rights of people
- Openness
- Equity
- Efficiency and accountability
- Quality of Service
- Valuing our Employees

To promote these Guiding Principles and to ensure all functions are carried out to the highest standards, the Ministry of Justice will fully support a process for identifying how the Guiding Principles and Public Sector Standards impact on specific work areas. Working to structured guidelines, work areas will have the opportunity to examine their behaviour and operations in the context of the Guiding Principles and Public Sector Standards. A working environment which encourages the highest standards of behaviour based on these principles and standards will be positively promoted.

### 10.—OBJECTIVES OF AGREEMENT

The aim of this Agreement is to provide greater workforce flexibility to meet the needs of all those involved in the prison system and to implement a program of workplace reform which complements business improvements designed to raise the standard of prison services for all Western Australians. It also aims to provide employees with more options for balancing their work and personal responsibilities.

Specifically the objectives of this Agreement are—

- To increase internal workforce flexibility;
- To develop committed workforce teams which will facilitate the implementation of improved prison service planning, prison service management systems, productivity and performance measurement, information systems and productivity improvement programs;
- To implement more flexible working arrangements to better meet the various needs of different customer groups as well as providing individual employees with greater options in the way they balance their work and personal responsibilities;
- To provide employees with opportunities to develop further work skills.
- To distribute the benefits from productivity improvements achieved through this Agreement between Ministry employees and Government.

### 11.—WORKFORCE ISSUES

The following are the main issues which have led to the development of this Agreement;

#### 11.1 Cost of prison services

Despite the achievement of a reduction in the cost of providing prison services through Agreement 64 of 1994, there is still a capacity for the implementation of further efficiencies. Initial investigation has shown that expenditure reductions need

to be based on complete management reviews, re-engineering of existing processes, elimination of redundant activities and targeting areas for expenditure reduction.

#### 11.2 Workforce flexibility

The Ministry of Justice provides a diverse range of prison services that are delivered according to the varying needs of different groups.

A range of labour flexibility options are required to meet the provision of different services and to provide more flexibility in working hours and, in some cases, changes to the way that work is organised and carried out.

#### 11.3 Workforce management and workplace change

To provide a more effective, efficient and responsive prison service, there are areas in the Ministry of Justice where changes are required in workforce organisation and work management.

#### 11.4 Monitoring and Implementation

The parties agree that the Enterprise Agreement Forum established under Clause 30 will oversee changes initiated under this clause.

All these issues have been taken into account in developing the clauses that follow.

### 12.—WORK TEAMS

The parties to this Agreement are committed to building functional or work area teams which focus on the participative management of work and the more flexible use of resources.

The development of work teams will give all employees the opportunity to participate in improving the performance of their work area and develop new skills. This will be achieved by the introduction of a structured team planning process throughout the Ministry of Justice. It will lead to the implementation of more flexible working arrangements which focus on productivity issues.

Systems will be put in place to ensure all team building activities are coordinated and integrated across the Ministry of Justice and that any changes to award provisions, that can be implemented at the team level, are applied consistently and fairly.

#### Team Planning Targets

- By 31 December 1997, each work area will have worked towards developing their own work team plan. Essential components of this plan will be an internal communications program, rostering arrangements and a skill development program which ensures coverage of all existing work within current resource allocation. Each work team will have identified Ministry needs and developed productivity improvement plans to meet these needs over the next year. It is recognised that appropriate training must be provided to teams in order to achieve the agreed targets.
- All Prisons will examine the feasibility of team based rosters. The parties will use the outcome of these investigations to determine whether team based rosters will be introduced into the Prison Service.

The focus by the parties for identifying productivity improvements will be as follows—

#### Prison Officer Focus

- Productivity Improvements which can be made: identification of all possibilities for improving productivity through looking at possible changes in what work is done, how the work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. where a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi-skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barrier to productivity improvements: identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality,

opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

#### Prison Management focus

- Structural matters: management will look at the structures within which the work is done and how they can be improved upon.
- Management style: management style and its appropriateness will be examined at both an organisational and prison level.
- Best practice: Benchmarking, continuous improvement and new opportunities: initiatives in these areas will need to be identified by management. This is an important area given that one of its outcomes should be improved competitiveness.
- Where barriers to competitiveness beyond the control of the local prison operations are identified, these should be drawn to the attention of the Executive Director Offender Management so that they can be addressed on an Ministry basis.
- Culture and Environment: management culture and organisational culture will be examined in light of the overall direction of prison operations management and where appropriate programs and training be introduced to address any identified problems.

#### Quality of Employment Issues to be examined by both Prison Officers and Prison Management

Unplanned Absences

Occupational Health and Safety

Health and Welfare of the workforce

Use of and clearance of leave

Employee Costs

Training and Development

Equity issues

### 13.—MANAGEMENT OF WORKPLACE CHANGE

All activities undertaken by the Ministry of Justice will be subject to review under a Business Improvement Plan which aims to better integrate justice services, to better meet community expectations of justice services and to improve productivity through more efficient service delivery. Prison Operations will participate in this review process.

The parties to the Agreement acknowledge that as a result of these reviews there may be changes to how the workforce is organised including the integration of Prison Operations occupational groups, changes in job design, reduction in layers of management and the times at which it is necessary to work to cover improved public access to services. Over time there may also be changes in the total number of positions but this is not expected to result in any loss of employment.

It is agreed that reviews and improvement implementation will be done in consultation with employees and WAPOU.

Employees and WAPOU will have input to any decision making which requires them to move their work location, make significant changes to their duties over a period of time or change their hours of work.

The criteria to be considered in determining changes are—

- The change is consistent with the Ministry of Justice Mission, Guiding Principles and Strategic Objectives;
- The change provides improved community/customer service by giving greater access to the justice system, greater protection of citizens rights and greater responsiveness to community needs;
- The change provides improved community/customer service through reducing the identified cost of the provision of the service without jeopardising the level or quality of service;
- The change is consistent with the Ministry of Justice commitment to equal opportunity for employees and the provision of a safe and healthy work environment;

- The change may provide a possible opportunity to increase job satisfaction for employees by improving job and task variety and skill development;
- The change increases the integration of service delivery within the Ministry of Justice.

#### 14.—VARIATION OF AWARD AND AGREEMENT PROVISIONS

The parties have agreed to some changes to award provisions that enable the introduction of more flexible arrangements in the workplace that best meets the needs of the industry, the work and individual preferences.

Without limiting the statement of intent contained within this Agreement the parties agree to the specific alterations to the parent Award and Agreement as detailed within Clauses 16 to 23, and 29 of this Agreement.

#### 15.—DOG HANDLERS ALLOWANCES

(i) Where the Ministry directs that an officer is to be responsible for maintaining an animal attached to the Dog Handlers Unit and that such responsibility includes feeding, home kennelling, transportation, safety and security of the animal, the officers shall be paid a fortnightly allowance calculated at ten and one half percent of the officers fortnightly annualised salary.

(ii) The Ministry shall be responsible to provide alternative kennel facilities for the animal during an officers leave.

(iii) The Ministry shall cover the cost of approved veterinary treatment provided to the animal.

#### 16.—ADDITIONAL HOURS/ SHIFTS, SPECIAL HOURS/ SHIFTS, EXCEPTIONAL HOURS/ SHIFTS

Clause 11 of the Gaol Officers Award No 12 of 1968 and Clause 11 of the Gaol Officers Industrial Agreement Award No 64 of 1994 is amended as follows

- (1) The Superintendent at the Broome and Roebourne Prisons, which have two specified rosters lines operating independently of the normal roster, and the local branch of WAPOU may agree a time in lieu arrangement based on time for time for officers performing escorts where such duty involves working time outside normal rostered shifts.
- (2) Where an officer is directed to perform an urgent or emergency medical escort of a prisoner and the duty extends beyond the normal rostered hours of the officer;
  - (a) if the period is three hours or less such hours shall be additional hours.
  - (b) if the period is more than three hours all such hours shall be paid at the officer's ordinary annualised hourly rate of pay.
  - (c) where the direction is issued to the officer in the last hour of that officer's scheduled shift then the officer shall be compensated in accordance with this subclause for a minimum of three hours.
  - (d) at the officer's discretion the arrangement provided in paragraph (b) of this subclause may be converted to additional hours.

Provided that where the duty extends a special shift of the officer then the extended period of duty shall be paid at the officer's ordinary annualised rate of pay.

- (3) Where the urgent or emergency medical escort is extended beyond the normal rostered hours of the officer and the prisoner is subsequently admitted to the hospital or another medical institution and that officer is required to provide guard duty during that admission that time shall;
  - (a) if the period is three hours or less such hours shall be additional hours
  - (b) if the period is more than three hours all such hours shall be paid at the officer's ordinary annualised hourly rate of pay
  - (c) where the direction is issued to the officer in the last hour of that officer's scheduled shift

then the officer shall be compensated in accordance with this subclause for a minimum of three hours

- (d) On admission of a prisoner to hospital or medical institution under the arrangements outlined in this clause the escorting officers shall be relieved within one and a half hours of the advice of the admission of the escorted prisoner. If the escorting officer is not relieved within the time prescribed then the total hours worked in excess of the officer's normal shift shall be paid at the officer's ordinary annualised hourly rate of pay
- (e) at the officer's discretion the arrangement provided in paragraph (b) of this subclause may be converted to additional hours.

Provided that where the duty extends a special shift of an officer then the extended period of duty shall be paid at the officer's ordinary annualised rate of pay.

- (4) An Industrial Officer who has appropriate qualifications and is called out to effect urgent emergency repairs or maintenance to prison property shall be paid for all time including travelling time at time and a half the officer's normal annualised rate.
- (5) Where prison emergency procedures are invoked in accordance with relevant prescribed standing orders for the good order and security of the prison and as a consequence Officers are directed to perform duties outside rostered hours, all hours shall be paid at the rate of time and one half the officer's hourly annualised rate of pay. This provision shall not apply in instances where a major emergency is declared in accordance with exceptional hours provisions.
- (6) Shifts required to cover an employee on parental leave shall be special shifts. These shifts shall only be required where the employee's absence cannot be covered by minimum staffing arrangements or excess/additional staff

#### 17.—TRAVEL CONCESSIONS ANNUAL LEAVE BROOME AND ROEBOURNE PRISONS

(a) Annual leave travel concessions for Officers stationed at the Broome and Roebourne Prisons when proceeding on annual leave to a destination outside the geographical region of their headquarters shall be entitled to the concessions contained in the following table provided that such concessions are limited to the lesser value of the return economy airfare from their headquarters to the destination or Perth.

(b) Officers are required to serve a year in these areas before qualifying for travel concessions. However, officers who have less than a years service in these areas and who are required to proceed on annual leave to suit departmental convenience will be allowed the concessions. The concession may also be given to an officer who proceeds on annual leave before completing the years service provided that the officer returns to the area to complete the years service at the expiration of the period of leave.

(c) The mode of travel is to be at the discretion of the Director General.

(d) Travel concessions not utilised within twelve months of becoming due will lapse.

Approved Mode Travelling of Travel	Travel	Concession
(i) Air	Air fare for the Officer, dependent spouse and dependent children	Time One day each way
(ii) Road	Full motor vehicle allowance rates, but reimbursement not to exceed the cost of the return air fare for dependent spouse dependent children travelling in the return air fare motor vehicle,	Broome <sup>o</sup> Two and one half days each way . Roebourne Two days each way

Approved Mode Travelling of Travel	Travel	Concession
(iii) Air and Road	Full motor vehicle allowance rates for car trip, but reimbursement not to exceed the cost of the return air fare for the Officer. Air fares for the dependent spouse and dependent children.	Time Broome Two and <sup>o</sup> one half days each way. Roebourne Two days each way

### 18.—LONG SERVICE LEAVE

Officers covered by this agreement may with agreement of the employer clear any accrued entitlement of long service leave in multiples of one week. The officer has the right to determine the length of any leave taken.

Such leave shall not be approved where additional shifts will be incurred.

All other conditions relating to long service leave will be as indicated in the parent award.

### 19.—FAMILY CARER'S LEAVE

19.1 Officers covered by this Agreement may with the consent of the Ministry use sick leave up to a maximum of 5 days per annum in accordance with this clause to provide care for another person subject to—

- a) The employee being responsible for the care of the person concerned.
- b) The person concerned being either-
  - a member of the employee's immediate family; or
  - a member of the employee's household.
- c) The term "Immediate family" includes—
  - a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
  - a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- d) Production of satisfactory evidence of illness of the other person.

19.2 The officer shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

19.3 An employee may elect, with the consent of the Ministry to take unpaid leave for the purpose of providing care to a family member who is ill.

### 20.—PARENTAL LEAVE

#### 20.1

- a) Type of leave—This clause includes maternity leave, paternity leave, adoption leave.
- b) Nature of leave—Parental leave, whether it be maternity leave, paternity leave or adoption leave, is unpaid leave.
- c) Definitions—For the purposes of this section—
  - (i) Employee includes a part time employee and fixed term contract employee up until the end of their contract period but does not include an employee engaged upon casual work.
  - (ii) Spouse includes a de facto or former spouse.

(iii) Continuous service means service under an unbroken contract of employment and includes—

- any period of leave taken in accordance with this clause;
  - any period of part time employment worked in accordance with the Gaol Officers Award or
  - any period of leave or absence authorised by Ministry or by the parent award.
- (iv) Child for the purposes of maternity and paternity leave means a child of the employee or the employee's spouse under the age of 1 year.
  - (v) Child for the purposes of adoption leave means a person under the age of 5 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or a child who has previously lived continuously with the employee for a period of 6 months or more.
  - (vi) Maternity leave means leave of the type provided for in this clause (and includes special maternity leave) whether prescribed in an award or otherwise.
  - (vii) Relative adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of whole blood or half blood or by marriage).
  - (viii) Male employee, in the case of part time workers, means an employed male employee who is caring for a child born of his spouse or a child placed with the employee for adoption purposes-
  - (ix) Female employee in the case of part time workers, means an employed female employee who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
  - (x) Former position means the position held by a female or male employee immediately before proceeding on maternity, paternity or adoption leave or part time employment, 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 of equal status and pay to that of the position first mentioned in this definition.

### 20.2 MATERNITY LEAVE

#### a) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to the Ministry of the certificate required by subclause 20.2 (b) 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. 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.
- (ii) Subject to subclause 20.2 (d) and (h) hereof the period of maternity leave shall be unbroken.
- (iii) Under special circumstances the Ministry may approve leave concurrent with the employee's spouse or in more than one period.

#### b) Certification

At the time specified in subclause 20.2 (c) the employee must produce to the Ministry a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement.

#### c) Notice requirements

- (i) An employee shall, not less than 10 weeks prior to the presumed date of confinement,

- produce to the Ministry the certificate referred to in subclause 20.2 (b).
- (ii) An employee shall give not less than 4 weeks notice in writing to the Ministry of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
  - (iii) The minimum period of absence on maternity leave shall commence 6 weeks before the expected date of birth and end 6 weeks after the day on which the birth has taken place. However, an employee may apply to the Ministry to reduce this period provided their application is supported by a certificate from a registered medical practitioner indicating that the employee is fit to continue or resume their normal duty within this period.
  - (iv) 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 subclause 20.2 (c)(ii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.
- d) Transfer to a safe job
- (i) 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 their present work, the employee shall, be transferred to a safe job at the rate and on the conditions attaching to her former job until the commencement of maternity leave.
  - (ii) If the transfer to a safe job is not practicable, the employee may or the Ministry 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 subclause 20.2 (e) to (h) hereof
  - (iii) The Ministry shall provide a replacement employee to cover the absence of an employee transferred in accordance with paragraph (i) of this subclause.
- e) Variations of period of maternity leave
- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause 20.2 (a) hereof.
    - a) 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;
    - b) the period may be further lengthened by agreement between the Ministry and the employee.
  - (ii) The period of maternity leave may, with the consent of the Ministry, 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.
- f) Cancellation of maternity leave
- (i) leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Ministry which shall not exceed 4 weeks from the date of notice in writing by the employee to the Ministry that she wishes to resume work.
- g) Special maternity leave and sick leave
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than . by the birth of a living child, then—
    - a) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - b) for illness other than the normal consequences of confinement she shall be entitled, either in lieu 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-
- h) Maternity leave and other leave entitlements an employee proceeding on maternity leave may elect to utilise—
- (i) accrued annual leave;
  - (ii) accrued long service leave. For the whole or part of the period referred to in subclause 20.2 (a) of this clause. The periods of leave referred to in subclauses (i) and (ii) of this subclause 20.2 (h) which are utilised, shall be paid leave,
  - (iii) an employee may extend her period of maternity leave by taking accrued annual long service leave or, on application, a further period of leave without pay-,
  - (iv) 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.
- i) 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 any relevant award or agreement.
- j) Termination of employment
- (i) An employee on maternity leave may terminate her employment any time during the period of leave at by notice given in accordance with this award.
  - (ii) The Ministry shall not terminate the employment of an employee on grounds of her pregnancy or of her absence on maternity leave, but otherwise the rights of the Ministry in relation to termination of employment are not hereby affected.
- k) Return to work after maternity leave
- (i) An employee shall confirm her intention of returning to work by notice in writing to The Ministry given not less than 4 week prior to the expiration of her period of maternity leave.
  - (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause 20.2 (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 20.2(d) hereof, the position which she held immediately before such transfer.
  - (iii) Where such a 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 of equal status and pay to that of her former position. .
- l) Replacement employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.

- (ii) Before engaging a replacement employee the Ministry shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employer exercising their rights under this clause, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this clause shall be construed as to require the Ministry to engage a replacement employee.

### 20.3 PATERNITY LEAVE

- a) Eligibility for paternity leave a male employee, upon production to the Ministry of the certificate required by subclause 20.3 (b) shall be entitled to a period of up to 52 weeks of paternity leave, in the following circumstances—
  - (i) An unbroken period of up to one week at the time of confinement of their spouse.
  - (ii) A further unbroken period of up to 51 weeks in order to be the primary carer 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 and shall not be taken concurrently with that maternity leave.
  - (iii) Under special circumstance the Ministry may approve leave concurrent with the spouse or in more than 2 periods.
- (b) Certification
 

At the time specified in subclause 20.3 (c) the employee must produce to The Ministry 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.
- c) Notice requirements
  - (i) The employee shall not less than 10 weeks prior to each proposed period of leave, give the Ministry notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate required in sub clause (b) hereof.
  - (ii) The employee shall not be in breach of this subclause 20.3 (c) as a consequence of failure to give the notice required in subclause 20.3 (c) (i) hereof if such failure is due to—
    - the birth occurring earlier than the expected date; or
    - the death of the mother of the child; or
    - other compelling circumstances.
  - (iii) The employee shall immediately notify the Ministry of any change in the information provided pursuant to subclause 20.3 (b) hereof.
- d) Variation of period of paternity leave
  - (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under subclause 20.3 (a) hereof—
    - the period of paternity leave provided by subclause 20.3 (a) (ii) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which leave is to be lengthened;
    - the period may be further lengthened by agreement between the Ministry and the employee.
  - (ii) The period of paternity leave taken under subclause 20.3 (a) (ii) hereof may, with the consent of the Ministry, be shortened by the

employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

- e) Cancellation of paternity leave
 

Paternity leave, applied for under subclause 20.3 (a) (iii) hereof but not commenced shall be cancelled when the pregnancy of the employees spouse terminates other than by the birth of a living child.
- f) Paternity leave and other leave entitlements an employee proceeding on paternity leave may elect to utilise—
  - (i) Accrued annual leave.
  - (ii) Accrued long service leave for the whole or part of the period referred to in subclause 20.3 (a) of this clause the periods of leave referred to in subclauses (i) and (ii) of this subclause 20.3 (f) which are utilised, shall be paid leave.
  - (iii) An employee may extend his period of paternity leave by taking accrued annual, long service leave or, on application, a further period of leave without pay.
  - (iv) 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.
- g) Effect of paternity leave on employment
 

Subject to 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 any relevant award or agreement.
- h) Termination of employment
  - (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with the award.
  - (ii) The Ministry shall not terminate the employment of an employee on the ground of their absence on paternity leave, but otherwise the rights of the Ministry in relation to termination of employment are not hereby affected.
- i) Return to work after paternity leave
  - (i) An employee shall confirm his intention of returning to work by notice in writing to the Ministry given not less than 4 weeks prior to the expiration of the period of paternity leave provided by subclause 20.3 (a) (ii) hereof.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause 20.3 i) (i) hereof shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) 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 equal in status and pay to that of his former position
- j) Replacement employee
  - (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before engaging a replacement employee the Ministry shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before engaging a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising their rights under this clause, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (iv) Nothing in this clause shall be construed as requiring the Ministry to engage a replacement employee

#### 20.4 ADOPTION LEAVE

##### a) Eligibility

An employee, upon production to the Ministry of the documentation required by subclause 20.4 (b) hereof shall be entitled to adoption leave, the total of which shall not exceed 52 weeks in the following circumstances—

- (i) A period of up to 3 weeks at the time of the placement of the child.
  - (ii) A period of up to 52 weeks from the time of the child's placement in order to be its primary care-giver. This leave shall not extend beyond 1 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 except in the circumstances where both adoptive parents need to go overseas to complete the adoption. This entitlement of up to 52 weeks shall be reduced by any period of leave taken pursuant to subclause 20.4 (a) (i) hereof.
  - (iii) Under special circumstances the Ministry may approve leave concurrent with the employee's spouse or in more than 1 period.
- b) Certification—before taking adoption leave the employee must produce to the Ministry
- (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.
- c) Notice requirements
- (i) Upon receiving notice of approval for adoption purposes an employee shall notify The Ministry of such approval and within 2 months of such approval shall further notify the Ministry 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.
  - (ii) An employee who commences employment with the Ministry after the date of approval for adoption purposes shall notify the Ministry thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take.
  - (iii) 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 Ministry of such date and of the date of the commencement of any period of leave to be taken under subclause 20.4 (a) (iii) hereof
  - (iv) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under subclause 20.4 (a) (iii), hereof give notice in writing to the Ministry of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclauses 20.4 (c) (iii) and (iv) 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 a spouse or other compelling circumstances.

##### d) Variation of period of adoption leave

- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause 20.4 (a) (ii) hereof
    - a) the period of leave taken under subclause 20.4 (a) (ii) 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;
    - b) the period may be further lengthened by agreement between the Ministry and the employee.
  - (ii) The period of adoption leave taken under subclause 20.4 (a) (ii) hereof may, with the consent of the Ministry be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- e) Cancellation of adoption leave
- (i) Adoption leave applied for but not commenced shall be cancelled should the placement of the child not proceed.
  - (ii) 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 Ministry forthwith and the Ministry shall nominate a time not exceeding 4 weeks from receipt of notification for the employee's resumption of work.
- f) Special leave
- The Ministry shall grant to any employee who is seeking to adopt a child such unpaid leave not exceeding 2 days plus an additional day for employees working and residing in rural locations 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 Ministry may require the employee to take such leave in lieu of special leave.
- g) An employee proceeding on adoption leave may elect to utilise
- (i) Accrued annual leave.
  - (ii) Accrued long service leave for the whole or part of the period referred to in subclause 20.4 (a) of this clause. The periods of leave referred to in subclauses (i) and (ii) of this subclause 20.4 (g) which are utilised, shall be paid leave.
  - (iii) Employees may extend their period of adoption leave by taking accrued annual and/or long service leave or, on application, a further period of leave without pay.
  - (iv) Paid sick leave or other paid award authorised absences (excluding annual leave or long service leave) shall not be available to employees during their absence on adoption leave.
- h) Effect of adoption leave on employment
- Subject to 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 or agreement.
- i) Termination of employment
- (i) 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.
  - (ii) The Ministry shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights the Ministry in relation to termination of employment are hereby not affected.

- j) Return to work after adoption leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to The Ministry given not less than 4 weeks prior to the expiration of the period of adoption leave provided by subclause 20.4 (a) (iii) hereof.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) 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 equal in status and pay to that of the employee's former position.
- k) Replacement employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before the Ministry engages a replacement employee it shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before the Ministry engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this clause, the Ministry shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Nothing under this clause shall be construed as requiring the Ministry to engage a replacement employee.
- (v) Fees paid to the Registrar of Titles or to the officer performing duties of a like nature and for the same purpose in another State or Territory of the Commonwealth.
  - (vi) Expenses relating to the execution or discharge of a first mortgage.
  - (vii) The amount of expenses reasonably incurred by the officer in advertising the residence for sale.
- (d) "Locality" in relation to an officer means—
- (i) Within the metropolitan area, that area within a radius of fifty (50) kilometres from the Perth City Railway Station, and
  - (ii) Outside the metropolitan area, that area within a radius of fifty (50) kilometres from an officer's headquarters when they are situated outside of the metropolitan area.
- (e) "Property" shall mean a residence as defined in this clause including a block of land purchased for the purpose of erecting a residence thereon to the extent that it represents a normal urban block of land for the particular locality.
- (f) "Residence" includes any accommodation of a kind commonly known as a flat or a home unit that is, or is intended to be, a separate tenement including dwelling house, and the surrounding land, exclusive of any other commercial property, as would represent a normal urban block of land for the particular locality.
- (g) "Settlement Agent" means a person carrying on business as settlement agent in a State or Territory of the Commonwealth, being, in a case where the law of that State or Territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under the law.

#### 21.—PROPERTY ALLOWANCE

(1) For the purposes of this clause the following expressions shall have the following meanings—

- (a) "Agent" means a person carrying on business as an estate agent in a State or Territory of the Commonwealth, being, in a case where the law of that State or Territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under that law.
- (b) "Dependant" in relation to an officer means—
  - (i) spouse including defacto spouse;
  - (ii) child/children; or
  - (iii) other dependant family;
 who resides with the officer and who relies on the officer for support.
- (c) "Expenses" in relation to an officer means all costs incurred by the officer in the following areas—
  - (i) Legal fees in accordance with the Solicitor's Remuneration Order, 1976 as amended and varied, duly paid to a solicitor or in lieu thereof fees charged by a settlement agent for professional costs incurred in respect of the sale or purchase, the maximum fee to be claimed shall be as set out under item 8 of the above order.
  - (ii) Disbursements duly paid to a solicitor or a settlement agent necessarily incurred in respect of the sale or purchase of the residence.
  - (iii) Real Estate Agent's Commission in accordance with that fixed by the Real Estate and Business Agents Supervisory Board, acting under Section 61 of the Real Estate and Business Agents Act, 1978, duly paid to an agent for services rendered in the course of and incidental to the sale of the property, the maximum fee to be claimed shall be fifty percent (50%) as set out under Items 1 or 2—Sales by Private Treaty or Items 1 or 2—Sales by Auction of the Maximum Remuneration Notice
  - (iv) Stamp Duty.

(2) When an officer is transferred from one locality to another in the public interest or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the officer has no control, the officer shall be entitled to be paid a property allowance for reimbursement of expenses incurred by the officer—

- (a) In the sale of residence in the officer's former locality, which, at the date on which the officer received notice of transfer to a new locality—
    - (i) the officer owned and occupied; or
    - (ii) the officer was purchasing under a contract of sale providing for vacant possession; or
    - (iii) the officer was constructing for the officer's own permanent occupation, on completion of construction; and
  - (b) In the purchase of a residence or land for the purpose of erecting a residence thereon for the officer's own permanent occupation in the new locality.
- (3) An officer shall be reimbursed such following expenses as are incurred in relation to the sale of a residence—
- (a) If the officer engaged an agent to sell the residence on the officer's behalf—50 percent of the amount of the commission paid to the agent in respect of the sale of the residence;
  - (b) if a solicitor was engaged to act for the officer in connection with the sale of the residence—the amount of the professional costs and disbursements necessarily incurred and paid to the solicitor in respect of the sale of the residence;
  - (c) if the land on which the residence is created was subject to a first mortgage and that mortgage was discharged on the sale, then an officer shall, if, in a case where a solicitor acted for the mortgagee in respect of the discharge of the mortgage and the officer is required to pay the amount of professional costs and disbursements necessarily incurred by the mortgagee in respect of the discharge of the mortgage—the amount so paid by the officer;
  - (d) if the officer did not engage an agent to sell the residence on his or her behalf—the amount of the

expenses reasonably incurred by the officer in advertising the residence for sale.

(4) An officer shall be reimbursed such following expenses as are incurred in relation to the purchase of a residence—

- (a) if a solicitor or settlement agent was engaged to act for the officer in connection with the purchase of the residence—the amount of the professional costs and disbursements necessarily incurred are paid to the solicitor or settlement agent in respect of the purchase of the residence;
- (b) if the officer mortgaged the land on which the residence was erected in conjunction with the purchase of the residence, then an officer shall, if, in a case where a solicitor acted for the mortgagee and the officer is required to pay and has paid the amount of the professional costs and disbursements (including valuation fees but not a procuracy fee payable in connection with the mortgage) necessarily incurred by the mortgagee in respect of the mortgage—the amount so paid by the officer;
- (c) if the officer did not engage a solicitor or settlement agent to act for the officer in connection with the purchase or such a mortgage—the amount of the expenses reasonably incurred by the officer in connection with the purchase or the mortgage, as the case may be, other than a procuracy fee paid by the officer in connection with the mortgage.

(5) An officer is not entitled to be paid a property allowance under paragraph (2)(b) of this clause unless the officer is entitled to be paid a property allowance under paragraph (2)(a) of this clause, provided that the Chief Executive Officer may approve the payment of a property allowance under paragraph (2)(b) of this clause to an officer who is not entitled to be paid a property allowance under paragraph (2)(a) of this clause if the Chief Executive Officer is satisfied that it was necessary for the officer to purchase a residence or land for the purpose of erecting a residence thereon in the officer's new locality because of the officer's transfer from the former locality.

(6) For the purpose of this Award it is immaterial that the ownership, sale or purchase is carried out on behalf of an officer who owns solely, jointly or in common with—

- (a) the officer's spouse, or
- (b) a dependant relative, or
- (c) the officer's spouse and a dependant relative.

(7) Where an officer sells or purchases a residence jointly or in common with another person—not being a person referred to in subclause (6) of this clause the officer shall be paid only the proportion of the expenses for which the officer is responsible.

(8) An application by an officer for a property allowance shall be accompanied by evidence of the payment by the officer of the expenses, being evidence that is satisfactory to the Chief Executive Officer.

(9) Notwithstanding the foregoing provisions, an officer is not entitled to the payment of a property allowance—

- (a) In respect of a sale or purchase prescribed in subclause (2) of this clause which is effected—
  - (i) more than twelve months after the date on which the officer took up duty in the new locality; or
  - (ii) after the date on which the office received notification of being transferred back to the former locality;

Provided that the Director General may, in exceptional circumstances, grant an extension of time for such period as is deemed reasonable.

- (b) Where the officer is transferred from one locality to another solely at the officer's own request or on account of misconduct.

## 22.—TRANSFERS

The following principles and objectives are the basis for transfer arrangements—

### Principles

Transfers are to be effected through an agreed process and applied in a manner able to withstand open scrutiny with fair and equitable treatment of all officers subject to transfer.

### Objectives

To facilitate the identification and filling of vacancies in a timely manner.

To ensure that agreed establishment levels are maintained at all prisons.

To ensure that agreed staffing ratios male/female are maintained in all prisons.

To provide stability in prison staffing.

To provide a degree of predicability and certainty so that officers can plan for the future.

To provide a system that is easy to work and easy to understand.

To provide officers with an opportunity to gain broad based experience.

To provide consistency in the decision making process

### 22.1. Definitions

For the purposes of this clause the following expressions shall have the following meanings—

“Transfer” means the movement of an employee from one location to another location at the same, or lesser rank. This includes Senior Officers, Prison Officers Industrial Officers and Hospital Officers.

First Class Prison Officers will only be considered for a transfer if there is a vacancy of the same level at the receiving prison.

Where a vacancy does not exist at the officers rank, the officer may choose to nominate for the transfer list of a lower rank and regress to that rank on the date a transfer is effected.

There are two main categories of transfer, these being—

- a) Voluntary: A transfer initiated by an officer and effected through the transfer lists, mutual swap or a compassionate transfer.
- b) Compulsory: A Ministry directive to an officer to relocate from one location to another in accordance with Prison Regulations.

“Transfer List” is the list of Prison Officers who have expressed an interest for a transfer ranked in seniority order at the time of application for placement on a transfer list.

Senior Officers, Industrial Officers and Hospital Officers can apply to be placed on a Transfer List at any time. If there is nobody on the Transfer List an officer may submit an expression of interest for transfer to a like for like position at the time a position becomes vacant.

“Compassionate Transfer” means a transfer effected outside the normal Transfer Lists in response to personal circumstances which warrant relocation of an officer.

“Mutual Swap” is a voluntary exchange of positions between officers of the same rank at different locations.

“Executive Director” means the Executive Director Offender Management and successors

“Permanent Posting”: means the placement of an officer to a permanent position at a prison, on the completion of the trainee prison officers course.

“Temporary Posting” means the agreed temporary placement of an officer to a prison on the completion of the trainee prison officer course, pending a permanent posting.

“Local Recruit” means an officer who is specifically recruited for a position in an identified prison or region and who resides in that location or region.

“Gender Ratio” means the agreed ratio which governs the percentage of female to male officers at the prison.

“Agreed Establishment Levels” means the number of officers required to fill the permanent substantive positions within a prison.

“Redeployed Prison Officer” means an officer who, as a result of a prison closure or abolition of their substantive position as a result of a restructure, does not have a permanent substantive position at any prison.

## 22.2 Special Rules

## (a) Initial Posting

Officers will be required to serve a minimum of twelve months at their initial posting (Prison) from the trainee prison officer course.

Where a vacancy is unable to be filled through the normal transfer process the twelve month requirement **may** be waived by the Ministry after consultation with WAPOU.

## (b) Two Year Rule

An officer who receives a transfer, whether it be through the Transfer Lists, mutual swap or a compassionate transfer, will be ineligible to be considered for a transfer within two years of their last, unless they are granted a further compassionate transfer.

Where a vacancy is unable to be filled through the normal transfer process the two year rule **may** be waived by the Ministry after consultation with WAPOU.

## (c) New Recruits

Trainee Prison Officers will take up vacancies after transfers based on the transfer list have been effected except where the position is filled by a local recruit.

## 22.3. Transfer process

## a) Transfer lists

To enable a transfer from a Transfer List to be effective there must be an identified vacancy at a prison which resulted or will result in the staffing level being below the approved establishment level

The Transfer List process will work as follows—

- i) Applications for expressions of interest from Prison Officers and First Class Prison Officers wishing to transfer to shift officer positions in prisons other than their own will be advertised in the Employment Notices as required. First Class Prison Officers who are transferred in this way will revert to the rank of Prison Officer.  
Applications for expressions of interest from Senior Officers, First Class Prison Officers, Industrial Officers and Hospital Officers to be placed on the relevant Transfer List can be submitted at any time.
- ii) Officers will be eligible to express an interest for transfer to a maximum of three prisons.
- iii) Applications for the Prison Officer Transfer List will be placed in seniority order at time of application when requested in the Employment Notices.
- iv) All other Transfer Lists will be compiled as applications are received.
- v) Officers who appear on a Transfer List for a particular prison will not have to reapply each time expressions of interest are called.
- vi) Officers accepting a transfer will be subject to the two year rule and will be removed from all other Transfer Lists.
- vii) Officers who are offered a transfer and decline the offer will be removed from the Transfer List for that particular prison, (with the exception of those officers who are redeployees).
- viii) Officers on the Transfer List who wish to transfer with a partner, will take a position on the Transfer List equivalent to the position of the partner with the least seniority.
- ix) In effecting the Transfer Lists the Ministry will take into account the following factors—  
Officers subject to redeployment;  
Gender ratio;  
Availability of accommodation at Broome, Eastern Goldfields and Roebourne;
- x) Transfer Lists will be circulated in Employment Notices at least twice per year.

## (b) Compassionate Transfers

The Ministry, for the purpose of effecting a compassionate transfer, are not obligated to consider the effects on the approved establishment levels of the particular prison.

Compassionate transfers will be considered by the Ministry on the following grounds—

- Medical reasons
- Personal/Family reasons
- Work related (conflict)

Officers seeking a compassionate transfer on one of the above grounds should make application to the Executive Director Offender Management stating the reason and where possible provide supporting evidence (ie advice from doctor).

Costs associated with a compassionate transfer will be met by the officer unless otherwise approved.

## (c) Mutual Swap

A mutual swap will not impact on the approved establishment level of any prison.

In instances where a mutual swap is approved the officers concerned will be responsible for all costs associated with the transfer unless otherwise approved.

Officers seeking a mutual swap are required to adhere to the following procedures—

Contact officers on the Transfer List who have nominated the officers current prison for transfer.

Should a mutual swap not be achieved through this action the officer will place a notice at the prison to which they wish to transfer.

Once the mutual swap has been arranged both officers are required to seek the recommendation of the Superintendents of both prisons.

A request in writing on how the mutual swap is to occur with the recommendations from the Superintendents is to be forwarded to the Executive Director Offender Management.

Officers may be required to return to their original substantive positions held prior to the swap in the event of one of the parties involved in the swap not fulfilling their obligations in the mutual swap process.

## (d) Redeployed Prison Officers

Officers who have been identified as being subject to redeployment will be given the opportunity to nominate one or more prisons where they wish to gain a permanent position.

At the first opportunity the officer will be placed at the preferred prison in a substantive position.

Should a substantive position not be available the officer may be placed at the preferred prison or another prison (as agreed) pending the availability of a substantive position.

Redeployed officers who have been placed through this means will not be subject to the two year rule.

## 22.5. Transfer and Removal Allowances

## Removal Costs

Removal costs will be paid in accordance with clause 39 of the Public Service Award.

## Disturbance Allowance

Disturbance Allowance will be paid in accordance with clause 32 of the Public Service Award.

## District Allowances

District Allowance will be paid in accordance with clause 31 of the Public Service Award.

## Property Allowance

Property Allowance will be paid in accordance with clause 21 of this Agreement.

## North West Child Allowance

North West Child Allowance will be paid in accordance with Circular to Departments and Authorities No.9 1980.

General Procedures

Forward two written quotes for the removal of furniture and effects to the Superintendent of the relevant prison. Approval must be obtained for goods in excess of 35 cubic meters. Freight charges for a motor vehicle must be shown as a separate item. Freight charges for additional items such as second motor vehicles, boats, trailers, caravans, etc are not to be included in the quotes.

An SGIO Inventory of Property form must accompany the two quotes to insure the goods in transit. If this does not occur or insurance is arranged by another company other than SGIO the Officer will be responsible for the cost of the insurance.

Air tickets to the new location are provided for the officer and family by the Ministry. Officers can apply to their Branch Head for permission to drive to their new location and will be reimbursed in accordance with clause 35 of the Public Service Award or the cost of economy air fares which ever is the lesser.

23.—RE-ENGAGEMENT IN EMPLOYMENT

Where an officer is reengaged in employment the Ministry has the discretion to

- (i) exempt the officer from all or part of the trainee program
- (ii) waive the period of probation
- (iii) appoint the officer to a point within the range for the rank of Prison Officers above the minimum that accounts for the officers previous relevant prison service

24.—REVIEW OF SERVICES

a) The parties undertake to jointly conduct a review into the delivery and provision of Transport Services and Health Services in Western Australian Prisons

b) The parties acknowledge that no significant change can be implemented into the delivery and provision of Transport Services and Health Services in Western Australian Prisons unless prior agreement is reached between the parties in accordance with the undertakings contained in Agreement 64 of 1994

25.—INDUSTRIAL OFFICER CLASSIFICATIONS

Within the first six months of the Agreement the parties will develop criteria structure for the future operations of Industrial Officers within the Prison Service. The criteria will address work requirements and reclassification procedures. The agreed reclassification procedures will replace the Industrial Officers Reclassification Committee.

26.—RANK STRUCTURE

During the term of the Agreement the existing rank structure including Industrial Officers will be investigated with a view to developing a more appropriate structure for the future operations of the Prison Service. A new structure will be available for implementation no later than 31 December 1997

27.—PERFORMANCE MANAGEMENT

The parties agree to the implementation of a performance management system for the assessment of Prison Officer work performance. The system will be operational with all prison officers participating by 31 December 1997

28.—PERMANENT PART TIME EMPLOYEES AND JOB SHARING

(a) The Ministry of Justice is committed to providing employees with opportunities to access part time and job share arrangements

(c) Part time employees may be employed to work less than forty hours per week.

(b) An employee's regular part time hours may be varied by the Director General with the consent of the employee.

(d) Part time employees shall not be required to work for less than three hours in any week or on any occasion of attendance at work.

(e) Part time employees those in job sharing arrangements shall be entitled to the salary and other conditions of employment as provided in this Agreement, the Gaol Officers Award No 12 of 1968 and the Gaol Officers Industrial Agreement Award No 64 of 1994 on a pro rata basis of their regular working hours to normal weekly working hours .

29.—CONSULTATIVE PROCESS

The parties to this Agreement are committed to working together to achieve improved prison services and provide a rewarding work environment for Ministry of Justice employees.

The parties will establish an Enterprise Agreement Forum to actively progress the implementation initiatives of the Agreement and monitor progress towards objectives and achievements in productivity.

The parties to the Agreement acknowledge that decisions will continue to be made by the Ministry of Justice which is accountable to Government, through legislation, for the operation of its business.

30.—DISPUTE SETTLEMENT PROCEDURE

This procedure is for dealing with issues arising from this Agreement. It is intended to operate in conjunction with the Ministry of Justice grievance policy and to complement existing dispute resolution procedures by speedily resolving any disputes over industrial issues.

No bans, stoppages or limitations will be imposed prior to, or during, the time this procedure is being followed.

This clause in no way limits the rights of the Ministry, employees, or WAPOU under the occupational Health, Safety and Welfare Act or other related legislation.

Where a matter is raised by an employee, or a group of employees, the following steps shall be observed—

1. The employee(s) shall discuss the matter of concern with the immediate supervisors. If the matter cannot be resolved at this level, the supervisor shall, within two working days, refer the matter to a more senior officer nominated by the Ministry, and the employee(s) shall be advised accordingly
2. The senior officer shall, if able, answer the matter raised as soon as practicable of it being referred and if the senior officer is not so able, refer the matter to the Executive Director Offender Management for his attention, and the employee(s) shall be advised accordingly.
3. If the matter has been referred in accordance with paragraph 2 above the employee(s) or the local union representative shall notify the Union Secretary or nominee to enable the opportunity of discussing the matter with the Ministry.
4. The Executive Director Offender Management shall as soon as practicable after considering the matter , advise the employee(s) or where necessary , the Union of the decision.
5. Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in paragraph (1) of this clause.
6. 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

The Manager of Employee Relations may be called upon to provide advice at any stage in the process.

31.—PAYMENT SCHEDULE FOR THIS AGREEMENT

On registration the officers covered by this agreement shall receive the rates provided in the salary scheduled for agreement to implement all provisions of the agreement

32.—ATTESTATION CLAUSE

EXECUTED as an agreement.

Dated this 29th day of May 1997

Signed by )  
 Attorney General in the )  
 Presence of ) Peter Foss  
 .....Signed..... )

Signed by )  
 Secretary of the Western Australian )  
 Prison Officers Industrial Union ) .....Signed.....  
 of Workers ) R. Stingemore  
 ) Secretary

SCHEDULE RATES OF PAY					TITLE RANK		5 May 1997	8.70%	WEEKLY RATE
TITLE RANK		EXISTING SALARY	TOTAL WKLY RATE	ANNUAL RATE	WEEKLY RATE	EXISTING SALARY	TOTAL WKLY RATE	ANNUAL RATE	WEEKLY RATE
(a) Probationary Prison Officer (Training School)		23826	456.73	25899	496.47				
(b) (i) Prison Officers									
Mon-Fri	1st Year	27564	528.39	29962	574.36				
	2nd Year	28691	549.99	31187	597.84				
	3-7 Year	30110	577.19	32730	627.41				
	Thereafter	30945	593.19	33637	644.80				
Shifts	1st Year	36024	690.56	39158	750.64				
	2nd Year	37585	720.48	40855	783.16				
	3-7 Years	39482	756.84	42917	822.69				
	Thereafter	40605	778.37	44138	846.09				
Shift—No Additional Shift Component									
	1st Year	34288	657.28	37271	714.46				
	2nd Year	35771	685.71	38883	745.37				
	3-7 Year	37575	720.29	40844	782.96				
	Thereafter	38643	740.76	42005	805.20				
(ii) First Class Prison Officers									
Mon-Fri		31800	609.58	34567	662.61				
Shift		41664	798.67	45289	868.15				
(iii) Senior Officers									
Mon-Fri	1st Year	32927	631.19	35792	686.10				
	2nd Year	33762	647.19	36699	703.50				
	3rd Year	34596	663.18	37606	720.88				
	Thereafter	35452	679.59	38536	738.71				
Shift	1st Year	43009	824.45	46751	896.18				
	2nd Year	44215	847.57	48062	921.31				
	3rd Year	45326	868.87	49269	944.46				
	Thereafter	46439	890.20	50479	967.65				
Security	Albany Canning Vale Prison								
	1st Year	39807	763.07	43270	829.46				
	2nd Year	40832	782.72	44384	850.82				
	3rd Year	41858	802.39	45500	872.20				
	Thereafter	42883	822.04	46614	893.56				
Reception	Canning Vale Prison CW Campbell Remand Centre								
	1st Year	38009	728.61	41316	792.00				
	2nd Year	38987	747.35	42379	812.37				
	3rd Year	39991	766.60	43470	833.29				
	Thereafter	40944	784.87	44506	853.15				
Senior Officer Training									
	1st Year	40928	784.56	44489	852.82				
	2nd Year	42075	806.55	45736	876.72				
	3rd Year	43131	826.79	46883	898.72				
	Thereafter	44189	847.07	48033	920.77				
(c) Industrial Drivers—Casuarina									
	1st Year	34083	653.35	37048	710.19				
	2nd Year	35483	680.19	38570	739.37				
	3-7 Year	37233	713.73	40472	775.82				
	Thereafter	38283	733.86	41614	797.71				
Drivers—CW Campbell Remand Centre									
	1st Year	31541	604.62	34285	657.22				
	2nd Year	32834	629.41	35691	684.17				
	3-7 Year	34450	660.38	37447	717.83				
	Thereafter	35420	678.98	38502	738.05				
Alternate Weekends									
	1st year	31933	612.13	34711	665.39				
	2nd Year	33375	639.78	36279	695.44				
	3-7 Year	34922	669.43	37960	727.67				
	Thereafter	35866	687.53	38986	747.35				
Alternative Weekends—Relief									
	1st Year	32494	622.89	35321	677.08				
	2nd Year	33827	648.44	36770	704.85				
	3-7 Year	35494	680.40	38582	739.59				
	Thereafter	36493	699.55	39668	760.41				
Industrial Officer Group 1									
Mon-Fri		31800	609.58	34567	662.61				
Mon-Fri + Public Holidays		32723	627.28	35570	681.85				
Alternate Weekends		36693	703.38	39885	764.57				
Alternate Weekends with Reliefs		37493	718.72	40755	781.25				
Bunbury/Casuarina Canteen		35798	686.22	38912	745.92				
Canning Vale Prison Canteen		34568	662.65	37575	720.30				
Wooroloo Canteen		33645	644.95	36572	701.06				
Metropolitan Security Unit—Dog Unit		39910	765.05	43382	831.61				
Albany Activities		35029	671.48	38077	729.90				
Bandyup Activities		38231	732.86	41557	796.62				
Bunbury Activities		37335	715.69	40583	777.96				
EAGO Activities		38718	742.20	42086	806.77				
Greenough Activities		39312	753.58	42732	819.14				
Karnet Activities		39024	748.06	42419	813.14				
Wooroloo Activities		38272	733.65	41602	797.48				
Canning Vale Prison Reception		36074	691.51	39212	751.67				
CW Campbell Remand Centre—Reception		37493	718.72	40755	781.25				
Industrial Officer Group 2									
Mon-Fri	1st Year	32927	631.19	35792	686.10				
	2nd Year	33762	647.19	36699	703.50				
	3rd Year	34596	663.18	37606	720.88				
	Thereafter	35452	679.59	38536	738.71				

(d) In addition to the rates prescribed above, any Officer or Industrial Officer who attained First Class status prior to 12 November, 1987 shall be paid an additional \$8.00 per week.

#### APPENDIX

#### EXPLANATORY NOTES ON DETERMINATION OF ADDITIONAL AND SPECIAL SHIFTS FILLING ROSTERS, ADDITIONAL SHIFTS AND SPECIAL SHIFTS

##### FILLING ROSTERS

(i) Identify all approved positions required for the prison.  
(ii) Calculate the FTE requirement to cover all these positions including the annual and long service leave relief. Identify the number of staff on duty and the number of staff available for annual and long service leave.

(iii) a) The first priority is to fill all lines on the roster.

b) Second priority is to cover long term sick.

c) Third priority is to cover peak muster positions.

d) It should be noted that the only time there will not be an officers name on a roster line is when there are **actual vacancies** at a prison. All officers whether on workers compensation, or secondments etc. should be placed against a roster line rather than leave the line vacant. This will then identify how the shifts on that roster line will be covered.

e) Salary budgets are based on the approved FTE level allocated to each prison. Staff in excess of this level are not included in the budget therefore when excess staff are used to cover Special Shifts, the money for that shift is deemed to have been utilised. Excess staff within each prison should be identified.

##### ADDITIONAL AND SPECIAL SHIFTS WHEN POSTING A ROSTER

(iv) When compiling the roster prior to posting any excess staff over the approved FTE should be used to offset any short-falls. Once this has been done and the roster is posted these staff are deemed to be part of the roster and cannot be used elsewhere during the period of the roster.

The only exception to this is if during a roster period an officer books off on long term sick leave. When this occurs any excess staff should be reassigned to cover the long term sick officer's roster line. The resultant vacant line will be covered by shifts applicable to the reason for the original rostered officer's absence, eg) secondment covered by a special shift.

#### ADDITIONAL AND SPECIAL SHIFTS DURING A ROSTER PERIOD

(v) During a roster period any officer not held against a specific roster line and/or the minimum manning policy shall be used to offset any vacancy resulting in the requirement for an Additional or Special Shift.

Additional Shifts will be covered in preference to Special Shifts.

It is recommended that these officers be moved around as vacancies occur but a cut off time, for example 1500 hours, be established. Once the cut off time is reached the officer remains in the allocated position.

Example: On Monday an excess officer is due to start cover of a workers compensation vacancy. At 1200 hours on Sunday preceding an officer books off on sick leave. The excess officer is moved to cover the sick leave vacancy and a special shift is called to cover the workers compensation line. If the officer books off at 1600 hours and not 1200 hours then the excess officer would remain on the workers compensation line and the sick leave vacancy covered by firstly minimum manning agreement and if a vacancy still exists by an additional shift.

(vi) Any long term sick vacancy which occurs during a roster period shall be filled by using Additional Shifts, only as a last resort.

(vii) During the times the human resource person is not at the prison the Senior Officer responsible for the manning level should be given a list of any shortfalls and how they are to be covered whether Additional or Special Shifts. Any subsequent shortfalls during this period will be covered as per the Award.

The above procedure allows for easy identification of whether a shortfall should be covered by Additional or Special Shifts. When calling an officer in for a Special Shift, the officer should be informed of the actual shift required to be covered. Once accepting this shift it cannot be changed. An officer therefore, cannot be advised that they will be doing a specific shift to find its been changed when they arrive at the prison.

#### ADDITIONAL SHIFTS

As part of their annualised salary Shift Officers have been paid for 80 hours Additional Shifts. Some identified Industrial Officer positions have been paid 40 hours Additional Shifts.

Additional Shifts are to cover staff shortfalls which were covered by overtime **prior to 1/7/1994** and not identified as Special Shifts or covered by a single rate annualised salary payment.

Additional Shifts will only be allocated in line with the Agreement and allocated as a last resort.

Where possible all prisons should have identified a minimum manning and non essential position policy.

Additional Shifts are not to be used to extend a prison's services as identified at 30/6/1994.

Carers leave will be covered by Additional Shifts as a last resort.

#### SPECIAL SHIFTS

Special Shifts shall be used to cover for Officers absent due to—

- vacancies,
- secondments,
- special projects,
- workers compensation,
- training including trade union training,
- trade union business,
- parental leave,
- peak musters,
- sick leave without pay,
- leave without pay
- or any other circumstance where the absent officer is not in receipt of salary,
- Red Dot, Red Alert or Z shifts on roster lines with no officer cover
- Red Dot, Red Alert or Z shifts on a vacant line

#### SINGLE RATE PAYMENT FOR SHIFTS

Payment at single rate of the annualised salary may be made available to cover the shifts as a result of—

- Single day annual leave.
- Annual and/or long service leave in excess of the approved number of staff on leave at any time.

It should be noted that these shifts are currently covered by additional shifts. Whilst money will be made available for the payment of the shift they are not voluntary shifts and must be covered. If coverage cannot be found then the leave should not be approved or the shortfall will revert back to additional shifts

When an Officer returns to duty early as a result of taking leave entitlements outside their normal leave letter they will initially be used to cover other single rate payment shifts or Special Shifts. If there is no demand to cover these shifts then the officer can be used as an extra officer.

#### EXCEPTIONAL HOURS

Exceptional hours are determined by the Minister or the Director General and include but not limited to a riot, major fire, or hostage situation. All exceptional hours are paid at double the officer's annualised hourly rate.

#### EMERGENCIES

(Subclause 16(5) of the Ministry of Justice Gaol Officers Enterprise Agreement 1997)

Any incident that requires officers to remain at work, conduct a prison escort or to be ordered into work after the expiration of their shift for the good order and security of the prison shall be paid at time and one half of the officers annualised hourly rate for a minimum of three hours.

An officer who is working a special or additional shift and is required to remain at work or conduct a prison escort after the expiration of their special or additional shift for the good order and security of the prison shall be paid at time and one half of the officers annualised hourly rate for a minimum of three hours.

#### CRITICAL INCIDENT

(Subclause 16(2) of the Ministry of Justice Gaol Officers Enterprise Agreement 1997)

Where an officer is directed within one hour of the scheduled expiry of their shift, including an additional shift, to perform an urgent or emergency escort and that duty extends beyond the officers rostered hours a minimum credit of three hours additional hours shall be made. If the actual duty exceeds three hours, all hours in excess of the officers normal rostered hours shall be paid at the officers annualised hourly rate.

An officer who is working a special shift is directed within one hour of the scheduled expiry of their special shift to perform an urgent or emergency escort and that duty extends beyond the officers ceasing time for the special shift a minimum payment for three hours. All hours in excess of the officers rostered special shift shall be paid at the officers annualised hourly rate.

**PENRHOS COLLEGE (ENTERPRISE  
BARGAINING) AGREEMENT, 1997.**  
No. AG 110 of 1997.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

and

Penrhos College.

No. AG 110 of 1997.

Penrhos College (Enterprise Bargaining) Agreement, 1997.

19 June 1997.

*Order.*

HAVING heard Ms T. Howe and Mr L. Woodford on behalf of the Applicants, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Penrhos College (Enterprise Bargaining) Agreement, 1997, filed in the Commission on the 29th day of April 1997 be registered on and from the 18th day of June 1997.

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Penrhos College (Enterprise Bargaining) Agreement, 1997 and shall replace the Penrhos College (Enterprise Bargaining) Agreement 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Relationship to Parent Award
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Long Service Leave
11. Professional Practices
12. Agreed Efficiency Improvements
13. Dispute Resolution Procedure
14. Other Matters
15. No Further Claims
16. No Precedent
17. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Penrhos College (the College) 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.

(2) The number of employees covered by this agreement is 88.

5.—DATE AND DURATION OF AGREEMENT

This agreement shall be registered on and from the 18th June 1997 and shall apply until 31 December 1998. The parties have agreed to meet no later than six months prior to the expiry of this agreement to review the 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 parties to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the College and reached full agreement.

8.—OBJECTIVES

The 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 College and its staff become genuine participants and contributors to the College'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 College and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the College 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. This should be done in ways which minimise both disruptions to students and additional costs.

9.—SALARY RATES

The teaching staff acknowledge that salary increases already in effect will be considered part of this agreement.

(1) The minimum annual rate of salary payable to teachers prescribed in Clause 11.—Salaries of the Award shall be increased as follows—

STEP	Current Salary \$	1.1.97 Salary \$	1.1.98 Salary \$
		10%	7%
1	23,997	26,397	28,245
2	25,455	28,001	29,961
3	26,912	29,603	31,675
4	28,595	31,455	33,657
5	30,165	33,182	35,505
6	31,510	34,661	37,087
7	32,856	36,142	38,672
8	34,538	37,992	40,651
9	36,388	40,027	42,829
10	37,902	41,692	44,610
11	39,247	43,172	46,194
12	40,930	45,023	48,175
13	42,611	46,872	50,153

(2) On and from 1 January 1997 the minimum allowance for promotion positions shall be—

Level 1	\$6,600
Level 2	\$4,400
Level 3	\$2,200
Level 4	\$1,100

(3) As from 1 January 1997 a three year trained teacher, if having accumulated eight (8) years teaching experience on Step 9, would progress to Step 10 and then each year thereafter progress a step on the Salary scale until Step 13 is reached.

(4) In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the salary rates prescribed by this agreement.

10.—LONG SERVICE LEAVE

(1) Notwithstanding the provisions of subclause (1) of Clause 10.—Long Service Leave of the award, from 1 July 1995 a teacher who has completed eight years' continuous service, or a further seven years' continuous service with the school, shall be entitled to take ten weeks' long service leave on full pay, taken within one school term.

(2) (a) The parties agree to the development of a management plan for the clearing of accrued Long Service Leave. As far as possible in this, the preferences of individual teachers will be taken into account.

(b) From 1 January 1998 all Long Service Leave will be required to be taken within 12 months of its falling due, unless the teacher has indicated in writing his/her intention to retire within 24 months or unless special circumstances pertain which affect the teacher or the College.

#### 11.—PROFESSIONAL PRACTICES

(1) The parties recognise that there is a wide range of responsibilities included in the profession of teaching.

(2) The parties recognise that the following factors apply in addressing fair and reasonable participation of teachers—

- (a) much of the life and culture of the College is derived from school activities involving teachers and students and conducted outside regular classroom contact;
- (b) the significant contributions of teachers to the life and values of the College are recognised;
- (c) there will continue to be consultation between the College and the staff in the allocation of teachers to all activities conducted by the College;
- (d) the competence, skills and qualifications of teachers, including part time teachers, will continue to be considered in the planning and allocation of activities conducted by the College.

#### 12.—AGREED EFFICIENCY IMPROVEMENTS

(1) Notwithstanding the provisions of Clause 8(3) and Clause 11 of this agreement, all teachers are required to be competent in the use of information technology. This is seen by both parties to assist in personal and professional development and to also guide career development. Whilst the College recognises the need to provide professional development programs for the staff it is recognised that a successful application of technology requires a time commitment and the active involvement of all staff.

##### (2) First Teaching Appointment

A teacher appointed to his or her first year at the College who, at the end of the initial twelve months, is deemed by the College 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) Carers' Leave

(a) A teacher may take in one year of service up to five days of paid 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 College 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.

##### (4) Staff Appraisal

(a) There is a commitment to the development and documentation of a performance appraisal system, to be completed by the end of the 1997 school year for implementation and evaluation in 1998.

(b) The process of this appraisal system shall be planned, trialed and accepted with full staff participation.

(c) The Staff Professional Development Committee, whose membership is to be partially determined by the teaching staff, shall be responsible for overseeing the design and evaluation of this appraisal process.

#### 13.—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.

#### 14.—OTHER MATTERS

When reviewing this agreement, or at an earlier mutually agreeable time, the parties agree to discuss such matters that are of relevance to either the College or the teaching staff.

Amongst matters for discussion are—

- (1) Salary Packaging
- (2) Promotional Positions

Introduction of fixed term employment arrangements for staff in promotional positions in the College: viz, Deputy Heads of Schools, Heads of Department, Middle School Curriculum Co-ordinators and Level Co-ordinators. There will be discussion in 1997 with possible implementation in 1998. Appropriate allowances to be linked with the implementation of any decisions.

- (3) Flexibility in Timetabling and the Structure of the School Day.
- (4) Co-curricular Expectations.

#### 15.—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.

#### 16.—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 College or not.

#### 17.—SIGNATORIES

G.C. Rixon  
Penrhos College

T.I. Howe  
The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

#### **PILBARA 4-WHEEL DRIVE AND MINE SERVICES AGREEMENT 1997.** **No. AG 119 of 1997.**

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

Pilbara 4-Wheel Drive and Mine Services.

No. AG 119 of 1997.

Pilbara 4-Wheel Drive and Mine Services Agreement 1997.

17 June 1997.

*Order.*

HAVING heard Mr J.K. Ferguson as agent for the Applicant there being no appearance for the Respondent, the

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

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 4th day of June, 1997 entitled Pilbara 4-Wheel Drive and Mine Services Agreement 1997 be registered as an industrial agreement.

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

### 1.—TITLE

This Agreement shall be known as the Pilbara 4-Wheel Drive and Mine Services Agreement 1997.

### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Relationship to Parent Award/Order
5. Parties Bound
6. Term
7. Background
8. Dispute Resolution
9. Objectives
10. Commitments
11. Hours
12. Wages
13. Accommodation
14. Long Service Leave
15. Afternoon Break
16. Uniforms
17. Sick Leave
18. Journey Cover
19. Training
20. Renewal of Agreement
21. Endorsement of Agreement  
Signatories to Agreement.

### 3.—AREA AND SCOPE

This Agreement shall apply to Pilbara 4-Wheel Drive and Mine Services with respect to approximately six engineering tradespersons employed by the Company in its operations at Newman, Western Australia.

### 4.—RELATIONSHIP TO PARENT AWARD/ORDER

(1) This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award No. 13 of 1965 and the Newman Metal Trades Order 1993.

(2) In the event of any inconsistencies between the documents, the provisions of this Agreement shall prevail.

### 5.—PARTIES BOUND

This Agreement shall apply to and be binding upon—

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—western Australian Branch (“AMWU”);

Pilbara 4-Wheel Drive and Mine Services;

Employees engaged as Engineering Tradespersons in the operations of the Company at Newman, Western Australia, who are, or eligible to be, members of the AMWU.

### 6.—TERM

(1) This Agreement shall operate for a period of 24 months from the date of registration.

(2) Further claims for wage increases or improvements in conditions shall not be made during this Agreement, except when consistent with a Wage Case Decision or the Western Australian Industrial Relations Commission, or where the parties agree that productivity improvements warrant a commensurable increase in wages.

### 7.—BACKGROUND

(1) After extensive negotiations between the Company, a Union representative and employee-elected representatives, comprising a single bargaining unit, agreement has been

reached according to the principles of the Enterprise Bargaining process.

(2) The purpose of this Agreement is to tailor employment conditions specifically to increase productivity for the Company which will ultimately be of benefit to employees.

(3) Set out hereunder are the aims of the Company—

- (a) Total focus on customers.
- (b) To employ and retain proficient tradespersons.
- (c) To provide quality service.
- (d) To exceed annual revenue and profit growth targets then continue to grow in a vigorous and profitable way.
- (e) A team commitment from all employees and management, trained to meet the required objectives.

(4) By utilising the Enterprise Bargaining principles it is hoped to develop a team of staff who are flexible and skilled in the areas needed to develop the Company as a market leader in the industry of equipment provision and maintenance.

(5) Benefits to employees from this Agreement will be—

- (a) Increased wages as prescribed in Clause 12.—Wages.
- (b) Incorporation of any previous bonus payments into new hourly rates, resulting in increased overtime payments.
- (c) The requirement of defined skills for each different pay level in conjunction with a proposed structured training programme to enhance advancement prospects within the Company.
- (d) Improvements in workplace communication and a more congenial environment.
- (e) Opportunities for employees to increase input into workplace issues.

(6) Advantages to the Company are—

- (a) The development of a skilled and flexible workplace team able to meet all Company requirements.
- (b) More efficient payroll control.
- (c) Training to provide skills which can be utilised to give greater productivity for the Company.
- (d) A faster and more efficient response to customer requirements.

### 8.—DISPUTE RESOLUTION

(1) The objective of this procedure is to promote the resolution of disputes by measures based on consultation, co-operation and discussion to avoid interruption to the performance of work that would result in consequential loss of production and wages.

Step 1: Discussion between the employees concerned and the immediate Supervisor.

Step 2: Discussion involving the employees concerned or the employee representative with the Site Manager.

Step 3: Discussion between the employees, an employee or Union representative and the Site Manager.

Step 4: Discussion involving the parties specified for Step 3 and Senior Management representatives.

Step 5: If the matter remains unresolved after taking Steps 1 to 4, the parties may jointly or individually refer the matter to the Western Australian Industrial Relations Commission for determination.

(2) In order to allow for the peaceful—resolution of grievances, the parties shall be committed to avoiding stoppages of work, lock-outs or any other bans or limitations on the performance of work while the procedures of resolution and conciliation are in progress.

### 9.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) Initiation of a new culture emphasising that the employer/employee relationship is based on teamwork.
- (b) Provision of a framework enabling the Company to become a more profitable and competitive Organisation providing challenging employment opportunities and a satisfying environment for all employees.

- (c) To provide all employees with opportunities to develop their skills and thereby demonstrate a broader range of competence.
  - (d) To provide all employees with career opportunities of benefit to themselves and the Company.
- (2) To achieve the aims specified in subclause (1) hereof, the following areas are to be considered—
- (a) Cost effectiveness.
  - (b) Quality of service.
  - (c) Customer relationships.
  - (d) Supplier relationships.
  - (e) Company sponsored training.
  - (f) Teamwork.
  - (g) Flexibility.

#### 10.—CLASSIFICATION STRUCTURE

- (1) Parties to this Agreement and all persons covered thereby are committed to—
- (a) Ensuring demonstrable gains in productivity
  - (b) Improvements in work Organisation, product and quality service, customer service, employee training and any other issues identified by the parties as being able to contribute to improved productivity and market performance.
- (2) All relevant forms required for recording of maintenance costs shall be completed by Engineering Tradespersons and will include—
- (a) Warranty information cards.
  - (b) Unit job cards.
  - (c) Job costing.
  - (d) Daily parts orders.
  - (e) Daily time sheets.
  - (f) Final road test inspection records.
  - (g) Repair and service check lists.
  - (h) Daily labour allocation sheets.
- (3) The Consultative Committee will be involved in the development of all future forms as the need arises.
- (4) The Company and employees shall ensure the certification of the Company to Australian Standard ISO 9002, with the aim of utilising quality assurance as an on-going improvement tool.

#### 11.—HOURS

- (1) The normal working week, excluding overtime, shall consist of 38 hours worked Monday to Friday inclusive.
- (2) Penalty rates shall only be paid after completion of 7.6 ordinary hours of work on any week day.
- (3) Employees shall not be granted any rostered days off.
- (4) Any employee who is absent from work for five consecutive days without contacting the Supervisor shall be deemed to have abandoned his/her employment.

#### 12.—WAGES

- (1) Wages will be paid weekly, in cash.
- (2) Leave loading of 17½% is incorporated into the wage structure and additional loading shall not be paid when accrued annual leave is taken.
- (3) Apprentices shall be paid the appropriate percentage of a Level 2 Tradesperson, as follows—
- |             |     |
|-------------|-----|
| First year  | 42% |
| Second year | 55% |
| Third year  | 75% |
| Fourth year | 88% |
- (4) The following hourly rate of pay shall apply to Tradespersons—
- |         |         |
|---------|---------|
| Level 1 | \$15.20 |
| Level 2 | \$15.40 |
- (5) Payment of the rates prescribed in subclause (4) hereof will commence on and from the date of registration of this Agreement by the Western Australian Industrial Relations Commission.
- (6) A disability allowance of \$1.50 shall be paid for all hours worked.

#### 13.—ACCOMMODATION

- (1) (a) A weekly accommodation allowance of \$130.00 shall be made, except in circumstances where equitable assistance has been agreed upon by the employer and employee.
- (b) The amount specified in paragraph (a) hereof shall be adjusted in accordance with variations to location allowances ordered from time to time by the Commission in Court Session.
- (2) Employees in Company accommodation who pay commercial rental rates shall receive the allowance prescribed in subclause (1) hereof.

#### 14.—LONG SERVICE LEAVE

- (1) Long service leave shall accrue at the rate of 13 weeks for every 10 years of service and be available after five years of service on a pro rata basis.
- (2) The Long Service Leave provisions set out in Volume 66 of the Western Australian Industrial Gazette, at pages 1 to 4 inclusive, are hereby incorporated in and form part of this Agreement.
- (3) Where there is any inconsistency between the standard Long Service Leave provisions and those in the Agreement, the provisions of this Enterprise Agreement shall prevail.

#### 15.—AFTERNOON BREAK

- All employees who are to work overtime after 5.00 p.m. shall be entitled to a 10-minute break commencing at 3.30 p.m.

#### 16.—UNIFORMS

- (1) Upon commencement, each employee shall be issued with two sets of uniforms and two sets annually thereafter.
- (2) Employees requiring additional issues of uniforms through abnormal wear and tear shall request same, as and when required, through their Supervisor who will evaluate the circumstances and, if warranted, approve such issue.

#### 17.—SICK LEAVE

- (1) The provisions for sick leave contained in the Metal Trades (General) Award No. 13 of 1965 shall apply to employees covered by this Agreement.
- (2) Each year, on the final pay day before Christmas, employees shall have the option of either accumulating, or being paid for, all or part of the unused portion of their current sick leave entitlement and payment shall be at the rate of one day's pay for each two days of sick leave accrued.
- (3) For the purposes outlined in subclause (2) hereof, sick leave will only be paid out in multiples of two whole days.
- (4) Employees shall be employed by the Company for a period of six months before becoming eligible for payment of untaken sick leave.

#### 18.—JOURNEY COVER

- Upon production of proof of membership to the insurance fund, the Company shall make a payment of \$20.00 to assist employees to take out, or renew, journey cover insurance as provided by the Union.

#### 19.—TRAINING

- (1) Employees agree to undertake any training required by the Company to improve skill levels, efficiency and productivity while maintaining safe working practices.
- (2) Up to 38 hours of training per year, in the employee's own time, may be undertaken at the Company's request.
- (3) Annual training of 38 hours shall not be cumulative.
- (4) Training in an employee's own time will be for a maximum period of three hours in any single instance.
- (5) Employees will be notified at least five working days in advance of any training required to be undertaken in their own time.

#### 20.—RENEWAL OF AGREEMENT

- Three months prior to the expiry of this Agreement, the parties will commence a review of its terms and conditions.

#### 21.—ENDORSEMENT OF AGREEMENT

- This Agreement has been negotiated between the Company and employees and reviewed by all parties who have entered

into the Agreement with full knowledge of its contents and effects.

#### SIGNATORIES TO AGREEMENT

Signed for and on behalf of Pilbara  
4-Wheel Drive and Mine Services

P.J. Robson  
.....  
5/5/97

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

J. Sharp-Collett  
.....  
28/5/97

**Common Seal**

### THE READYMIX—PORT HEDLAND CONCRETE PLANT (ENTERPRISE BARGAINING) AGREEMENT 1996. No. AG 102 of 1997.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CSR Limited trading as CSR Construction Materials  
and

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

No. AG 102 of 1997.

The Readymix—Port Hedland Concrete Plant (Enterprise  
Bargaining) Agreement 1996.

COMMISSIONER P E SCOTT.

20 June 1997.

*Order.*

HAVING heard Mr J N Uphill and with him Mr M Petale on  
behalf of the Applicant Ms R McGinty on behalf of the Re-  
spondent and by consent, the Commission, pursuant to the  
powers conferred on it under the Industrial Relations Act, 1979,  
hereby orders—

THAT The Readymix—Port Hedland Concrete Plant  
(Enterprise Bargaining) Agreement 1996 in the terms of  
the following Schedule be registered on the 1st day of  
May 1997.

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

[L.S.]

### THE READYMIX PORT HEDLAND CONCRETE PLANT (ENTERPRISE BARGAINING) AGREEMENT 1996

#### 1.—TITLE

This agreement shall be known as The Readymix—Port  
Hedland Concrete Plant (Enterprise Bargaining) Agreement  
1996.

#### 2.—ARRANGEMENT

Clause	Subject Matter
1	Title
2	Arrangement
3	Application and Parties to this Agreement
4	Date and Duration of Agreement
5	Relationship to Parent Awards and Agreements
6	Productivity Improvements—General
7	Training—Specific
8	Measures to Increase Productivity, Efficiency and Flexibility
9	Wages
10	Meal Break Allowance
11	Commitments
12	Renewal of Agreement

13	Resolution of Disputes
14	Signatories to this Agreement
Appendix A	EBA Index Chart Wage Rate Schedules

#### 3.—APPLICATION OF THE AGREEMENT

(1) This Agreement shall apply to and be binding on CSR  
Limited trading as CSR Construction Materials (“the com-  
pany”) and the Transport Workers Union of Australian  
Industrial Union of Workers, Western Australian Branch (“the  
union”) and all persons employed by the company in or in  
connection with concrete batching and delivery operations  
within the town of Port Hedland.

(2) There are approximately six employees covered by this  
agreement.

#### 4.—DATE & DURATION OF THE AGREEMENT

This agreement shall operate on and from 12 December 1996  
and shall remain in force for a period of twelve months.

#### 5.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This agreement shall be read and interpreted wholly in con-  
junction with the Transport Workers (General) Award, No. 10  
of 1961 (“the Award”).

Where there is any inconsistency between this agreement  
and the award, the agreement shall prevail to the extent of any  
inconsistencies.

#### 6.—PRODUCTIVITY IMPROVEMENTS—GENERAL

(1) The company has developed a broad framework to  
facilitate ongoing business improvement based on strategic  
planning and total quality management (TQM) principles. The  
framework is stated in the Country Division Vision Statement  
and the objectives are particularly outlined in CSR Construc-  
tion Materials Quality Policy April 1996 and Occupational  
Health and Safety Policy March 1993.

- Where customers are more than just buyers of our  
products, where customers (internal and external) are  
those for whom we work and those who work with  
us.
- Where every person knows his/her customers, un-  
derstands their needs and seek ways to meet and better  
their expectations.
- Where employee groups run their own areas, solve  
their own problems with supervisors acting in a sup-  
port role.
- Where employees and management work as a team,  
knowing in the long term it is in their mutual best  
interests.
- Where all employees pursue training and education  
that results in “doing the job right the first time”.
- Where scoreboards are visible around the division  
measuring key drivers and things that are important  
to our customers. Believing in that “if we can’t mea-  
sure it, we’re not managing it”.
- Where we all know and understand what drives qual-  
ity in each key process and all the important work is  
focussed on improving these processes.
- With products of such unquestioned quality that cus-  
tomers receive them without inspection.

(2) A fundamental ingredient to achieving the vision is in-  
volvement of all employees in developing and implementing  
improved practices. Although these processes of involvement  
will continue to evolve, a number of major initiatives will be  
undertaken to best equip the employees to effectively partici-  
pate in the continuous improvement process. These include—

- Provision of adequate resources and training.
- Extensive utilisation of teams to improve workplace  
environment, productivity and safety.
- Achieving continuous production when resources are  
allocated to learn problem solving, data analysis,  
training and communication.

In this regard employees agree to carry out a much  
broader range of duties using their skills and compe-  
tence to the fullest extent, subject to employees being

fully trained and the duties safe, legal and within their skills and competence to perform.

- (d) Training of all employees in TQM principles and problem solving tools.
- (e) Extensive identification of opportunities for improvements (OFI's).

7.—TRAINING—SPECIFIC

The employee shall agree to undergo specific training in the following areas—

- Job Safety Analysis;
- Hazard Inspection and Reporting;
- Accident / Incident Investigation;
- OFI use and close out;
- OH & S Representative (where applicable);
- Safety Committee;
- Matrix Measurement, Part 1; and
- Matrix Measurement, Part 2.

All training is to be provided and paid for during ordinary working hours.

8.—MEASURES TO INCREASE PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

Key areas in the operations have been identified as measures designed to affect real and demonstrable gains in productivity, efficiency and flexibility.

These areas have been assembled in the following matrix and weighted by factors reflecting their impact on overall company performance. Current situations are known and entered at level three while achievable targets have been set at level ten. 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 index score is entered into the "score" box.

The index scores for each measurable are added together and then divided by the total number of measurables to give the combined index score for the period, the combined index is then applied to the EBA Index Chart to give the % increase on base rates payable.

Example : Index for 7.1 would give a 2.625% increase.

**1. Opportunity for Improvement**

17 Raised in 6 months = 3/month

Target 6/month

A.	Number raised	Index Score
	0	0
	1	1
	2	2
	3	4
	4	6
	5	8
	6	10

B.	Number Effectively Closed	Index Score
	0	0
	1	1
	2	2
	3	4
	4	6
	5	8
	6	10

A. + B. Index Score , 2 = Index for O.F.I.'s

**2. Safety Performance**

Measured against the Safety Matrix System

	75	=	10.0
	70	=	9.0
	65	=	7.5
	60	=	6.0
	55	=	4.5
	50	=	3.0
	45	=	1.5
Current	40	=	0

**3. Slump Variation**

Percentage of Slump Tests.

As measured by Concrete Engineering "Results"

Exceeding the maximum specified slump.

	Index Score
0	= 10
1	= 8
2	= 6
3	= 4
4	= 2
5	= 0

**4. Maintenance System**

	% per activity	% Score
1. Critical parts list identified for each item of plant		10
2. Maintenance schedule in place for each item of plant		10
3. Maintenance carried out as per the schedule for each item of plant		60
4. Records maintained for each item of plant		20
	Index Score	
100%		10
90%		9
80%		8
70%		7
60%		6
50%		5
40%		4
30%		3
20%		2
10%		1

Data collection will focus on the above items but will not be confined to these areas. As the process develops further critical information may surface which can be linked to an expected follow-on agreement.

The specific activities or solutions necessary to achieve the targets for each area will be identified, designed and implemented through the structured team base 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 Concrete Production, capability and developing planned improvements in all facets of the process to improve productivity in line with quality products and services.

9.—WAGES

(1) The following wage increases are payable on the basis that all employees covered in this agreement continue to fully participate in and fully support the continuous improvement programmes as outlined in Clauses 6.—Productivity Improvements—General and 7.—Training—Specific and 8.—Measures to Increase Productivity, Efficiency and Flexibility.

(2) Subject to subclause (1) hereof the following wage rate increases shall be payable—

- (a) A 11% increase in addition to the rates payable pursuant to the Award(s) listed in recognition of —
  - All employees on site continuing to undertake duties including, but not limited to, general housekeeping tasks in and around the depot, general maintenance duties on plant and equipment such as greasing, checking of fluid levels and replenishing mixtures and refuelling mobile equipment.
  - The employees on site varying their start times to suit operational requirements, providing they have been advised on the previous shift or earlier, not withstanding that in regard to payment of such starts, normal award conditions shall apply.
  - Employees continuing to operate such plant and equipment as they are competent to operate without any demarcation in terms of award classification which may require drivers to operate various pieces of plant.

- Employees carrying out duties within the depot and at other locations such as associated leases with the boundaries of the Port Hedland Town Council.
  - All employees undertaking to take part in company training programmes during normal working hours.
  - Employees continuing to work as a team at the Wedgefield concrete plant and depot.
- (b) The wage increase specified in paragraph (2) (a) hereof shall be payable to all items under the Wages and Supplementary Clause of each award as defined in Clause 5.—Relationship to Parent Awards and Agreements.
- (c) Pay adjustments will be made at three monthly intervals in the following manner—
- Now-base award rate—11%.
  - Period 1 (0-3 months)—base award rate + 11% continues—four of the eight specific training sessions noted in section 7.0 of the EBA are to be completed in this period.
  - Period 2 (4-6 months)—base award rate +15%
    - based on successful completion of the first four training sessions in period 1 by the existing employees.
    - the remaining four specific training sessions noted in Section 7.0 of this EBA are to be completed in this period.
  - Period 3 (7-9 months)—base award rate +15%
    - based on successful completion of all eight specific training sessions noted in section 7.0 of this EBA by the existing employees.
    - measurement against the matrix system commences in this period.
  - Period 4 (10-12 months)—base award rate 15% + percentage determined by matrix score.

Note: Should the company fail to supply the training courses in section 7.0 of this EBA in the periods noted, the payment of base award rate +15% shall apply up to such time that all training has been supplied and completed. All new employees who commence work with the company after some or all training courses have been completed shall be trained in these courses as soon as practicable. The rates of pay for these employees shall be those of the relevant award classifications plus any EBA increases which are paid to the site workforce generally.

#### 10.—MEAL BREAK ALLOWANCE

A payment of \$12.00 which covers the first meal break and the meal allowance for working in excess of 10 hours shall be paid for all days worked or for weekend days worked exceeding 6.0 hours/day. In return for this payment an employee shall take a meal break of 30 minutes at any time from start of work to completion of work providing that—

- (i) if a break is not taken no further payment is due;
- (ii) meal breaks do not cause supply to a customer to be disrupted;
- (iii) a compulsory paid break of 20 minutes shall be taken after completion of 12.0 hours worked on any shift providing hours to be worked will exceed 12.0;
- (iv) no customer order can be deferred to another day in order to enable a meal break to be taken without prior consultation and agreement with the plant manager;
- (v) for days worked less than 6.0 hours, no payment shall be made;
- (vi) no further claim shall be made in regard to meal breaks or allowances covered by this clause.

#### 11.—COMMITMENTS

(1) The parties agree there shall be no further increase in wages for the life of this agreement except in accordance with state wage decisions.

(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 Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

#### 12.—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 outlined in Clauses 6.—Productivity Improvements General, 7.—Training—Specific and 8.—Measures to Increase Productivity, Efficiency and Flexibility.

(2) Such a review will be based on a minimum of three months' data collection and is expected to result in the renegotiation, renewal or replacement of this agreement effective from 12th December 1997.

(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.

#### 13.—RESOLUTION OF DISPUTES

(1) The following procedures shall apply in connection with questions, disputes or difficulties arising under this industrial agreement.

- (a) The persons directly involved, or representatives of person/s directly involved shall discuss the question, dispute or difficulty as soon as is practicable.
- (b)
  - (i) If these discussions do not result in a settlement, the question, dispute, or difficulty shall be referred to senior management for further discussion.
  - (ii) Discussions at this level will take place as soon as practicable.

(2) The terms of any agreed settlement should be jointly recorded.

(3) Any settlement reached which is contrary to the terms of this industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(4) Nothing in this procedure shall be read so as to exclude an organisation party to, or bound by the industrial agreement from representing its members.

(5) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

#### 14.—SIGNATORIES TO THIS AGREEMENT

(Signed) COMMON SEAL  
Signature on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch  
Date 14/4/97  
J. McGIVERON, Secretary.

(Signed)  
Signature on behalf of CSR Ltd, trading as CSR Construction Materials  
Date 1/4/97  
P. HATT, Divisional Manager.

#### APPENDIX A—EBA INDEX CHART

EBA INDEX CHART	
COMBINED INDEX	% INCREASE ON BASE RATE
9.6 to 10.0	3.500
9.1 to 9.5	3.325
8.6 to 9.0	3.150
8.1 to 8.5	2.975
7.6 to 8.0	2.800
7.1 to 7.5	2.625
6.6 to 7.0	2.450
6.1 to 6.5	2.275
5.6 to 6.0	2.100
5.1 to 5.5	1.925
4.6 to 5.0	1.750

APPENDIX A—EBA INDEX CHART—*continued*EBA INDEX CHART—*continued*

COMBINED INDEX	% INCREASE ON BASE RATE
4.1 to 4.5	1.575
3.6 to 4.0	1.400
3.1 to 3.5	1.225
2.6 to 3.0	1.050
2.1 to 2.5	0.875
1.6 to 2.0	0.700
1.1 to 1.5	0.525
0.5 to 1.0	0.350
0.1 to 0.40	0.175

WAGE RATE SCHEDULES

## Port Hedland Concrete Plant Agreement (Enterprise Bargaining)

Classification [under Concrete Batching Plants Award (Federal) 1985]

Batch Plant Operator	Base Rate & Disability Allowance	* Base Rate + 11%	* Base Rate + 15%
Level 1	\$429.70	\$476.96	\$494.15
Level 2	\$401.50	\$445.67	\$461.72
Level 3	\$401.50	\$445.67	\$461.35
Level 4	\$377.70	\$419.25	\$434.35
Level 5	\$372.60	\$413.60	\$428.49

Classification [under Transport Workers (General) Award 1961]

Concrete Agitator Truck Driver	Base Rate	* Base Rate + 11%	Base Rate + 15%	Concrete Drivers Allowance
Grade 4	\$409.70	\$454.76	\$471.15	\$9.14

\* Inclusive of the three (3) safety net adjustments totalling \$24.00 per week.

**SERCO AUSTRALIA PTY LIMITED ENTERPRISE BARGAINING AGREEMENT 1997.  
No. AG 104 of 1997.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Serco (Australia) Pty Ltd.

No. AG 104 of 1997.

COMMISSIONER J F GREGOR.

9 June 1997.

*Order.***REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 104 of 1997**

Having heard Ms K. Cameron on behalf of the first named party and Mr J. Duncan on behalf of the second named party, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the document titled Serco Australia Pty Limited Enterprise Bargaining Agreement 1997, filed in the Commission on 18 April 1997, be and is hereby registered as an Industrial Agreement.

[L.S.]

(Sgd.) J.F. GREGOR,  
Commissioner.

## 1.—TITLE

This Agreement shall be known as the "Serco Australia Pty Limited Enterprise Bargaining Agreement 1997, No. AG 104 of 1997."

## 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Term of Agreement
6. Relationship to Award
7. Wages
8. Casual Employees
9. Cost Savings Incentive
10. Rostered Day Off
11. Meal Money
12. Grievance Procedure
13. Signatories

## 3.—AREA AND SCOPE

The area and scope of this Agreement shall be that prescribed in the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 (No. R32 of 1976) ("the Award") as amended from time to time, insofar as it applies to employees of Serco Australia Pty Limited.

## 4.—PARTIES BOUND

This Agreement shall apply to and be binding on Serco Australia Pty Limited ("the Company"), and The Shop, Distributive and Allied Employees' Association of Western Australia ("the union") and shall apply to all employees employed at the Company's operation in Belmont, who are members or are eligible to be members of the union and who are covered by the Award as varied from time to time.

It is estimated that 25 employees will be bound by this Agreement upon registration.

## 5.—TERM OF AGREEMENT

(1) This Agreement shall operate from 27 January 1997 and shall expire on 26 January 1998.

(2) The parties to this Agreement shall begin negotiations for a new Agreement at least 3 months prior to the expiration of this Agreement.

(3) Following its expiry, the Agreement shall continue to operate until varied by the parties or replaced by another Agreement.

## 6.—RELATIONSHIP TO AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Award, as varied from time to time, as identified in Clause 3.—Area and Scope, of this Agreement.

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

## 7.—WAGES

(1) Permanent Employees

The following wage rates shall come into effect on the first full pay period on or after 27 January 1997 and represent an 3% increase. The wage rates are for 38 ordinary hours per week.

	CURRENT RATE	27 JAN 1997 WEEKLY RATE	27 JAN 1997 HOURLY RATE
Permanent Employee	\$433.63	\$446.64	\$11.75

(2) Casual Employees

The following wage rates shall come into effect on the first full pay period on or after the dates listed below.

	CURRENT HOURLY RATE	27 JAN 1997 HOURLY RATE	ON REGISTRATION
Casual Employee	\$13.29	\$13.69	\$14.10

Upon registration the casual hourly rate of pay shall represent a loading of 20% on the full time ordinary hourly rate of pay for ordinary hours of work.

(3) This Agreement shall not operate to cause any employee to suffer a reduction in an overaward payment.

(4) All allowances, as prescribed by the Award, shall be increased by 3% from 27 January 1997.

8.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged for a maximum of 30 ordinary hours in any one week, provided that a casual employee may be engaged for 38 ordinary hours per week for periods not in excess of four consecutive weeks.

(2) Notwithstanding subclause (1), during the peak working period, commencing the second week in November and ending in the second week in March, a casual employee may be engaged to work a maximum of 38 ordinary hours per week.

9.—COST SAVING INCENTIVE

A cost savings incentive shall be introduced, with a further 1% increase to be paid from 1 November 1997, provided that the Company's budget deficit is reduced by 20% before this date.

10.—ROSTERED DAYS OFF

The parties have agreed that the system of a Rostered Day Off, (R.D.O.), for all full time employees shall be continued for the term of this Agreement.

Full time employees shall be rostered to work ordinary hours over not more than 19 days in any four week roster cycle. Employees shall be rostered to work eight ordinary hours for each of the 19 days in the four week roster cycle.

11.—MEAL MONEY

An employee shall be paid a meal allowance of \$6.70 when he or she is required to continue working after the usual finishing time for more than two hours.

12.—GRIEVANCE PROCEDURE

(1) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure—

- (a) The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the union delegate.
- (b) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the appropriate representative of the Company.
- (c) If not settled the matter shall be discussed between an official of the union and an appropriate representative of the Company.

(2) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in subclause (1) of this clause, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(3) It will be open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute.

13.—SIGNATORIES

For and on behalf of The Shop, Distributive and Allied Employees' Association of Western Australia—

.....signed..... Date: 14 May 1997

JOSEPH BULLOCK, General Secretary.

For and on behalf of Serco Australia Pty Limited—

.....signed..... Date: 19 May 1997

JAMES DUNCAN, Contract Manager.

**STRAMIT INDUSTRIES (MADDINGTON)  
WESTERN AUSTRALIA ENTERPRISE  
BARGAINING AGREEMENT 1996.  
No. AG 95 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stramit Industries

and

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

No. AG 95 of 1997.

Stramit Industries (Maddington) Western Australia Enterprise Bargaining Agreement 1996.

COMMISSIONER P E SCOTT.

12 June 1997.

*Order.*

HAVING heard Mr J N Uphill on behalf of the Applicant and Ms R McGinty on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Enterprise Bargaining Agreement in the terms of the following Schedule be registered on the 1st day of May 1997.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

Schedule.

STRAMIT INDUSTRIES  
ENTERPRISE BARGAINING AGREEMENT 1996

1.—TITLE

This Agreement shall be known as the Stramit Industries (Maddington) Western Australia Enterprise Bargaining Agreement 1996.

2—ARRANGEMENT

This Agreement is arranged as follows—

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
Title	1
Arrangement	2
Application	3
Parties Bound	4
Date and Period of Operations	5
Relationship to Parent Award	6
Objectives of the Agreement	7
Service Standards	7.1
Competency of Personnel	7.2
Payment of Wages	7.3
Operator Based Maintenance	7.4
Safe Work Practices	7.5
Personnel Protective Equipment	7.6
Quality Accreditation	7.7
Customer Service Standards	7.8
Key Indicators	8
Wages	9
No Extra Claims	10
Avoidance of Industrial Disputes	11
Not to be used as a Precedent	12
National Standards	13
Agreement Monitoring Procedure	14
Renewal of Agreement	15
Commitment	16
Signatories to this Agreement	17

### 3.—APPLICATION

a. This Agreement shall apply at Stramit Industries—Malcolm Road, Maddington—to approximately 12 employees who are bound by the terms of the Transport Workers (General) Award No. 10 of 1961 in so far as those provisions relate to the parties referred to in Clause 4—PARTIES BOUND—of this Agreement.

b. It is the express intention of the parties that the terms of this Enterprise Bargaining Agreement shall be met notwithstanding the provision of the Award referred to in (a) above. In all other aspects the provisions of the relevant Award shall apply.

### 4.—PARTIES BOUND

The parties to this Agreement are—

- a. Stramit Industries (Maddington) Western Australia (A division of Amtel Limited)
- b. All employees engaged in any of the occupations, industries or callings specified in the Transport Workers (General) Award No. 10 of 1961.
- c. The organisation that represents the employees defined in (b), namely—
  - i. Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch
- d. The parties agree to oppose any applications by other parties to be joined to this Certified Agreement.

### 5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the beginning of the first pay period to commence on or after the 21st May, 1996, and shall remain in force for a period of two years.

### 6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Transport Workers (General) Award No. 10 of 1961, provided that where there is any inconsistency between this Agreement and the Transport Workers (General) Award No. 10 of 1961, this Agreement, shall take precedence to the extent of the inconsistency.

### 7.—OBJECTIVES OF THE AGREEMENT

The objectives of this Agreement are to achieve real and positive gains in productivity, efficiency, flexibility and service, as follows—

#### 7.1 SERVICE STANDARDS

To extend our twenty four hour delivery cycle time to a wider range of customers and product lines.

##### Actions

- a. To ensure priority deliveries are made on time.
- b. Damage as a result of transit and off loading to be closely monitored to eliminate these quality failure incidents.
- c. To inform the appropriate supervisor as soon as it becomes apparent that delivery of an order may be delayed.

#### 7.2 FLEXIBILITY OF COMPETENCY OF PERSONNEL

Ensure the continuation of existing and future training plans to achieve total flexibility and competency of personnel across all areas of the operations, as required, without any artificial restrictions inhibiting same. Consistent with the foregoing establish an effective competency appraisal system to ensure individual and organisational needs are satisfied.

##### Actions

- a. Employees are required to fully participate in the Company's multi-skilling programme to develop a more highly skilled and flexible workforce.

- b. Providing employees with appropriate training to acquire additional skills.
- c. Remove any barriers to the utilisation of skills acquired provided appropriate training has been provided with due regard to the nature of work at hand and the safety of personnel. To this end employees will continue to perform a wide range of functions and duties including work which is incidental to their main task or functions provided same is within the skills and competence of the employee/s concerned.
- d. Experienced employees are required to cooperate and assist with the training of other employees who are developing their skills.
- e. Employees and other authorised persons operating overhead cranes and forklift trucks are required to achieve the Company's Certificate of Competency (see Appendix), before using this equipment. A listing of authorised personnel is to be maintained by the Company.
- f. In carrying out duties, employees shall ensure and take all necessary steps to ensure that the quality, accuracy and completion of any job or task are maintained to the required standards. Employees shall not impose any restriction or limitations on the measurement and/or review of work methods or the utilisation of labour under the terms and conditions of the Agreement.

### 7.3 PAYMENT OF WAGES

Wages are to be paid by Electronic Fund Transfer (EFT) for all employees engaged by Stramit Industries.

### 7.4 OPERATOR BASED MAINTENANCE

Drivers will regularly carry out their own routine checks and report vehicle equipment malfunction to their Supervisor at the earliest opportunity.

### 7.5 SAFE WORK PRACTICES

To minimise lost time accidents and injuries through adherence and review of safe working practices, procedures and programmes.

##### Actions

- a. The parties are committed to the elimination of all incidents which could result in personal injury, occupational illness or damage to Company property and the environment or injury or damage to a customer or supplier.
- b. All employees have an obligation as defined under the Western Australia Occupational Safety and Health Act 1984 (Occupational Safety and Health Regulations 1st July, 1996) to participate in the maintenance of a safe working environment.
- c. The Company operates a Safety Committee with an elected representative from each of the main work areas.
- d. Delegate so elected must regularly attend Safety Committee Meetings. If absence is unavoidable then the Company's Safety Officer must be informed and a deputy provided.
- e. Employees will be provided with training in the performance of tasks, consistent with the requirements of the Western Australian Occupational Safety and Health Act 1984.
- f. All work-related injuries must be reported to the appropriate supervisor/manager and noted by the same. Failure to report accidents may jeopardise payment of accident compensation should this subsequently be claimed.

- g. Any damage to Company vehicles, equipment or third parties should be reported to the appropriate supervisor/manager within twenty four hours.

#### 7.6 PERSONAL PROTECTIVE EQUIPMENT

The Company will eliminate where possible potential work hazards through job design. When this is not possible, the Company will provide personal protective equipment (PPE) to prevent injury to employees. Employees will be supplied and shall wear/use at all times and maintain, as directed, appropriate protective clothing and equipment, for the job or task being performed.

The relevant Occupational Health and Safety Committee will be the body for reviewing and recommending PPE standards based on inputs from task analysis, users of PPE and Australian standards.

#### 7.7 QUALITY ACCREDITATION

The commitment and active participation of all employees in quality assurance procedures and methods required to AS/NZS ISO 9002: 1994.

#### 7.8 CUSTOMER SERVICE STANDARDS

The Company has a commitment for all its employees to achieve and maintain levels of excellence in customer services and is reaffirmed with the specific objectives—

- : reduce distribution related complaints

##### Action

- a. The Company is reviewing its Customer Awareness programme with a view to improving Stramit's customer service and image.
- b. Employees should take account of Service Standard Actions as show in Clause 7.1 Service Standards of this document.
- c. Employee having direct customer contact are required to present themselves in a neat and tidy appearance which includes the wearing of Company provided clothing.
- d. Such employees are required to conduct themselves in a helpful and courteous manner.

#### 8.—KEY INDICATORS

In order to achieve and maintain a continuous improvement environment the following key indicators will be monitored and specific objectives measured throughout the life of this Agreement. The Consultative Committee is to play a constructive role in monitoring, communicating and where appropriate modifying to reflect realistic performance objectives of these key indicators, to ensure the continued focus and commitment to the enterprise's growth and efficient performance by all employees at all levels.

The key indicators are—

- a. Co-operate with the Company's policy of reducing delivery cycle time to achieve next day delivery in all stock products and up to **25%** of Mono clad/Corrugated.
- b. Reduce incidents of loading, transit and off loading damage and other related distribution complaints via the Customer Service / Quality Incident Report.
- c. Improve safety performance—lost time accidents are to be recorded and investigated together with adherence to safe working practices and maintenance of good housekeeping standards. Target **0%**.
- d. Maintain AS/NZS ISO 9002 : 1994 accreditation.
- e. Minimise loss of productive hours due to non attendance. Target of no more than **2%** of total ordinary hours worked.

#### 9.—WAGES

a. Wages will be increased as follows—

(i) Transport Workers (General) Award No. 10 of 1961.

Wage Group	Classification Table	Col. 1	Col.2	Col.3
		20.05.96	21.05.96	19.05.97
Grade 1		388.60	404.14	420.31
Grade 2		405.10	421.30	438.16
Grade 3		413.50	430.04	447.24
Grade 13A	Special Loader	420.00	436.80	454.30
Grade 4		425.90	442.94	460.65
Grade 5		434.30	451.67	469.74
Grade 6		442.50	460.20	
	From 03.02.1997		467.70	486.41
Grade 7		451.70	469.77	488.56
Grade 8		471.60	490.46	510.10
Grade 9		483.80	503.15	523.28
Grade 10		504.50	524.68	545.67

#### 10.—NO EXTRA CLAIMS

The parties to this Agreement undertake that during the period of operation of this Agreement, there shall be no further wage increase sought, or granted, except for those provided under the terms of this Agreement.

#### 11.—AVOIDANCE OF INDUSTRIAL DISPUTE EMPLOYEE GRIEVANCE PROCEDURE

a. The disputes settlement procedure provided for in the Transport Workers (General) Award No. 10 of 1961, shall apply to any matter in dispute between the Company, employees and the Union.

#### 12.—NOT TO BE USED AS A PRECEDENT

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

#### 13.—NATIONAL STANDARDS

This Agreement shall not operate so as 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, etc.

#### 14.—AGREEMENT MONITORING PROCEDURE

This Agreement shall be subject to continuous monitoring and review periods of no longer than one (1) month to ensure that expected performance improvement actually occurs. In particular, adverse movements in the productive performance measures will be a primary trigger for the review procedure.

Accordingly, in the event that performance fails to match expectations, or subsequently deteriorates, corrective action will be taken without delay.

#### 15.—RENEWAL OF AGREEMENT

Discussions will take place three months prior to the expiry of this Agreement to discuss the nature of changes, if any, to the Agreement.

#### 16.—COMMITMENT

This Agreement commits every employee, covered by the Transport Workers Award, of Stramit Industries (Maddington) Western Australia, Management and the union to exercise the necessary flexibility and broadness of approach to allow the measures and objectives outlined in the Agreement to be achieved.

#### 17.—SIGNATORIES TO THIS AGREEMENT

(Signed)

ELTON W. BROWN  
State Manager W.A.  
Stramit Industries  
Western Australia

Dated this 24th day of March, 1997

(Signed)

J. McGIVERON  
Transport Workers Union of Australia, Industrial Union of  
Workers, Western Australian Branch

Dated this 13 day of March, 1997

COMMON SEAL

## APPENDIX

- a. Certificate of Competence—Overhead Electric Cranes  
 b. Certificate of Competence—Fork Lift Trucks

<h2 style="margin: 0;">CERTIFICATE OF COMPETENCE</h2> <p style="margin: 10px 0;">Awarded to</p> <p style="margin: 10px 0;">Permit to operate Stramit Industries Fork Lift Trucks</p> <p style="margin: 10px 0; font-size: small;">This is to certify that the above named has been assessed in accordance with the Competency Standards for Operators of Load Shifting Equipment - NOHSC:7019 (1992) and having satisfied the requirements is authorised to operate Company Fork Lift Trucks</p>	
<p style="font-size: small;">Brian N Stone Training Manager</p>	<p style="font-size: small;">Elton W Brown State Manager</p>

<h2 style="margin: 0;">CERTIFICATE OF COMPETENCE</h2> <p style="margin: 10px 0;">Awarded to</p> <p style="margin: 10px 0;">Permit to operate Stramit Industries Overhead Electric Cranes</p> <p style="margin: 10px 0; font-size: small;">This is to certify that the above named has been assessed in accordance with the Competency Standards for Operators of Load Shifting Equipment - NOHSC:7019 (1992) and having satisfied the requirements is authorised to operate Company Overhead Electric Cranes</p>	
<p style="font-size: small;">Brian N Stone Training Manager</p>	<p style="font-size: small;">Elton W Brown State Manager</p>

**WESTCAN ENTERPRISE BARGAINING  
AGREEMENT 1997/98.  
No. AG 121 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Westcan (A Division of Amcor Ltd)

and

The Automotive, Food, Metals, Engineering, Printing and  
Kindred Industries Union of Workers—Western Australian  
Branch and Another.

No. AG 121 of 1997.

Westcan Enterprise Bargaining Agreement 1997/98.

17 June 1997.

*Order.*

HAVING heard Ms C.D. Natta as agent for the Applicant, Mr J.K. Ferguson as agent for The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, and there being no appearance for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing, and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 9th day of June, 1997 entitled Westcan Enterprise Bargaining Agreement 1997/98 be registered as an industrial agreement.

(Sgd.) G. L. FIELDING,  
Senior Commissioner.

[L.S.]

WESTCAN ENTERPRISE AGREEMENT 1997/98

1.—TITLE.

This agreement shall be known as the Westcan Enterprise Bargaining Agreement 1997/98.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Incidence And Parties Bound
4. Period And Date Of Operation
5. Relationship To Parent Award
6. Background
7. Occupational Health And Safety
8. Maintenance
9. Employee Training And Development
10. Quality
11. Performance And Culture
12. Key Performance Indicators
13. Gainsharing System
14. Communication
15. Workplace Flexibility And Work Organisation
16. Annual Leave
17. Production Coverage
18. Labour Compliment
19. Wages And Remuneration
20. Redundancy Agreement
21. Issue Resolution
22. Public Interest
23. Renewal Of Agreement
24. Operational Clause
25. Additional Claims
26. Signatories  
Appendix A Remuneration

3.—INCIDENCE AND PARTIES BOUND

(1) This agreement shall apply at the premise located at 153—159 Bannister Road, Canning Vale W.A. 6155 and be binding upon—

- (A) Westcan (A division of Amcor Ltd)

- (B) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.
- (C) The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia.

- (2) The Agreement applies to all employees.
- (3) This Agreement covers fifty four employees.

#### 4.—PERIOD AND DATE OF OPERATION

(1) This agreement shall operate from the beginning of the first pay period commencing on or after March 1st 1997 and shall remain in force until March 1st 1999.

(2) The parties shall apply to the Industrial Commission to cancel the agreement on the 1st March 1999 unless it is renewed or varied at that time.

#### 5.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted wholly in conjunction with the so called Westcan Award and the Metal Trades General Award No. 13 of 1965 provided that there is no inconsistency, the terms of this agreement shall prevail to the extent of the inconsistency.

#### 6.—BACKGROUND

This Westcan Enterprise Agreement has been negotiated between the parties taking into account the needs of both the business and its employees. Of particular importance in this Agreement is the upcoming end to one Westcan's major contracts which means that Westcan must be in a position of absolute low cost manufacture at that time. To meet this objective a series of Key Performance Indicators have been identified to help drive the business in the correct direction.

The process of negotiation was to establish the important business issues and to then identify the issues which were of concern to and affected the employees in their ability to effectively meet the business objectives. The issues identified by the workforce were then analysed individually which led to the development of a plan to jointly address the major areas concerned as well as the Key Performance Indicators for the ongoing measurement of the success of the agreement to all parties.

The two cornerstones of the agreement, are for Westcan to become the most cost effective can manufacturing facility within South East Asia through the continuous achievement of output figures of 1.9 million cans per day with an annual spoilage rate below 2.5%, whilst continuously reducing manufacturing unit costs and utilising innovative systems, processes and technology.

The second cornerstone to the agreement is for the Westcan organisation inclusive of all employees to implement the agreed occupational health and safety programs to place the organisation to becoming the safest benchmarked can manufacturing facility, not only within Australia, but overseas.

This will be achieved through the detailed agreed initiatives provided for in this agreement.

#### 7.—OCCUPATIONAL HEALTH AND SAFETY

The current culture at Westcan in relation to Occupational Health and Safety is recognised as a reactive system rather than a proactive system.

The organisation and all Westcan employees commit to achieve the successful implementation of all phases of the Victorian Safety Map initiative. This will involve the "overhaul" of the current Westcan Occupational Health and Safety system and build in a systematic analysis of the workplace and the potential risks associated within the environment.

This will involve documenting all hazards through the application of a risk assessment analysis and control process.

It was accepted this is now a legislative requirement within Australia and agreed that the objectives for the organisation are to achieve the set key performance indicators described in this document which involve—

- (1) LTI severity rates below 200 (Number of lost working days per million man hours worked)
- (2) LTI frequency rates below 5 (Number of lost time incidents per million man hours worked)

- (3) Absenteeism rates below 2% (number of hours absent / total of hours worked)
- (4) Successful implementation of all phases of Safety Map through the life of this agreement
- (5) Successful program of risk analysis of machinery within the Westcan plant.

#### 8.—MAINTENANCE

The ongoing development of the preventative maintenance culture and system of work aimed primarily at increased machine availability. The measures that have been identified to achieve this are—

- maintenance analysis and measurement.
  - benchmarking of other similar plants.
  - development of a maintenance management system.
  - development of an inventory management system for spares.
  - implementation of a preventative maintenance system.
  - identify and manage areas of process variability.
  - improve planning, communication and information sharing in regards to maintenance activities.
  - establish weekly maintenance meetings.
  - include more preventative maintenance focus in daily production meetings.
  - commence an education process to change the culture in relation to maintenance.
  - continue employee training initiatives outlined in the company training strategy.
  - link developed maintenance procedures with Key Performance Indicators.
- where deemed appropriate planned capital expenditure within the plant will have input from Westcan employees.

To attain the desired maintenance objectives, it is recognised that involvement and input is imperative from the shift production system employees is taken into account when carrying out not only planned maintenance but also reactive maintenance.

#### 9.—EMPLOYEE TRAINING & DEVELOPMENT

A key area for the future of the organisation is recognised as training. To this end the following actions need to be put into place—

- establishment of training goals for individuals and work groups.
- review and update of the skills audits.
- develop training systems and programmes.
- update all staff on the overall Training strategy.
- establish training guidelines and standard operating procedures.

The focus on the training strategy within the Westcan organisation will be predominantly in the following areas—

- (1) Occupational Health and Safety.
- (2) Quality Systems and Procedures.
- (3) Customer quality control and assurance in relation to the Westcan product.
- (4) Communication.
- (5) Technical.

Technical training will be principally on the job training.

#### 10.—QUALITY

To remain a viable and low cost manufacturer it is also essential not to lose focus on the quality of the process and product that is produced at Westcan. The following issues have been identified as critical in maintaining current quality standards and establishing a mechanism for continuous improvement in this area—

- Compliance to the procedures established in the management system which is covered within the certification of the business to ISO 9002.
- Continuous feedback on customer issues.

- Reports on quality issues at the daily production meetings.
- Review of plant layouts and work designs with a view to eliminate serious customer complaints.
- Improved utilisation of quality tools such as Statistical Process Control techniques and other problem solving techniques including Pareto charts, Fishbone charts, brainstorming and any other technique which is found to be appropriate.

#### 11.—PERFORMANCE CULTURE

As well as the establishment of the above business issues, it was felt that some recognition of the process that has been undertaken by all employees at Westcan during the latter six months of 1996 needed to be made in this agreement as it would form one of the critical building blocks of the business for the future.

The Westcan Enterprise commits to continuous programmes that engender performance driven self directed work groups.

The rewards to the business and its employees from this process are—

- Through embracing and implementing the previous mentioned Occupational Health and Safety initiatives, employee lifestyle will be enhanced both within the workplace and socially.
- Increased skill levels and responsibility both of which will be appropriately recognised and rewarded.
- Involvement in decision making.
- Involvement in continuous improvement projects.
- Increased productivity and reduced wastage.
- Remuneration for continuous improvement through identified Key Performance Indicators and the agreed gainshare program.
- An informed, co-operative and contented workforce.
- Generation of ideas to continuously improve the manufacturing process.
- Utilise to optimum effect the skills, and talents of the workforce.
- Establish concept group (s) to process ideas.

Further to the above items this agreement is designed to continually improve the effectiveness of Westcan. To provide secure employment through the attainment of specific business objectives. These objectives will be determined through a process of consultation involving production work groups, engineering services and management. Performance indicators are to be used as a tool to—

- Ensure that our products and services are competitive.
- Drive continuous improvement projects.
- Provide products and services that conform to Customer requirements as a minimum and that surpass those of our competitors.
- Continually promote opportunities for employees to contribute to the success of Westcan.
- Promote trust and cooperation through effective consultative processes and actions that achieve results.

#### 12.—KEY PERFORMANCE INDICATORS

The inclusive Key Performance Indicators which have been identified for the organisation to obtain the goals depicted within this agreement are as follows—

##### 1. Health and Safety

- LTI severity rates
- LTI frequency rates
- Absenteeism
- Safety Map implementation
- Continuous risk audit assessment

##### 2. Production

- Cans per day.
- Cans per man hour.
- Raw material usage.
- Labour costs.

##### 3. Quality

- Returns (customers).
- Spoilage.
- Quality Procedures (audits).

##### 4. Environmental

- Waste reduction.
- Successful implementation of environmental audit.

An agreed Education Package is to be developed and Westcan employees will learn how to develop, implement, monitor and improve performance indicators.

#### 13.—GAINSHARING SYSTEM

Westcan Management and employees will establish a gainsharing mechanism that will provide benefits to all.

The interim gainsharing system that exists currently will remain in place until an appropriate system is agreed upon and implemented. The agreed objective is to have a finalised gainsharing system implemented within two months of commencement of this agreement.

It is agreed by both parties that the current practice for bonus payments is ineffective in both substance and employee ownership.

The parties agree to develop the following gainshare plan, with both the organisational goals and the employees being the focus of the plan—

- (1) Form a gainshare design team.
- (2) Train the design team.
- (3) Set objectives for the gainshare plan.
- (4) Design the gainshare plan.
- (5) Implement the gainshare plan.
- (6) Evaluate and monitor the gainshare plan.

#### 14.—COMMUNICATION

The parties recognise in order to achieve the objectives of the enterprise there needs to be effective processes in place. Personnel at Westcan in the past have focussed on the outcome rather than the process to this point. It is recognised that an effective communication system is one process that will enable the achievement of these objectives.

Communication at Westcan will be enhanced by training in the following areas—

1. Recognition and acceptance of the critical role communication plays in successful organisations.
2. Development and knowledge of the communication systems within the plant.
3. Skill development to increase the effectiveness of communication.

#### 15.—WORKPLACE FLEXIBILITY & WORK ORGANISATION

Subject to Clause 1—Operational Clause the following will apply.

The company commits to continued investment in its people, customers, technology and manufacturing processes. Work practices & job roles will be continuously reviewed and adapted to recognise the ever changing needs of our customers, the Westcan business and its employees, for example; if required the dayshift personnel will work on shift to enhance and upskill other shift employees, and attend to plant mechanical issues. This process is not limited to this, these are meant as possible job design initiatives. This flexibility also extends to committing to 24 hour coverage on annual overhauls.

#### 16.—ANNUAL LEAVE

The present agreement of one employee per shift for the utilisation of annual leave coverage will continue. Due to the short term issues associated with the palletiser, pallet and conveying area an additional employee will be operational within this area at the team leaders discretion. In addition, due to market indicators, through the reduction of four shifts to three shifts there will be an additional employee added to each shift with the sole intention to cover for annual leave or any unforeseen absences on the shift, with the short term view to reduce the Westcan annual leave liability.

If a second successive employee requests annual leave, then this would need to be reviewed and approved by a senior management representative.

Due consideration will be made throughout this process.

A maximum of 200 hours leave entitlement for each employee will be carried unless prior approval is agreed with a senior management representative at Westcan.

In conjunction with Senior Management and members of the Joint Consultative Committee. An agreed annual leave reduction programme will be established with individual employees who are currently carrying excess annual leave entitlements.

Due consideration will be made to individual employee circumstances.

To improve the planning process of the Westcan production facility, the four weeks of annual leave accrued throughout the calendar year, will be taken by employees in the following format—

- I. At least two weeks continuous annual leave.
- II. At least one week continuous annual leave.
- III. The remaining can be taken as single days, if necessary. Westcan management will not prevent any employee who requires to take more than two weeks continuous annual leave at any given time, he or she will be encouraged.

#### 17.—PRODUCTION COVERAGE

There will be no agreed running levels under the term of this Agreement neither can one be set. Due to the re-structuring of the shift structure as previously discussed above, the additional personnel on the dayshift will be utilised for any additional coverage on shift for unforeseen leave or any agreed additional shift annual leave.

The additional employees operational on the dayshift will be utilised for training, plant maintenance and site maintenance.

#### *Casuals*

1. Casuals will be employed by Westcan for Annual Leave, Sick Leave or Workers Compensation after the first 5 weeks of leave taken, if necessary.

2. Could be used to allow greater training opportunities if the team so decides.

3. Any further use of casuals would be discussed and agreed by the Joint Consultative Committee.

#### 18.—LABOUR COMPLIMENT

Through the reduction of four shifts to three, an option will be open to invite voluntary redundancies to a maximum of three. This option will be reviewed in six months time, with the view to accept a further three volunteers.

The selection criteria for these redundancies will be as follows—

One volunteer will be accepted from the Front End and the Decorator areas. No more than two volunteers will be accepted from the Internal Coater and Palletiser areas.

If there is an over subscription or an under subscription seniority will apply.

The option is not open to Team Leaders, C8's or C10's.

#### 19.—WAGES AND REMUNERATION

Westcan management and employees agree to develop and implement an integrated remuneration programme that encourages employees to increase skills, pursue continuous improvement and satisfaction and, allows for the gainsharing of productivity gains.

A 4 percent base rate wage increase to employees is to be paid effective from March 1st 1997. A further 3 percent base rate wage increase to employees will be effective from March 1st, 1998.

To encourage and reward Westcan employees for maximisation of performance and efficiency the remuneration package has been linked to both market volume, efficiency and number of hours operated per week.

The following table indicates the hours operated at Westcan under the system. The output is based on 1.7 million cans per day and due consideration has been made for ten public holidays, three annual overhaul days, and four preventative maintenance days.

Bracket	Volume Sales (million)	Hours per week	(See Appendix A for individual classification payments)
1.	437—458 m	44 hrs	
2.	415—436.99m	42 hrs	
3.	414 and below	40 hrs	

The system is designed for the Westcan operation and its employees to operate between a 5 Day and 6 Day operation.

If the manufacturing performance exceeds the outlined expected efficiency rates, and it is necessary to reduce the working week, then the Westcan employees will still enjoy the 44 hr average rate.

Should the average hours operated exceed 44 hrs, over the twelve month period, either due to an increase in market share or poor performance, then the Westcan employees will not be disadvantaged, and will be remunerated accordingly when it becomes evident.

It is recognised that there are common goals and objectives for all Westcan employees. To maximise output and efficiency, therefore all Westcan employees will be paid in the same manner when calculating the 44 hr average pay.

If there is a reduction in market share to such an extent to break into the second bracket ie. 415—436.99 million then the average pay will be lowered to 42 hours per week.

The Joint Consultative Committee will review the effectiveness of the content of this agreement, remuneration package and targets on a monthly basis.

#### 20.—REDUNDANCY AGREEMENT

The parties agreed to commit to negotiate the Westcan Redundancy Agreement during the life of this Enterprise Agreement.

The present Agreement will remain in place until a new Agreement has been finalised.

#### 21.—ISSUE RESOLUTION

All Westcan employees have a responsibility to raise and discuss workplace related issues as soon as they arise.

Issue Resolution is to be achieved through a process of open, honest consultation, in a co-operative manner that at all times recognises the values contained in this agreement.

Work Team representatives, an employee A.M.W.U. representative and Management Group representatives shall meet regularly to discuss all matters concerning the effective performance of the Westcan operation.

At each team meeting, all agreed Key Performance Indicators will be a standard part of the agenda.

Where on site matters cannot be resolved internally, appropriate personnel will be invited to attend the Consultative processes, for example, Customers, Internal and External Suppliers, A.M.W.U. Representatives.

(Refer to Clause 3A Metal Trades Award).

#### *Occupational Health and Safety*

It is recognised that all employees at Westcan will comply and adhere to the subjects outlined in the Westcan Safety Procedures Manual.

The current Occupational Health and Safety procedures will be reviewed and overhauled. These procedures will be discussed and agreed upon with the Safety Committee before implementation.

An awareness programme on all procedures will be carried out with all employees at Westcan.

In the event of an employee repeatedly offending Westcan's agreed procedures then in line with the reinforcement procedure his/her continued employment with the organisation will be evaluated.

#### 22.—PUBLIC INTEREST

The parties to this agreement are committed to ensuring that all primary shareholders in the business (including customers, suppliers, employees, shareholders and the general community) benefit from the program of continuous improvement in place within the Westcan plant. The improvements in cost efficiency as well as product quality and reliability associated with this program will consolidate the position of Westcan as a low producer and major supplier of aluminium cans.

## 23.—RENEWAL OF AGREEMENT

The parties will review the contents of this agreement three months prior to March 1st 1999. Such a review is expected to result in a renegotiation, renewal or replacement of this agreement, effective from March 1st 1999. Any new or renewed or replacement agreement would reflect the changes detailed in this agreement as a minimum.

## 24.—OPERATIONAL CLAUSE

Conditions may arise during the term of this Agreement that would require a change to the current working arrangements. If this becomes apparent to senior management it will be communicated to all employees within Westcan as soon as practical and discussed at the joint consultative committee.

## 25.—ADDITIONAL CLAIMS

During the life cycle of this agreement there will be no additional claims made on the Westcan operation by the employees or employee representatives.

## 26.—SIGNATORIES

Signed for and on behalf of Westcan, a Division of Amcor Limited (ACN 000 017 372)—

Andrew Harris

A. Harris (signed) 9/6/97

Signature Date

The Common Seal of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch.

Common Seal

J. Sharp-Collett  
Secretary

J. Sharp-Collett (signed) 6/6/97

Signature Date

The Common Seal of The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia

Common Seal

W.E. Game  
State Secretary

W.E. Game (signed) 6-6-97

Signature Date

J.D. Fiala  
Organiser

J.D. Fiala (signed) 6-6-97

Signature Date

**PUBLIC SERVICE  
ARBITRATOR—  
Awards/Agreements—  
Variation of—**

**PUBLIC SERVICE AWARD 1992.  
No. PSA A4 of 1989.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

The Public Service Commissioner and Others  
and

The Civil Service Association of Western Australia  
Incorporated.  
No. P 47 of 1994.

The Public Service Award 1992.  
COMMISSIONER R.N. GEORGE.

19 June 1997.

*Order.*

HAVING heard Mr B. Kirwan on behalf of the Applicants and Ms F. Bajrovic 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 Public Service Award 1992 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 and from 1 October 1994.

(Sgd.) R. N. GEORGE,

Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement: Delete 'Schedule L—Named Union Party' and insert in lieu thereof the following—

Schedule L—Named Parties

2. Clause 4.—Scope: Delete this clause and insert in lieu thereof the following—

4.—SCOPE

(1) This Award shall apply to all public service officers, other than those listed in subclause (2) of this clause, appointed under Part 3 of the Public Sector Management Act 1994 or continuing as such by virtue of clause 4(c) of Schedule 5 of that Act, who are members of or eligible to be members of the Civil Service Association of Western Australia (Inc).

(2) (a) A chief executive officer as defined in section 3(1) of the Public Sector Management Act 1994.

(b) A public service officer whose remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975.

(c) A public service officer whose remuneration is determined by an Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.

3. Schedule L—Named Union Party: Delete this Schedule and insert in lieu the following—

SCHEDULE L—NAMED PARTIES

The Civil Service Association of Western Australia Incorporated.

Commissioner, Aboriginal Affairs

Director General, Agriculture Western Australia

Executive Director, Department of the Arts

Auditor General for WA, Office of the Auditor General

Executive Director, Contract and Management Services

Chief Executive Officer, Department of Commerce and Trade

Executive Director, Department of Conservation and Land Management

Chief Executive Officer, Disability Services Commission

Director General, Education Department of WA

Commissioner, WA Electoral Commission

Chief Executive Officer, Department of Environmental Protection

Commissioner, Equal Opportunity Commission

Director General, Family and Children's Services

Executive Director, Ministry of Fair Trading

Executive Director, Fisheries Department

Chief Executive Officer, Gascoyne Development Commission

Board of Trustees, Government Employees Superannuation Board

Chief Executive Officer, Goldfields-Esperance Development Commission

Chief Executive Officer, Great Southern Development Commission

Commissioner, Health Department of Western Australia

Director, Office of Health Services Review

Executive Director, Homeswest

Registrar, WA Industrial Relations Commission

2.

Information Commissioner, Office of the Information Commissioner

Director General, Ministry of Justice

Chief Executive Officer, Kimberley Development Commission

Chief Executive Officer, Department of Land Administration

Executive Director, Department of Local Government

Chief Executive Officer, Mid-West Development Commission  
 Director General, Department of Minerals and Energy  
 Director of Public Prosecutions for WA, Office of the Director Public Prosecutions  
 Chief Executive Officer, Peel Development Commission  
 Chief Executive Officer, Pilbara Development Commission  
 Chief Executive Officer, Ministry of Planning  
 Chief Executive Officer, Police Department  
 Chief Executive Officer, Department of Productivity and Labour Relations  
 Director General, Ministry of Premier and Cabinet  
 Chief Executive Officer, Department of Resources Development  
 Chief Executive Officer, South West Development Commission  
 Executive Director, Ministry of Sport and Recreation  
 Commissioner, State Revenue Department  
 Chief Executive Officer, WA Department of Training  
 Director General, Department of Transport  
 Under Treasurer, Department of Treasury  
 Valuer General, Valuer General's Office  
 Chief Executive Officer, Water and Rivers Commission  
 Executive Director, Workcover WA  
 Commissioner, Worksafe Western Australia  
 Chief Executive Officer, Wheatbelt Development Commission

## AWARDS/AGREEMENTS— Variation of—

### BUILDING AND ENGINEERING TRADES (NICKEL MINING AND PROCESSING) AWARD 1968. No. 20 of 1968.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,  
Information, Postal, Plumbing and Allied Workers Union of  
Australia, Engineering and Electrical Division, WA Branch  
and

Western Mining Corporation Limited and Others.

No. 1692 of 1996.

Building and Engineering Trades (Nickel Mining and  
Processing) Award, 1968.

16 June 1997.

*Order.*

HAVING heard Mr C.F. Young as agent for the Applicant and Ms T.M. Allen as agent for the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Building and Engineering Trades (Nickel Mining and Processing) 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 date hereof.

(Sgd.) G.L. FIELDING,  
Senior Commissioner.

[L.S.]

Schedule.

1. Clause 8.—Overtime (Other Than Continuous Shift Workers): Delete subclause (6) of this clause and insert in lieu thereof the following—

(6) When an employee, without being notified on the previous day, is required to continue working after

their usual knock-off time for more than one hour, such employee shall be provided with a suitable meal by the employer or be paid \$5.43 in lieu thereof.

2. Clause 9.—Continuous Shift Workers: Delete subclause (7) of this clause and insert in lieu thereof the following—

(7) When an employee, without being notified on the previous day, is required to continue working after their usual knock-off time for more than one hour, such employee shall be provided with a suitable meal by the employer or be paid \$5.43 in lieu thereof.

3. Clause 39.—Apprentices: After subclause (11) of this clause add a new subclause as follows—

(12) Adult apprentices are those trade apprenticeships into which persons of 21 years of age or over are indentured. The duration of any adult apprenticeship will be determined in accordance with the Industrial Training Act, 1975.

4. Clause 44.—Rates of Pay and Classification Definitions: Delete subclause (10) of this clause and insert in lieu thereof the following—

(10) Notwithstanding the provisions of this award, no employee (including an apprentice), 21 years of age or over, shall be paid less than \$332.00 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay will not apply where the ordinary rate of pay is more than \$332.00 per week.

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, it shall be calculated upon the rate prescribed by this award for the classification in which the employee is employed.

### BUILDING TRADES (CONSTRUCTION) AWARD 1987. No. R14 of 1978.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Adsigns Pty Ltd and Others.

No. 656 of 1997.

Building Trades (Construction) Award 1987,  
No. R14 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

11 June 1997.

*Order.*

HAVING heard Ms J. Harrison on behalf of the Applicants and Mr K. Richardson 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 (Construction) Award 1987, No. R14 of 1978 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th May 1997.

(Sgd.) W. S. COLEMAN,  
Chief Commissioner.

[L.S.]

## Schedule.

Clause 28.—Time Records: Delete subclause (1) of this clause and insert in lieu the following—

- (1) Each employer shall keep a record, from which can be readily ascertained the following—
- (a) the name of each employee and his/her classification;
  - (b) the hours worked each day;
  - (c) the gross amount of wages and allowances paid;
  - (d) the amount of each deduction made and the nature thereof;
  - (e) the net amount of wages and allowances paid;
  - (f) the employer's Workers Compensation Policy or other satisfactory proof of insurance such as a renewal certificate;
  - (g) any relevant records which detail taxation deductions and remittances to the Australian Taxation Office, including those payments made as PAYE Tax whether under a Group Employers' Scheme or not;
  - (h) a certificate or other documentation from the Construction Industry Long Service Leave Payments Board which will confirm the employer's registration, the date of the last payment, and the period for which that payment applies; and
  - (i) the employer's and the employee's Construction + Building Union Superannuation number or other occupational superannuation number and the contribution returns by the employer to the Construction + Building Union Superannuation or other occupational superannuation schemes on behalf of the employee, where such benefit applies.

**DRY CLEANING AND LAUNDRY AWARD 1979.  
No. R 35 of 1978.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous  
Workers Union, Miscellaneous Workers Division, Western  
Australian Branch

and

Eric Dry Cleaners and Others.

No. 589 of 1997.

Dry Cleaning and Laundry Award 1979.

No. R 35 of 1978.

13 June 1997.

*Order.*

HAVING heard Ms J. Freeman on behalf of the Applicant and Ms C. Natta on behalf of Broome Industrial Linen Service, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Dry Cleaning and Laundry Award 1979 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 13th day of June 1997.

[L.S.]

(Sgd.) A. R. BEECH,  
Commissioner.

## Schedule.

1. Clause 2.—Arrangement: Delete this clause and insert in lieu the following—

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. Scope
4. Area
5. Term
6. Definitions
7. Contract of Service
8. Deleted
9. Hours of Work
10. Meal Intervals and Rest Periods
11. Meal Money
12. Overtime
13. Holidays
14. Annual Leave
15. Absence Through Sickness
16. Bereavement Leave
17. Long Service Leave
18. Special Rates
19. Mixed Functions
20. Travelling Time
21. Casual Worker/Permanent Part-Time Worker
22. Location Allowances
23. Time and Wages Record
24. Right of Entry
25. General Conditions
26. Protective Equipment
27. Notice Boards
28. Board of Reference
29. Liberty to Apply
30. Wages
31. Payment of Wages
32. Maternity Leave
33. Shift Work
34. Superannuation
35. Award Modernisation and Enterprise Consultation
36. Relationship to the National Training Wage Interim Award 1994  
Appendix—Resolution of Disputes Requirement  
Schedule A—Respondents  
Schedule B—Parties to Award  
Appendix—S.49B—Inspection Of Records Requirements
2. Immediately following Clause 35.—Award Modernisation and Enterprise Consultation insert the following new clause—
- 36.—RELATIONSHIP TO THE NATIONAL TRAINING WAGE INTERIM AWARD 1994  
A party to this award shall comply with the terms of the National Training Wage Interim Award 1994 [Print L5189], as varied, as though a party bound by clause 3 of that award.

**ENGINEERING AND ENGINE DRIVERS' (NICKEL  
SMELTING) AWARD, 1973.  
No. 4 of 1973.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,  
Information, Postal, Plumbing and Allied Workers Union of  
Australia, Engineering and Electrical Division, WA Branch  
and

Western Mining Corporation Limited and Others.

No. 1748 of 1996.

Engineering and Engine Drivers' (Nickel Smelting)  
Award, 1973.

16 June 1997.

*Order.*

HAVING heard Mr C.F. Young as agent for the Applicant and Ms T.M. Allen as agent for the Respondent, and by consent,

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

THAT the Engineering and Engine Drivers' (Nickel Smelting) Award, 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

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

Schedule.

1. Clause 8.—Overtime: Delete paragraph (c) of subclause (3) of this clause and insert in lieu thereof the following—

(c) Subject to the provisions of paragraph (d) of this subclause, an employee required to work overtime for more than one hour shall be supplied with a suitable meal by the employer or be paid \$4.90 for a meal and if, owing to the amount of overtime worked, a second or subsequent meal is required, he/she shall be supplied with each such meal by the employer or be paid \$4.90 for each meal so required. Any dispute as to the suitability of meals supplied shall be determined by a Board of Reference.

2. Clause 23.—Adult Minimum Wage: Delete this clause and insert in lieu thereof the following—

23.—ADULT MINIMUM WAGE

Notwithstanding the provisions of this award, no employee (including an apprentice), 21 years of age or over, shall be paid less than \$332.00 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay will not apply where the ordinary rate of pay is more than \$332.00 per week.

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, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

3. Clause 28.—Apprentices: After subclause (8) insert a new subclause as follows—

(9) Adult apprentices are those trade apprenticeships into which persons of 21 years of age or over are indentured. The duration of any adult apprenticeship will be determined in accordance with the Industrial Training Act, 1975.

4. Schedule A—Parties to the Award: Delete this Schedule and insert in lieu thereof the following—

SCHEDULE A—PARTIES TO THE AWARD

Unions Party To The Award

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, Western Australian Branch

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

Employer Party To The Award

Western Mining Corporation Limited

**ENGINEERING TRADES AND ENGINE DRIVERS  
(NICKEL REFINING) AWARD, 1971.**

**No. 10 of 1971.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch  
and

Western Mining Corporation Limited and Others.

No. 1691 of 1996.

Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971.

16 June 1997.

*Order.*

HAVING heard Mr C.F. Young as agent for the Applicant and Ms T.M. Allen as agent for the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

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

Schedule.

1. Clause 1.—Title: Delete this clause and insert in lieu thereof the following—

1.—TITLE

This award shall be known as the Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971, and replaces Award No. 11 of 1970.

2. Clause 2.—Arrangement: Delete the number and name "35. Special Day Off Provisions" and insert in lieu thereof the number and name "34. Special Day Off Provisions".

3. Clause 11.—Overtime (Other Than Continuous Shift Workers): Delete subclause (6) of this clause and insert in lieu thereof the following—

(6) When an employee without being notified on the previous day is required to continue working after his/her usual knock off time for more than two hours he/she shall be provided with any meal required or be paid \$6.15 in lieu thereof. Provided that such payment need not be made to employees living in the same locality as their place of employment who can reasonably return home for a meal.

4. Clause 12.—Continuous Shift Workers: Delete subclause (6) of this clause and insert in lieu thereof the following—

(6) When an employee without being notified on the previous day is required to continue working after his/her usual knock off time for more than two hours he/she shall be provided with any meal required or be paid \$6.15 in lieu thereof. Provided that such payment need not be made to employees living in the same locality as their place of employment who can reasonably return home for a meal.

5. Clause 29.—Apprentices: After subclause (4) add a new subclause as follows—

(5) Adult apprentices are those trade apprenticeships into which persons of 21 years of age or over are indentured. The duration of any adult apprenticeship will be determined in accordance with the Industrial Training Act, 1975.

6. Clause 30.—Wages: Delete subclause (9) of this clause and insert in lieu thereof the following—

(9) Notwithstanding the provisions of this award, no employee (including an apprentice) 21 years of age or

over shall be paid less than \$332.00 per week as the ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay will not apply where the ordinary rate of pay is more than \$332.00 per week.

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, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

7. Schedule A—Parties to the Award: Delete this Schedule and insert in lieu thereof the following—

**SCHEDULE A—PARTIES TO THE AWARD**

**Unions Party To The Award**

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, Western Australian Branch

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

**Employer Party To The Award**

Western Mining Corporation Limited

It is necessary to consider whether or not the application falls within the scope of the Principles. Both parties agree that essentially the district allowances represent the additional cost of living in the remote parts of the State to which the Award refers. I consider that to be a fair assessment of the position. Indeed, there is some support for that view when one has regard to the original application to which Mr Sturman referred, which gave rise to the district allowances in their current form, although saying that it is not to be taken as an indication that the allowances represent only the additional cost of living. I think that they represent, and were always intended to represent, some recompense for the discomfort associated with living in the remote parts of the State. Nonetheless, they are essentially designed to accommodate the additional costs of living, and on that basis it can fairly be said that to increase the allowances in accordance with CPI movements is not inconsistent with the Principles.

The remaining issue is the operative date for the change. The application was made on 14 April 1997. It was made on the basis that the allowances would be increased to a figure slightly less than is now to be the case. The Respondent, by its initial Answer, suggested that the changes should be operative from 1 January 1997, but since then, partly on the prompting of myself as a result of the concern expressed at the measure of retrospectivity, the Respondent has changed its position and seeks a current date. The parties have reached what I think is a fair compromise, and that is that the changes are to take effect from the first pay period commencing or after 14 April 1997, that being the date on which the application was lodged. In my view, that is a fair compromise, particularly as the rates are to be increased above a level from that which was originally sought by the Union.

Appearances: Mr G.C. Sturman as agent for the Applicant  
Ms L.A. Houghton as agent for the Respondent

**ENGINEERING TRADES  
(GOVERNMENT) AWARD, 1967.  
AWARD Nos. 29, 30 and 31 of 1961 and 3 of 1962.**

**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

Hon. Minister for Works and Others.

No. 704 of 1997.

Engineering Trades (Government) Award, 1967 Award  
Nos. 29, 30 and 31 of 1961 and 3 of 1962.

11 June 1997.

*Reasons for Decision (extempore)*

**SENIOR COMMISSIONER:** This is an application to amend clause 21 of the Engineering Trades Government Award, 1967. Clause 21 fixes the district allowances for those employees covered by the Award who are required to work in the distant parts of the State. The allowances, as currently outlined in the Award, seemingly have not been amended since the beginning of 1991, and by this application the Union seeks to amend the allowances currently provided in the Award to reflect movements in the CPI since that time.

The Respondent, by its Answer, consents to the proposal to amend the allowances, but it does so by taking into account the recent December quarter CPI movements. It has therefore responded by suggesting that the allowances should be increased slightly higher than the levels originally proposed by the Union. Not surprisingly, the Union has consented to that course of action. If one is going to modernise the Award it is only sensible that the most modern rates be inserted into it, as proposed by the Respondent.

**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

Hon. Minister for Works and Others.

No. 704 of 1997.

Engineering Trades (Government) Award, 1967 Award  
Nos. 29, 30 and 31 of 1961 and 3 of 1962.

11 June 1997.

*Order:*

HAVING heard Mr G.C. Sturman as agent for the Applicant and Ms L.A. Houghton as agent for the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962 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 14th day of April, 1997.

(Sgd.) G.L. FIELDING,  
Senior Commissioner.

[L.S.]

## Schedule.

1. Clause 21.—District Allowances: Delete subclause (6) of this clause and insert in lieu thereof the following—

- (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	COLUMN III EXCEPTIONS TO STANDARD RATE	COLUMN IV RATE
	\$ per week	Town or Place	\$ per week
6	56.15	Nil	Nil
5	45.90	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	61.75
		Liveringa (Camballin) Marble Bar Wittenoom	57.50
		Karratha	54.15
		Port Hedland	50.25
4	23.10	Warburton Mission	62.30
		Carnarvon	21.75
3	14.60	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	23.10
2	10.35	Kalgoorlie Boulder	3.45
	10.35	Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	13.80
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.

2. Clause 21.—District Allowances: Delete subclause (15) of this clause and insert in lieu thereof the following—

- (15) Adjustment of Rates—

- (a) The rates shown in subclause (6) of this clause shall be adjusted administratively every 12 months, effective from the first pay period commencing on or after the 1st day of July each year, in accordance with the official Consumer Price Index (CPI) for Perth, as published for the preceding 12 months at the end of the March quarter by the Australian Bureau of Statistics.
- (b) The rates so agreed by the parties, in accordance with the foregoing formula, shall then be lodged with the Western Australian Industrial Relations Commission for registration.

**ENROLLED NURSES AND NURSING ASSISTANTS  
(GOVERNMENT) AWARD.  
No. R 7 of 1978.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous  
Workers Union, Miscellaneous Workers Division, Western  
Australian Branch

and

Albany Regional Hospital and Others.

No. 765 of 1997.

11 June 1997.

*Order.*

HAVING heard Mr D. Kelly on behalf of the Applicant and Mr R. Lindsay 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 Enrolled Nurses and Nursing Assistants (Government) Award as varied be further 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 5 March 1997.

[L.S.] (Sgd.) C.B. PARKS,  
Commissioner.

Schedule.

Clause 19.—Laundry and Uniforms: Delete the amount of \$1.05 prescribed in subclause (7) of this clause and insert in lieu thereof the amount of \$1.10.

**FOOD INDUSTRY (FOOD MANUFACTURING OR  
PROCESSING) AWARD.  
No. A20 of 1990.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers' Union of Western Australia, Union of  
Workers

and

Anchor Products Pty Ltd & Others.

No. 127 of 1997.

COMMISSIONER J.F. GREGOR.

26 June 1997.

*Order.*

HAVING heard Mr W. Johnston on behalf of the Food Preservers' Union of Western Australia, Union of Workers and Mr M. Beros on behalf of Anchor Products Pty Ltd and Others, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Food Industry (Food Manufacturing or Processing) Award, No. A20 of 1990, be varied in accordance with the following Schedule as amended and further amended in today's proceedings and that such variation shall have effect from the beginning of the first pay period commencing on or after today's date.

[L.S.] (Sgd.) J.F. GREGOR,  
Commissioner.

Schedule.

1. Clause 2.—Arrangement—

A. Delete the words "Clause 8.—Compassionate Leave" in this clause and insert in lieu thereof the following—

8.—Bereavement Leave

B. Delete the words "Clause 13.—Maternity Leave" in this clause and insert in lieu thereof the following—

13.—Parental Leave

C. Immediately following "Clause 32.—Definitions" insert the following—

Appendix 1.—Parental Leave Entitlements

2. Clause 7.—Absence Through Sickness—

A. Delete subclause (1) and insert in lieu thereof the following—

- (1) (a) An employee who is unable to attend or remain at his or her place of employment during ordinary hours of work by reason of personal ill health or injury shall be entitled to payment for such absence in accordance with the following provisions.

- (b) Entitlement to payment for a full time employee shall accrue weekly at the rate of 1.461 hours per week, such that an employee's maximum annual sick leave entitlement shall be 76 hours. For part time employees the entitlement

in hours to sick leave shall accrue at a rate per week calculated in the following manner—

Hours per week

38 x 1.461

- (c) The rate of pay for an absence in accordance with this clause shall be the employee's ordinary wage that he/she would have received had he/she not been on leave. For part time employees, payment shall only be made for rostered ordinary hours he/she would have worked had he/she not been on leave in accordance with this clause.
- (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.

B. Delete subclause (4) and insert in lieu thereof the following—

- (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 that would satisfy a reasonable person. Provided that an employee shall not be required to produce a medical certificate or such other proof with respect to absences of two days or less unless after two such absences in any year of service the employer requests that the next and subsequent absences, if any, shall be accompanied by such certificate.

3. Clause 8.—Compassionate Leave. Delete this Clause and insert in lieu thereof the following—

#### 8.—BEREAVEMENT LEAVE

- (1) An employee shall, on the death of the spouse, de facto spouse, parent, step-parent, child or step-child of the employee or any other person who, immediately before that person's death, lived with the employee as a member of the employee's family, be entitled to paid bereavement leave up to 2 days.
- (2) The right to such leave shall be dependent on compliance with the following conditions—
- (a) The employee shall furnish proof such as would satisfy a reasonable person as to the death that is the subject of the leave and/or the relationship of the employee to the deceased person should the employer so request.
- (b) The employee shall not be entitled to leave under this clause during a period of any other kind of leave.
- (3) For the purpose of this clause the pay of an employee employed on shift work shall be deemed to include the allowance set out in Clause 17.—SHIFT WORK.

4. Clause 13.—Maternity Leave. Delete this clause and insert in lieu thereof the following—

#### CLAUSE 13.—PARENTAL LEAVE

- (1) Subject to the terms of this clause employees are entitled to unpaid maternity, paternity and adoption leave and to work part time with the approval of the employer in connection with the birth or adoption of a child in accordance with the provisions of Appendix 1 to this Award.
- (2) Definitions

For the purposes of Appendix 1, the following definitions shall apply—

- (a) "Employee" includes a part time employee but does not include an employee engaged upon casual or seasonal work.
- (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.

5. Clause 21.—Contract of Employment—

A. Delete subclause (1) of this Clause, and insert in lieu thereof the following—

- (1) An employee will be engaged as a full time, part time or casual employee.
- (2) Termination of Full Time and Part Time Employment

(a) Should an Employer wish to terminate a full time or part time employee, the following period of notice shall be provided—

<u>Period of Continuous Service</u>	<u>Period of Notice</u>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) Employees over 45 years of age with 2 or more years continuous service at the time of termination, shall receive an additional week's notice.
- (c) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.
- (d) Payment in lieu of notice shall be calculated using the employees weekly ordinary time earnings.
- (e) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.
- (f) Notice of termination by employee  
1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture of 1 week's pay by the employee to the employer in lieu of notice.

B. Renumber existing subclause (2) as subclause (3) and delete existing subclause (3) of this Clause.

C. Insert a new subclause (4) in this Clause, as follows—

(4) Probation

Notwithstanding subclause (2) above, a full time or part time employee engaged under the terms of this Award may be engaged under probation for an agreed period not exceeding three months during which time either party may terminate the contract without notice.

(D) Renumber existing subclauses (4), (5) and (6) as subclause (5), (6) and (7) of this Clause.

6. Clause 30.—Traineeships. Delete this Clause and insert in lieu thereof the following—

#### 30.—TRAINEESHIPS

(1) Scope

- (a) Subject to paragraph (b) of this subclause shall apply to persons—
- (i) who are undertaking a Traineeship (as defined); and
- (ii) who are employed by an employer bound by this award; and
- (iii) whose employment is covered by the Food Industry (Food Manufacturing or Processing) Award No. A 20 of 1990.

(b) Notwithstanding the foregoing, this clause shall not apply to employees who were employed by an employer bound by this clause prior to the date of approval of a traineeship scheme relevant to the employer, except where agreed between the employer and the Union.

(2) Objective

(a) The objective of this clause is to establish a system of traineeships which provides approved training in conjunction with employment in order to enhance the skill levels and future employment prospects of Trainees, particularly young people, and the long term unemployed.

(b) The system is neither designed nor intended for those who are already trained and job ready.

(c) Existing employees shall not be displaced from employment by trainees.

(3) Supersession

The existing award provisions for the Australian Traineeship System (ATS) shall not apply to any employer bound by this award, except in relation to ATS trainees who commenced a traineeship with the employer before the employer was bound to this award.

(4) Definitions

“Approved Training” means training undertaken in a Traineeship and shall involve formal instruction, both theoretical and practical, and supervised practice in accordance with a Traineeship Scheme approved by the relevant State Training Authority or NETTFORCE. The training will be accredited and lead to qualifications as set out in subclause 5(e).

“Relevant Award” means the Food Industry (Food Manufacturing or Processing) Award No. A 20 of 1990.

“Trainee” means an employee who is bound by a Traineeship Agreement made in accordance with this clause.

“Traineeship” means a system of training which has been approved by the appropriate State Training Authority, or which has been approved on an interim basis by the National Employment and Training Taskforce (NETTFORCE), until final approval is granted by the relevant State Training Authority.

“Traineeship Agreement” means an agreement made subject to the terms of this award between an Employer and the Trainee for a Traineeship and which is registered with the appropriate State Training Authority, NETTFORCE, or under the provisions of the appropriate State legislation. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

“Traineeship Scheme” means an approved Traineeship applicable to a group or class of employees or to an industry or sector of an industry or an enterprise. A Traineeship Scheme shall not be given approval unless consultation and negotiation with the Union upon the terms of the proposed Traineeship Scheme and the Traineeship have occurred. An application for approval of a Traineeship Scheme shall identify the Union and demonstrate to the satisfaction of the approving authority that the abovementioned consultation and negotiation have occurred.

“Parties to a Traineeship Scheme” means the employer organisation and/or the employer and the union involved in the consultation and negotiation required for the approval of a Traineeship Scheme.

References in this award to “the relevant State Training Authority or NETTFORCE” shall be taken to be a reference to NETTFORCE in respect of a Traineeship that is the subject of an interim approval but not a final approval by the relevant State Training Authority. NETTFORCE powers and functions

stipulated in this award may be circumscribed and/or delegated by the terms of an agreement between NETTFORCE and a relevant State Training Authority. Reference to NETTFORCE and a relevant state training authority. Reference to NETTFORCE within this clause will have no effect during the currency of the W.A. State Training Authority/NETTFORCE Memorandum of Agreement.

“Appropriate State Legislation” means the State Employment and Skills Development Authority Act 1990.

(5) Training Conditions

(a) The Trainee shall attend an approved training course or training program prescribed in the Traineeship Agreement or as notified to the trainee by the appropriate State Training Authority in accredited and relevant traineeship schemes; or NETTFORCE if the traineeship scheme remains subject to interim approval.

(b) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the employer and the trainee and lodged for registration with the relevant State Training Authority or NETTFORCE, provided that if the Traineeship Agreement is not in a standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the relevant State Training Authority or NETTFORCE. The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on-the-job training.

(c) The employer shall provide a level of supervision in accordance with the Traineeship Agreement during the traineeship period.

(d) The employer agrees that the overall training program will be monitored by officers of the appropriate State Training Authority or NETTFORCE and training records or work books may be utilised as part of this monitoring process.

(e) Training shall be directed at—

(i) The achievement of key competencies required for successful participation in the workplace (where these have not been achieved) (e.g. literacy, numeracy, problem solving, teamwork, using technology), and as are proposed to be included in the AVC Level 1 qualification. This could be achieved through foundation competencies which are part of endorsed competencies for an industry or enterprise, and/or

(ii) The achievement of competencies required for successful participation in an industry or enterprise (where there are endorsed national standards these will define these competencies), as are proposed to be included in the AVC Level 2 qualification or above.

(6) Employment Conditions

(a) A Trainee shall be engaged as a full-time employee for a maximum of one year’s duration provided that a Trainee shall be subject to a satisfactory probation period of up to one month which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the relevant State Training Authority or NETTFORCE the parties to a Traineeship Agreement may vary the duration of the Traineeship and the extent of approved training provided that any agreement to vary is in accordance with the relevant Traineeship Scheme.

- (b) (i) An employer shall not terminate the employment of a Trainee without firstly having provided written notice of termination to the Trainee concerned in accordance with the Traineeship Agreement and to the relevant State Training Authority or NETTFORCE. The written notice to be provided to the relevant State Training Authority or NETTFORCE shall be provided within 5 working days of termination.

- (ii) An employer who chooses not to continue the employment of a trainee upon the completion of the traineeship shall notify, in writing, the relevant State Training Authority or NETTFORCE of its decision.

- (c) The Trainee is permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

- (d) Where the employment of a Trainee by an employer is continued after the completion of the traineeship period, such traineeship period shall be counted as service for the purposes of any relevant Award or any other legislative entitlements.

- (e) (i) The Traineeship Agreement may restrict the circumstances under which the Trainee may work overtime and shiftwork in order to ensure the training program is successfully completed.

- (ii) No Trainee shall work overtime or shiftwork on their own unless consistent with the provisions of this relevant award.

- (iii) No Trainee shall work shiftwork unless the parties to a Traineeship Scheme agree that such shiftwork makes satisfactory provision for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant year period no less than the amount of training required for non-shiftwork Trainees.

- (iv) The Trainee wage shall be the basis for the calculation of overtime and/or shift penalty rates prescribed by the relevant award, unless otherwise agreed by the parties to a Traineeship Scheme, or unless the relevant award makes specific provision for a Trainee to be paid at a higher rate, in which case the higher rate shall apply.

- (f) All other terms and conditions of the relevant award that are applicable to the Trainee or would be applicable to the Trainee but for this Clause shall apply unless specifically varied by this Clause.

- (g) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions or provisions similar thereto.

#### (7) Wages

- (a) (i) The minimum rates of wages payable weekly to trainees are as provided in subparagraph (iv) of this subclause.

- (ii) These wage rates will only apply to Trainees while they are undertaking an approved traineeship which includes approved training as defined in this Clause.

- (iii) The wage rates prescribed by this clause do not apply to completed trade level training which is covered by the Apprenticeship system.

#### (iv) Skill Level B—

Where the accredited training course and work performed are for the purposes of generating skills which have been defined for work at Skill Level B.

#### HIGHEST YEAR OF SCHOOLING COMPLETED

School Leaver	Year 10 and below \$	Year 11 \$	Year 12 \$
Plus 1 year out of school	152.00	183.00	213.00
Plus 2 years	213.00	245.00	287.00
Plus 3 years	245.00	287.00	327.00
Plus 4 years	287.00	327.00	
Plus 5 years	327.00		

Figures in brackets indicate the average proportion of time spent in approved training to which the associated wage rate is applicable. Where not specifically indicated, the average proportion of time spent in structured training which has been taken into account in setting the rate is 20%.

- (b) The skill level of approved Traineeships in the food industries has been agreed to be Skill Level B.

- (c) For the purposes of this provisions, "out of school" shall refer only to periods out of school beyond Year 10, (or below) and shall be deemed to—

- (i) Include any period of schooling beyond Year 10 (or below) which was not part of nor contributed to a completed year of schooling;

- (ii) Include any period during which a Trainee repeats in whole or part a year of schooling beyond Year 10 (or below); and

- (iii) Not include any period during a calendar year in which a year of schooling is completed.

- (iv) Have effect on an anniversary date being January 1 in each year.

- (d) At the conclusion of the Traineeship, this clause ceases to apply to the employment of the Trainee and the award shall apply to the former trainee.

9. Clause 32.—Definitions. Immediately following this Clause, insert the following—

#### APPENDIX 1.—PARENTAL LEAVE ENTITLEMENTS

##### (1) Maternity Leave

- (a) Nature of Leave

Maternity leave is unpaid leave

- (b) Definitions

For the purposes of this subclause—

- (i) "Paternity leave" means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.

- (ii) "Child" means a child of the employee under the age of one year.

- (c) Eligibility for Maternity Leave

An employee who becomes pregnant, upon production to the Employer of the certificate required by paragraph (d) 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. 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, specified in the relevant statutory declaration.

Subject to paragraphs (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement include a period of six weeks compulsory leave. Notwithstanding the requirement to take compulsory leave, an employee may request to return to work at any time, subject to the agreement of the employer.

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the Employer;

- (i) A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) 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 be engaged in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to the employer the certificate referred to in subparagraph placitum (i) of paragraph (d) above.
- (ii) An employee shall give not less than four weeks notice in writing to the Employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to the Employer the statutory declaration referred to in placitum (ii) of paragraph (d) above.
- (iii) The 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 the presumed date of confinement.
- (iv) An employee shall not be in breach of this Clause as a consequence of failure to give the specified period of notice in accordance with placitum (ii) hereof if such failure is occasioned by—
  - (aa) the confinement occurring earlier than the presumed date, or
  - (bb) compelling circumstances, it was not reasonably practicable for the employee to comply; or
  - (cc) by the employee submitting the application as soon as reasonably practicable before, on or after the first day of the leave.

(f) 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 employer may, or the Employer may require the worker 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 paragraphs (j), (k), (l) and (m) hereof.

(g) Variation of Period of Maternity Leave

- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof;

(aa) 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;

(bb) The period may be further lengthened by agreement between the employee and the Employer.

- (ii) 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.

(h) Cancellation of Maternity Leave

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

- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Employer which shall not exceed four weeks from the date of notice in writing by the employee to the Employer that she desires to resume work.

(i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

(aa) 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

(bb) 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.

- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered 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 paragraph (c) hereof.

- (iii) For the purposes of paragraph (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph 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 paragraph (f), hereof 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 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.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) 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.
- (ii) 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.
- (k) Effect of Maternity Leave on Employment
- Subject to this subclause, irrespective of 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 any relevant award or agreement.
- (l) Termination of Employment
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) The Employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.
- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the Employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f) 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.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before the 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.
- (iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.
- (2) Paternity Leave
- (a) Nature of Leave
- Paternity leave is unpaid leave
- (b) Definitions
- For the purposes of this subclause
- (i) "Maternity leave" means leave of the type provided for in subclause (1) of this clause and includes special maternity leave whether prescribed in an award or otherwise.
- (ii) "Child" means a child of the employee or the employee's spouse under the age of one year.
- (iv) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.
- (c) Eligibility for Paternity Leave
- A male employee upon production to the Employer of the certification required by paragraph (f) 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—
- (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 employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave.
- The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he proceeds upon either period of leave.

- (d) Certification
- At the time specified in paragraph (e) the employee must produce to the Employer;
- (i) 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;
  - (ii) in relation to any period to be taken under placitum (ii) of paragraph (c) hereof, a statutory declaration stating:
    - (aa) He will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.
- (e) Notice Requirements
- (i) The employee 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 proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in paragraph (d) hereof.
  - (ii) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to—
    - (aa) The birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify the Employer of any change in the information provided pursuant to paragraph (d) hereof.
- (f) Variation of Period of Paternity Leave
- (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof—
    - (aa) The period of paternity leave provided by placitum (ii) of paragraph (c) 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;
    - (bb) The period may be further lengthened by agreement between the Employer and the employee.
  - (ii) The period of paternity leave taken under placitum (ii) of paragraph (c) 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.
- (g) Cancellation of Paternity Leave
- (i) Paternity leave, applied for under placitum (ii) of paragraph (c) 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.
  - (ii) Paternity leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) 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.
  - (ii) 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.
- (i) 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 employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) 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.
  - (ii) The Employer shall not terminate the employment of an employee 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.
- (k) Return to Work After Paternity Leave
- (i) 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 placitum (ii) of paragraph (c) hereof.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by placitum (i) above, 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.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before the 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.
  - (iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to

replace an employee exercising his rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

### (3) Adoption Leave

#### (a) Nature of Leave

Adoption leave is unpaid leave

#### (b) Definitions

For the purposes of this subclause

- (i) "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.
- (ii) "Relative Adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of whole blood or half blood or by marriage).
- (iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

#### (c) Eligibility

An employee, upon production to the Employer of the certification required by paragraph (d) 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—

- (i) An unbroken period of up to three weeks at the time of placement of the child;
- (ii) An unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of a 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—
  - (aa) Any period of leave taken pursuant to placitum (i) above; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse; The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he or she proceeds on such leave in either case.
- (iii) The entitlement to adoption leave must not overlap with any periods of adoption leave taken by the employee's spouse, except an unbroken period of up to three weeks at the time of placement of the child.

#### (d) Certification

Before taking adoption leave the employee must produce to the Employer;

- (i) (aa) 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

- (bb) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

- (ii) in relation to any period to be taken under placitum (ii) of paragraph (3) hereof, a statutory declaration stating:

(aa) The employee is seeking adoption leave to become the primary care-giver of the child;

(bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(cc) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

#### (e) Notice Requirements

- (i) 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.
- (ii) An employee who commences employment with the 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 the Employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) 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 placitum (i) of paragraph (c) hereof.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under placitum (ii) of paragraph (c) hereof, give notice in writing to the Employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with placitum (iii) and (iv) 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.

- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (c) hereof—
    - (aa) The period of leave taken under placitum (ii) of paragraph (c) 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;
    - (bb) The period may be further lengthened by agreement between the Employer and the employee.
  - (ii) The period of adoption leave taken under placitum (ii) of paragraph (c) 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.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) 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.
  - (iii) Adoption leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.
- (h) 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.
- (i) Adoption Leave and Other Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (3) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this subclause, irrespective of 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 any relevant award or agreement.
- (k) Termination of Employment
- i) 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.
  - ii) The Employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- i) 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 placitum (ii) of paragraph (c) hereof.
  - ii) 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 to 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.
- (m) Replacement Employees
- i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - ii) Before the 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.
  - iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.
- (4) Part Time Work
- (a) Definitions
- For the purpose of this subclause—
- (i) "Male employee" means a employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.
  - (ii) "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.
  - (iii) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part time employment under this subclause 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.
- (b) Entitlement  
With the agreement of the Employer—
- (i) 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.
  - (ii) 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.
  - (iii) 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.
  - (iv) 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.
- (c) Return to Former Position
- (i) An employee who has had at least 12 months continuous service with the 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.
  - (ii) Nothing in placitum (i) 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.
- (d) 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 continuity of service or employment.
- (e) Pro Rata Entitlements  
Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (f) hereof, part time employment shall be in accordance with the provisions of this award which shall apply pro-rata.
- (f) Part time Work Agreement
- (i) Before commencing a period of part time employment under this subclause the employee and the Employer shall agree—
    - (aa) That the employee may work part time; Upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
    - (bb) Upon the classification applying to the work to be performed; and
    - (cc) Upon the period of part time employment.
  - (ii) The terms of this agreement may be varied by consent.
  - (iii) 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.
  - (iv) The terms of this agreement shall apply to the part time employment.
- (g) Termination of Employment
- (i) 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 proposes to enjoy any benefits arising under this clause.
  - (ii) 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 employment and all service as a part time employee on a pro-rata basis.
- (h) Extension of Hours of Work  
The 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 paragraph (f).
- (i) 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.
- (j) Inconsistent Award Provisions  
An employee may work part time under this clause irrespective of 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 prescribing a minimum or maximum number of hours a part time employee may work.
- (k) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee working part time under this subclause.
  - (ii) A replacement employee may be employed part time. Subject to this paragraph, paragraphs (e), (f), (g) and (j) of this subclause apply to the part time employment of a replacement employee.
  - (iii) Before an employer engages a replacement employee under this paragraph, the Employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of placitum (v) of paragraph (a) hereof.
  - (v) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

**FOODLAND ASSOCIATED LIMITED (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982.**  
**No. A27 of 1982.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association  
of Western Australia

and

Foodland Associated Limited.

No. 538 of 1997.

Foodland Associated Limited (Western Australia)  
Warehouse Award 1982.

COMMISSIONER J F GREGOR.

5 June 1997.

*Order.*

HAVING heard Mr W. Johnston on behalf of the Applicant and no appearance (by prior arrangement) 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 document titled the Foodland Associated Limited (Western Australia) Warehouse 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 5 June 1997.

(Sgd.) J.F. GREGOR,

[L.S.] Commissioner.

*Schedule.*

1. Clause 28.—Wages. Delete subclause (3) of paragraph (a) of this clause and insert in lieu thereof the following—

(a) ADULTS (Classification and wage per week)

	Award Rate \$
(i) Storeworker Grade 1 (as defined)	
(aa) During first 3 months service	425.10
(bb) After 3 months service	428.90
(cc) After 12 months service	433.00
(ii) Grade 2 (as defined)	
(aa) During first 3 months service	430.50
(bb) After 3 months service	434.40
(cc) After 12 months service	438.30
(iii) Grade 3 (as defined)	
(aa) During first 3 months service	435.80
(bb) After 3 months service	439.60
(cc) After 12 months service	443.70
(iv) Grade 4 (as defined)	
(aa) During first 3 months service	448.90
(bb) After 3 months service	452.80
(cc) After 12 months service	456.80
(v) Storeworker who is required by the employer to be in charge of a store or warehouse or other employees, shall be paid the following all purpose amount in addition to the rates prescribed in sub paragraph (i) of this clause.	
(aa) If placed in charge of a store or warehouse with no other workers or if placed in charge of less than three other workers	\$12.50
(bb) If placed in charge of three or more other workers but less than ten other workers	\$22.80
(cc) If placed in charge of ten or more other workers	\$41.30

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to

the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

**MISCELLANEOUS WORKERS' (ACTIV FOUNDATION) AWARD**  
**No. A20 of 1980.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Activ Foundation Inc.

No. 363 of 1996.

10 June 1997.

*Order.*

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr L. Burns 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 Miscellaneous Workers' (Activ Foundation) 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 30 October 1996.

(Sgd.) C.B. PARKS,

[L.S.] Commissioner.

*Schedule.*

1. Clause 37.—Wages: Delete this clause and insert in lieu thereof—

**37.—WAGES**

(1) The following rate of wage payable to employees covered by this award shall be as set out hereunder—

	Base Rate Per Week \$	1st, 2nd & 3rd Arbitrated Safety Net Adjustments Per Week \$	Total Rate Per Week \$
(a) <u>MISCELLANEOUS EMPLOYEES</u>			
Level One:			
Comprehends the following classes of work:			
Domestic Residents' Aide			
1st year of employment	369.50	24.00	393.50
2nd year of employment	374.10	24.00	398.10
3rd year of employment and thereafter	378.00	24.00	402.00
Level Two:			
Comprehends the following classes of work:			
Laundry Person			
Gardener			
1st year of employment	374.60	24.00	398.60
2nd year of employment	379.60	24.00	403.60
3rd year of employment and thereafter	383.80	24.00	407.80
Level Three:			
Comprehends the following classes of work:			
Handyperson			
1st year of employment	383.40	24.00	407.40
2nd year of employment	388.00	24.00	412.00
3rd year of employment and thereafter	392.00	24.00	416.00

	Base Rate	1st, 2nd & 3rd Arbitrated Safety Net Adjustments	Total Rate
	Per Week \$	Per Week \$	Per Week \$
Level Four: Comprehends the following classes of work:			
Cook			
1st year of employment	399.10	24.00	423.10
2nd year of employment	403.90	24.00	427.90
3rd year of employment and thereafter	408.30	24.00	432.30
Level Five: Comprehends the following classes of work:			
Tradesperson Cook			
1st year of employment	454.80	24.00	478.80
2nd year of employment	459.10	24.00	483.10
3rd year of employment and thereafter	462.90	24.00	486.90
(b) <u>HOUSE SUPERVISOR/ MANAGER</u>			
House Supervisor			
Weekday rate	135.90	6.30	142.20
Weekend rate	236.90	8.82	245.72
House Manager			
Weekday rate	146.12	6.30	152.42
Weekend rate	247.22	8.82	256.04

(2) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

2. Clause 42.—House Supervisors and House Managers: Delete section “(E)—WAGES” of this clause delete the section letter and title “(F)—BEREAVEMENT LEAVE” and replace with the letter and title “(E)—BEREAVEMENT LEAVE”.

**MOTOR VEHICLE (SERVICE STATION, SALES ESTABLISHMENTS, RUST PREVENTION AND PAINT PROTECTION) INDUSTRY AWARD.  
No. A29 of 1980.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch,  
Industrial Union of Workers

and

Allpike's Honda and Peugeot and Others.

No. 311 of 1997.

Asterian Pty Ltd T/A Mick's Caltex and Others

and

The Australian Workers' Union, West Australian Branch,  
Industrial Union of Workers.

No. 964A of 1997.

Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980.

26 June 1997.

*Order.*

HAVING heard Mr M. Lourey on behalf of the applicant and Ms C. Brown for the Respondents in the first mentioned matter and Ms C. Brown for the applicants and Mr M. Lourey for

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

- (1) THAT Application 964 of 1997 be divided into 964A and 964B of 1997.
- (2) THAT the Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of July 1997.
- (3) THAT Application 964B of 1997 be adjourned sine die.

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement: Delete 9.—Shift Work and insert in lieu the following—

9. Meal Breaks

2. Clause 7.—Hours: Delete this clause and insert in lieu the following—

7.—HOURS

- (1) (a) The provisions of this clause apply to all employees to whom this award applies.

Subject to the provisions of this clause, the ordinary hours of work shall be an average of not more than 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; or
- (v) 304 hours within a work cycle not exceeding eight weeks for the purposes of working an eight week roster.

- (b) For the purposes of this clause any other work cycle during which a weekly average of 38 ordinary hours is worked may be agreed between the employer and the employee(s).

- (2) In each workplace an assessment should be made as to which arrangement of hours best suits the business and the needs of the employees. Any proposal for changing the arrangement of working hours shall be discussed with the employee(s) concerned with the objective of reaching agreement.

- (3) The ordinary hours of work may be worked on any or all days of the week Monday to Sunday inclusive and shall be consecutive except for a meal break taken in accordance with Clause 9.—Meal Breaks.

- (4) (a) The ordinary hours of work for full time and part time employees shall be arranged over not more than ten starts per fortnight which may be worked consecutively provided at least two consecutive days off are allowed within each fortnight.

- (b) Notwithstanding paragraph (a) of this subclause, an employer and employee may agree to work an alternative arrangement of ordinary hours provided at least two consecutive days off duty are allowed within each fortnight.

- (5) The ordinary hours of work prescribed herein shall not exceed ten on any day provided that, by agreement between the employer and the majority of employees concerned in the workplace or section(s),

up to twelve ordinary hours on any day may be worked.

- (6) (a) The employer shall notify employees at least seven days in advance of the employees' rostered ordinary hours of duty. Provided that ordinary hours may be varied by agreement between the employer and the employee(s) concerned or by the employer giving seven days' notice.
- (b) Where rostered ordinary hours are changed without either agreement or notice prescribed in paragraph (a) of this subclause the employee shall be paid a penalty of 50% or the penalty applicable to the revised shift in accordance with Clause 8A.—Additional Rates for Ordinary Hours in addition to the base wage whichever is the greater.

3. Clause 9.—Shift Work: Delete this clause and insert in lieu the following—

#### 9.—MEAL BREAKS

##### (1) UNPAID MEAL BREAKS

- (a) Where it is not impracticable to relieve an employee from the workstation, an employee shall be allowed an unpaid meal break in accordance with the following—
- (i) more than 5 and up to 8 ordinary hours—30 minutes; or
  - (ii) more than 8 and up to 10 ordinary hours—45 minutes; or
  - (iii) more than 10 and up to 12 ordinary hours—1 hour.
- (b) Provided the employer and employee may agree to vary the entitlement above to not more than one and one half hours total unpaid meal breaks and may make suitable arrangements for the meal breaks to be split into not more than three parts.
- (c) The time of taking a scheduled unpaid meal break by one or more employees may be altered by the employer if it is either agreed to by the employee(s) or is necessary to do so in order to meet a requirement for continuity of operations.
- (d) The employer and employee may agree that the employee work for up to six hours without taking a meal break referred to in this clause.
- (e) An employee who is rostered to take an unpaid meal break and is prevented from doing so for more than one hour from the scheduled time shall be paid at overtime rates for the period commencing at the scheduled meal break until the meal interval is taken. Nothing in this subclause shall be read as a requirement to pay overtime rates for any hours outside of the rostered shift.

##### (2) PAID MEAL BREAK

- (a) Where it is impracticable for an employee to be relieved from the work station for a rostered and uninterrupted meal break, a paid meal break shall be allowed to an employee in accordance with the following—
- (i) more than 5 and up to 8 ordinary hours—20 minutes; or
  - (ii) more than 8 and up to 10 ordinary hours—30 minutes; or
  - (iii) more than 10 and up to 12 ordinary hours—45 minutes.
- (b) Employees entitled to an unpaid meal break shall be allowed the meal break at the workstation to partake of meals and refreshments that would ordinarily be allowed for unpaid breaks. Provided that customer service shall be maintained at all times.

(c) The paid meal break shall be considered as time worked for all purposes of the award.

4. Clause 21.—Wages: Delete the preamble to subclause (1) and subclause (1) of this clause and insert in lieu the following—

The following shall be the minimum rate of wages payable to employees under this award from the beginning of the first pay period commencing on or after 1 July 1997.

##### (1) Adult Employees—

	Base Rate Per Week \$	Supple- mentary Payment \$	1st & 2nd Arbitrated Safety Net Adjustments \$	Total Rate Per Week \$
Service Station Attendant Grade 1 reclassified to Levels				
I.	306.40	8.10	16.00	330.50
II.	306.40	15.10	16.00	337.50
Service Station Attendant Grade 2 reclassified to Levels				
II.	329.30	5.30	16.00	350.60
III.	329.30	14.90	16.00	360.20
IV.	329.30	23.80	16.00	369.10
Service Station Attendant Grade 3 reclassified to Levels				
III.	346.10	7.80	16.00	369.90
IV.	346.10	16.60	16.00	378.70

Provided that any increase in rates of pay flowing from the implementation of the Minimum Rates Adjustment principle, may be absorbed into any overaward payment, insofar as that overaward payment is not being used for the purposes of absorption of Arbitrated Safety Net Adjustments.

#### SOCIAL TRAINERS AND ASSISTANT SUPERVISORS' (ACTIV FOUNDATION) AWARD. No. A15 of 1984.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous  
Workers Union, Miscellaneous Workers Division, Western  
Australian Branch

and

Activ Foundation Inc.

No. 384 of 1996.

10 June 1997.

*Order:*

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr L. Burns 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 Social Trainers and Assistant Supervisors' (Activ Foundation) 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 30 October 1996.

(Sgd.) C.B. PARKS,  
Commissioner.

[L.S.]

## Schedule.

Clause 32.—Wages: Delete this clause and insert in lieu thereof—

## 32.—WAGES

(1) The minimum weekly rate of wage payable to employees covered by this award shall be as set out hereunder—

	Old Rate	1st, 2nd & 3rd Arbitrated Safety Net Adjustments	New Rate	Total Rate
	Per Annum \$	Per Annum \$	Per Annum \$	Per Forthnight \$
(a) Trainee Social Trainer				
Under 21 years—				
1st Year				
Level 1, appropriate to age				
2nd Year				
Next additional increment				
3rd Year				
Next additional increment				
Level One				
18 years of age	14238	1251	15489	593.83
19 years of age	16481	1251	17732	679.82
20 years of age	18507	1251	19758	757.50
Over 21 years—				
1st Year				
Level 1, 1st year of adult service	20331	1251	21582	827.43
2nd Year				
Level 1, 2nd year of adult service	20983	1251	22234	852.42
3rd Year				
Level 1, 3rd year of adult service	21634	1251	22885	877.38
(b) Social Trainer				
On appointment				
Level 1, 4th year of adult service	22281	1251	23532	902.19
2nd year				
Level 1, 5th year of adult service	22932	1251	24183	927.14
3rd year				
Level 1, 6th year of adult service	23583	1251	24834	952.10
4th year				
Level 1, 7th year of adult service	24332	1251	25583	980.82
5th year				
Level 1, 8th year of adult service	24850	1251	26101	1000.68
6th year				
Level 1, 9th year of adult service	25616	1251	26867	1030.04
(c) Senior Social Trainer				
1st year				
Level 2, 1st year of adult service	26533	1251	27784	1065.20
2nd year				
Level 2, 2nd year of adult service	27236	1251	28487	1092.15
3rd year				
Level 2, 3rd year of adult service	27975	1251	29226	1120.49
4th year				
Level 2, 4th year of adult service	28756	1251	30007	1150.43
5th year				
Level 2, 5th year of adult service	29573	1251	30824	1181.75
(d) Community Access Co-ordinator/Assistant Supervisor				
1st year	22946	1251	24197	927.68
2nd year	23597	1251	24848	952.64
3rd year	24346	1251	25597	981.35
4th year	24864	1251	26115	1001.21
5th year	25629	1251	26880	1030.54

(2) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

**SUPERMARKETS AND CHAIN STORES (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982.**  
**No. A26 of 1982.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association  
of Western Australia

and

Coles Supermarkets Australia & Other.

No. 537 of 1997.

Supermarkets and Chain Stores (Western Australia)  
Warehouse Award 1982.

COMMISSIONER J F GREGOR.

5 June 1997.

*Order.*

HAVING heard Mr W. Johnston on behalf of the Applicant and no appearance (by prior arrangement) 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 document titled the Supermarkets and Chain Stores (Western Australia) Warehouse 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 5 June 1997.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

## Schedule.

1. Clause 29.—Wages. Delete subclause (1) of this clause and insert in lieu thereof the following—

## (1) Adults

	Rate per week for employees of Coles Supermarkets Australia \$	Rate per week for employees of Woolworths (WA) Ltd \$
(a) Probationary Storeworker	417.20	431.00
(b) Storeworker Grade 1		
(i) During first 3 months' service	417.20	431.00
(ii) After 3 months' service	421.00	434.90
(iii) After 12 months' service	425.00	439.00
(c) Storeworker Grade 2		
(i) During first 3 months' service	422.50	436.40
(ii) After 3 months' service	426.40	440.50
(iii) After 12 months' service	430.20	444.40
(d) Storeworker Grade 3		
(i) During first 3 months' service	427.70	441.80
(ii) After 3 months' service	431.50	445.80
(iii) After 12 months' service	435.50	449.90
(e) Storeworker Grade 4		
(i) During first 3 months' service	440.60	455.20
(ii) After 3 months' service	444.40	459.10
(iii) After 12 months' service	448.40	463.30
(f) A storeworker who is required by the employer to be in charge of a store or warehouse or other employees, shall be paid the following all purpose amount in addition to the rate prescribed in paragraphs (b), (c), (d) and (e) of this subclause—		
	Rate per week for employees of Coles Supermarkets Australia \$	Rate per week for employees of Woolworths (WA) Ltd \$
(i) If placed in charge of a store or warehouse with no other employees or if placed in charge of less than three other employees	12.30	12.70
(ii) If placed in charge of three or more other employees but less than ten other employees	22.40	23.20
(iii) If placed in charge of ten or more other employees	40.50	41.90

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety net Adjustment Principles

pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

**WESTERN AUSTRALIAN MINT SECURITY  
OFFICERS' AWARD 1988.  
No. A5 of 1988.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Western Australian Mint.  
No. 403 of 1997.

Western Australian Mint Security Officers' Award 1988.  
No. A5 of 1988.

CHIEF COMMISSIONER W. S. COLEMAN.

4 July 1997.

*Order.*

HAVING heard Ms J. Freeman on behalf of the Applicant and Ms K. Netter 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 Western Australian Mint Security Officers' Award 1988 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 14th March 1997.

(Sgd.) W. S. COLEMAN,  
Chief Commissioner.

[L.S.]

Schedule.

1. Clause 14.—Wages and Allowances—
  - A. In subclause (3) of this clause delete the amounts of \$1.13 and \$5.65 and insert in lieu thereof the amounts of \$1.20 and \$6.00 respectively.
  - B. In subclause (4) of this clause delete the amounts of \$1.23 and \$6.15 and insert in lieu thereof the amounts of \$1.30 and \$6.50 respectively.
2. Clause 16.—Overtime: In subclause (2) of this clause delete the amounts of \$6.10 and \$3.70 and insert in lieu thereof the amounts of \$6.30 and \$3.80 respectively.

**AGREEMENTS—  
Industrial—Retirements from—**

**PEEL LAUNDRY (TRANSPORT WORKERS)  
ENTERPRISE AGREEMENT, 1996  
No. AG 192 of 1996.**

IN THE WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

No. 1182 of 1997.

IN THE MATTER of the Industrial Relations Act 1979  
and

IN THE MATTER of the filing in the office of the Registrar  
of the Notice of Retirement from Industrial Agreement  
in accordance with section 41(7) of the said Act.

The Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch will cease to be a party to the Peel Laundry (Transport Workers) Enterprise Agreement, 1996 No. AG 192 of 1996 on and from the 27th day of July 1997.

Dated at Perth this 27th day of June 1997.

J.G. CARRIGG,  
Registrar.

**NOTICES—  
Award/Agreement matters—**

Application No. PSA A 2 of 1997.

APPLICATION FOR AN AWARD ENTITLED  
"GRAYLANDS, SELBY-LEMNOS AND SPECIAL CARE  
SERVICES AWARD 1997".

NOTICE is given that an application has been made to the Commission by the Civil Service Association of Western Australia (Incorporated) under the Industrial Relations Act 1979 for the above Award.

As far as relevant, those parts of the proposed Award which relate to area of operation or scope are published hereunder.

3.—AREA OF OPERATION

This Award shall apply throughout the State of Western Australia.

4.—SCOPE

This Award shall apply to all Government employees eligible for membership of the Civil Service Association of Western Australia Incorporated, employed by the Graylands, Selby-Lemnos and Special Health Care Services Board of Management.

A copy of the proposed Award may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. SPURLING,  
Registrar.

7 July 1997

## LONG SERVICE LEAVE— Boards of Reference—Special—

### LONG SERVICE LEAVE—STANDARD PROVISIONS.

#### BOARD OF REFERENCE.

Rebecca Karanikolaou  
and

Tony Sadler Pty Ltd.  
File No. 3 of 1997.

The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 Award No R32 of 1976.

MR J.G. CARRIGG (CHAIRMAN)  
MR D. JONES (MEMBER)  
MR W. LATTER (MEMBER)

Perth 27 June, 1997.

#### *Decision.*

THIS Board of Reference has been convened at the request of Rebecca Karanikolaou in a letter dated 9 April 1997 addressed to the Western Australian Industrial Relations Commission.

Mrs Karanikolaou was employed by Tony Sadler Pty Ltd on the 1 June 1979 under the Shop and Warehouse (Wholesale and Retail Establishment) State Award 1979 Award No R32 1976 in a casual capacity as defined by that award.

Mrs Karanikolaou's service was continuous from 1 June 1979 and the 23 December 1986, and from the 10 March 1987 to the 5 January or the 11 January 1996. There is some uncertainty as to the exact date of Mrs Karanikolaou's termination but that uncertainty is not material to her claim with respect to long service leave.

Mrs Karanikolaou was a casual employee from the 10 March 1987 to the 1 July 1987. From the 1 July 1987 to her termination in January 1996 she was a full time employee.

Neither of these periods of continuous employment are sufficient to obtain an entitlement under the Long Service Leave Standard Provisions.

The dispute which has been brought to this Board of Reference for settlement is as to whether the period of her absence from 23 December 1986 to 10 March 1987 is or is not continuous service in accordance with Section 6 of those provisions.

Mr Steven Andrews, the respondents accountant, produced in Exhibit E1 the Company's pay history for the 1986/87 year. That record shows Mrs Karanikolaou was employed as a casual but on a continuing basis for 3.5 hours per week up to the pay ending the 23 December 1986.

That record further shows that between the 23 December 1986 and the 10 March 1987 Mrs Karanikolaou was not on the payroll.

From the 10 March 1987 she was again on the payroll at 3.5 hours per week.

Mr Tony Sadler in his evidence said that as his business was retail in nature and employed a significant number of casuals, and that his policy was, except for prior arrangements such as to travel overseas to take a holiday from a specific date to another date, where a casual employee left his service for whatever reason it was regarded as a termination.

Further, Mr Sadler also said that in many cases those previously employed casual employees returned to his employment at a later date.

Mr Sadler made it quite clear that this was the arrangement with respect to Mrs Karanikolaou's absence between the 23 December 1986 and the 10 March 1987.

Mrs Karanikolaou in her evidence said that she was unaware of that policy and that she was not advised at any time before, at the beginning of, or during her absence from work between the 23 December 1986 and the 10 March 1987 that her services had been terminated

She was always on the understanding that her job was available to her when she wished to return to work.

The circumstances which occasioned Mrs Karanikolaou absence between the 23 December 1986 and the 10 March 1987

were that she was unable to work for that period because she had to care for her husband who was ill and subsequently died.

Those circumstances were common knowledge both to Mr Sadler and his other employees.

Mr Sadler said that the policy regarding termination of casuals was one that he had followed for some 25 years while he has been in business and was well known and applied consistently to his casual employees. Mr Sadler in his evidence also said that this policy had to be followed, as for example in Mrs Karanikolaou circumstances, the period of absence that she required was unknown and it was impossible for him as an employer to keep a casual position open in those circumstances.

Mr Sadler's policy in regard to casuals has not been committed to a document and does not appear to form part of the contract of engagement, but in his own terms is one that "he keeps in his head".

Mrs Karanikolaou relied fairly heavily on discussions that she had with a Mrs Beryl Grant, who was not present at the Board of Reference, in which she says that Mrs Grant, who was a senior employee of the company at the time, said, that her job would remain open for her.

Mr Sadler in his evidence made it quite clear that the responsibility for termination and engagement of employees was solely his and not Mrs Grant's, and that he readily offered people who had worked for him on a casual basis, re-employment after periods following termination.

The evidence also established that Mrs Karanikolaou was on a 6 hours per week engagement prior to the beginning to her absence on the 23 December 1986 and that from the 10 March 1987 she was on a 3.5 hours engagement.

It is the determination of this Board of Reference the facts do not support the applicants contention that the period between the 23 December 1986 and the 10 March 1997 should not break service for the purposes of the Long Service Leave Standard Provisions.

The Board of Reference therefore finds that Mrs Karanikolaou service with Tony Sadler Pty Ltd is in two parts, that is, from the 1 June 1979 to the 23 December 1986 and from the 10 March 1987 to either the 5 or 11 January 1996.

Neither of these periods of continuous service attract an entitlement to long service leave in accordance with the Standard Provisions.

J. G. CARRIGG,  
Chairman.

Filed in the Office of the Registrar 27 June 1997

J. CARRIGG,  
Registrar.

### LONG SERVICE LEAVE—STANDARD PROVISIONS

#### BOARD OF REFERENCE

Maria Lord  
and

Tony Sadler Pty Ltd.  
File No. 4 of 1997.

The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977.  
Award No R32 of 1976.

Mr J.G. CARRIGG (Chairman)  
Mr D. JONES (Member)  
Mr W. LATTER (Member).

Perth, 27 June, 1997.

#### *Decision.*

This Board of Reference is convened at the request of Maria Lord in a letter dated the 18 April 1997 addressed to the Western Australian Industrial Relations Commission.

On the 31 October 1984 Mrs Lord commenced her employment with Tony Sadler Pty Ltd and was designated a casual.

On the 30 October 1987 Mrs Lord's employment was interrupted by the need to attend hospital, and for a period of recuperation. She returned to work on the 4 February 1988.

On the 24 February 1996 Mrs Lord submitted her resignation to take effect from the 26 February 1996.

Exhibit E2, the wages records of Tony Sadler Pty Ltd for the period July to June 1987/88 show that Mrs Lord regularly worked more hours than the limit imposed for casual work by the Shop and Warehouse (Wholesale and Retail Establishment) State Award 1977 Award No R32 1976. Notwithstanding that, she described the nature of her employment as being casual as did Mr Sadler in his evidence.

Mr Sadler was aware of Mrs Lord's need to go to hospital and for the recuperation period she required, when her break in service commenced in October 1987.

The time and wages record after that date do not contain any entries for Mrs Lord until February 1988.

Mr Tony Sadler in his evidence said that as his business was retail in nature and employed a significant number of casuals, and that his policy was, except for prior arrangements such as to travel overseas or take a holiday from a specific date to another date, where a casual employee left his service for whatever reason it was regarded as a termination.

Further, Mr Sadler also said that in many cases those previously employed casual employees returned to his employment at a later date.

Mr Sadler made it quite clear that this was the arrangement with respect to Mrs Lord's absence between the 30 October 1987 and the 4 February 1988.

In her evidence Mrs Lord stated that she was unaware of the management policy with respect to termination of casual employees who were unable to continue working but who had an expectation that they may be available in the future.

Mr Sadler in his evidence said that he was well aware of Mrs Lord's circumstances before she finished up on the 13 October 1987 and that he was concerned, as he is with all female employees, that following her hospitalisation and recuperation it may be inappropriate for her to work in his business because of the lifting requirements associated with manchester.

Mr Sadler said that the policy regarding termination of casuals was one that he had followed for some 25 years while he has been in business and was well known and applied consistently to his casual employees. Mr Sadler in his evidence also said that this policy had to be followed, as for example in Mrs Lord circumstances, the period of absence that she required was unknown and it was impossible for him as an employer to keep a casual position open in those circumstances.

Mr Sadler's policy in regard to casuals has not been committed to a document and does not appear to form part of the contract of engagement but in his own terms is one that "he keeps in his head".

It is the determination of this Board of Reference that Mrs Lord has continuous service from 31 October 1984 to the 30 October 1987, and from the 4 February 1988 to the 26 February 1996.

Neither of these continuous periods secure an entitlement to long service leave in accordance with the Long Service Leave Standard Provisions.

With respect to the period 30 October 1987 to the 4 February 1988 notwithstanding that the termination policy as detailed as Mr Sadler applies to casual employees and that Mrs Lord's hours were normally in excess of those applicable to such an employee under the Award, the Board finds that the facts do not support that period being deemed to be continuous service in accordance with Section 6 of the Long Service Leave Standard Provisions.

J. G. CARRIG, Chairman.

Filed in the Office of the Registrar

27 June 1997

J. CARRIGG, Registrar.

## UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christopher Cornelio

and

West Coast Radio Pty Ltd.

No. 723 of 1997.

16 June 1997.

*Reasons for Decision* (extempore)

THE SENIOR COMMISSIONER: The Applicant in this matter claims to have been unfairly dismissed from the Respondent's employment on or about 13 March last.

As events have transpired, it now appears to be common ground that the Applicant was in fact never employed by the Respondent, but, as he would have it, was promised employment as a salesman or sales executive with the Respondent, which promise the Respondent never honoured.

The Applicant claims to have been told by one of the Respondent's executives that he would be appointed as a sales executive for the Respondent at some time in the future, which time he says expired in or about March this year. It seems common ground that at about that time, or perhaps shortly before, the Respondent placed an advertisement seeking a sales executive. At about that time, the Applicant was interviewed for that position, whether as a result of that advertisement or not does not matter. As is common ground, he was not appointed to the position. Someone else was appointed to the position.

The Applicant now asserts that the Respondent has breached its promise to him by not appointing him to that position. As a result of that breach, the Applicant says that he has suffered loss and seeks to recover that loss by way of compensation for what he asserts, at least in his Notice of Application, to be an unfair dismissal. That loss is said to constitute money in the form of bond and two weeks' rent paid in advance, preparatory to him taking up the position, the cost of him moving to Bunbury where the position would have been and the loss associated with having to cut short a trip that he was then undertaking in the United Kingdom, which, he says, was cut short in his belief that he was to be appointed to the position. Thus he now seeks compensation in the sum of something in the order of approximately \$2,500.

The Respondent, for its part, denies that the Applicant was ever promised appointment to the position in question, or indeed that he was ever employed by it. It simply says that he was advised that he would be considered for the position. He was considered for the position, so the Respondent says, and was unsuccessful. The Respondent argues that, as the Applicant was never an employee, he could therefore never have been dismissed. Thus his application is wholly misconceived and ought to be dismissed. Furthermore, the Respondent asserts that the application was made out of time. The Respondent says that the application was made some 34 clear days from the date on which the Applicant claims to have been dismissed. Thus, even if he was dismissed, the claim was out of time and the Commission is without jurisdiction to deal with the matter on that ground also.

The matter is quite clear. The Applicant, by his own admission, has said that he was never employed by the Respondent. Indeed, his complaint is that he was not appointed to the position that he was promised. In effect, he is saying that he was denied employment in breach of a promise that he would in fact be employed. In those circumstances, as I have suggested to the Applicant, it is difficult to see how he can be said to have been dismissed from employment. As his complaint is that he was never given the employment that he says he was promised, there was therefore no employment for him to be dismissed from. There is a marked difference, as the cases in this jurisdiction and in other like jurisdictions make clear, between the refusal to employ and a dismissal from employment.

In my view, on the Applicant's own admission, there is no case for the Respondent to answer. The Commission is simply without jurisdiction to deal with this matter. It may be, as the Applicant contends, that he should be entitled to compensation for the losses that he has suffered by reason of a breach of promise on the Respondent's part. If that is the case, then his remedy is in another court, not in this court.

It might also be that the application should be dismissed for want of jurisdiction on the grounds that the application was instituted out of time. The Industrial Relations Act 1979 imposes a limit of 28 days to institute claims of this nature. That time commences to run from the date of dismissal, which the Applicant says was 13 March last.

It appears that the application was lodged first in the Commission on or about 9 April last, but the Commission's records show that it was not in fact accepted for registration until 15 April last, apparently because the Applicant did not, when the document was first lodged, pay the necessary filing fees as the Regulations require. If it be, as the register appears to indicate, that the application was not filed until 15 April last, then the application is defective and fatally so, because it was out of time. There is no power in the Commission to extend that time.

Be that as it may, on the Applicant's own admission, he was never an employee. He was not in employment but, if anything, refused employment. In the circumstances, in my view the application should be dismissed for want of jurisdiction. I propose to so order, rather than put the parties to further unnecessary expense.

Appearances: The Applicant on his own behalf.

Ms E.G. Hartley, of counsel, on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christopher Cornelio

and

West Coast Radio Pty Ltd.

No. 723 of 1997.

16 June 1997.

*Order.*

HAVING heard the Applicant on his own behalf and Ms E.G. Hartley, 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 the application be and is hereby dismissed.

(Sgd.) G. L. FIELDING,

[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ernest Jesnoewski

and

Troy Slammer.

No. 630 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

25 June 1997.

*Reasons for Decision.*

CHIEF COMMISSIONER: The Applicant was successful in gaining a position of Truck driver on the "east west and west east run" between Perth and Brisbane transporting general freight. He was to be paid \$850 for the trip to Brisbane and he understood that he would receive \$1700 for a round trip.

On 21st February 1997 the Applicant left Perth in the Respondent's Volvo truck. Another truck accompanied him on the trip. The Applicant was the supervisor of both vehicles. He was given \$200 for food by the Respondent. During the trip the truck the Applicant was driving developed mechanical problems. Repairs costs \$133.60. The Applicant paid for these. Tyres had to be rotated between the truck and trailer to overcome steering problems. This was done at the Respondents direction.

When he arrived in Brisbane the Applicant contacted the Respondent to arrange for funds to be transferred into his bank account. Although this was promised nothing was forthcoming. The Applicant was stranded in Brisbane without money for food for four days while freight for his return trip was arranged. The proprietor of another trucking business came to his assistance with meals.

On the trip back to Perth the truck experience further mechanical problems. At the Respondents direction the vehicle was delivered to a place other than the depot for repairs. The Applicant waited there for several hours to be picked up. However, the responded did not attend and the Applicant's wife come and took him home. These are the facts stated by the Applicant under oath. He goes on to say that numerous attempts to meet with the Respondent and telephone calls to his home have failed to elicit a response.

The Applicant seeks outstanding contractual benefits for the trip to Brisbane and return (\$1800) plus reimbursement of costs incurred by him in repairing the vehicle in accordance with his instructions (\$133.60). Furthermore, the Applicant seeks compensation for unfair dismissal. In this respect he seeks an amount equal to 4 weeks wages (calculated at the rate of \$459.70 per week in line with the wage paid pursuant to the Transport Workers (General) Award).

The Applicant submits that 4 weeks was the period during which he was unemployed following the Respondent's failure to respond to his attempts to speak with him and to provide him with work and income. The Applicant has only been able to secure casual employment since the termination of his employment with the Respondent on 4th March.

The Respondent failed to appear in the proceedings.

The Applicant impressed me as a forthright and responsible employee who during the period of his employment acted to maintain the property and protect the interests of the Respondent.

I am satisfied that the relationship was that of an employee and employer given the nature of the Applicant's appointment as supervisor and the control exercised by the Respondent over the performance of his duties.

The contractual benefits under the terms of his appointment as a truck driver are due to him. These include reimbursement of the costs of mechanical repairs incurred by the Applicant on the Respondent's behalf.

I find that the Applicant was harshly dismissed from employment. There is nothing before me to conclude that there was to be anything but an on-going relationship between the Applicant and the Respondent. While the Applicant's wage was expressed by reference to payment for trips to and from Brisbane it can be reasonably inferred that the Applicant's duties involved continuing travel between Perth and the east coast. The Respondent sought and secured a mature driver for the position. A failure to continue that employment and to ignore the Applicant's attempts to communicate with him renders the Respondent's action in terminating the relationship as harsh and oppressive.

As a mature man, the Applicant has had some difficulty securing employment and even now that is only on a casual basis. The claim for compensation is in the circumstances justified.

The Order which issues reflects this decision.

Appearances: Ms R. McGinty appeared on behalf of the Applicant.

No appearance on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ernest Jesnoewski

and

Troy Slammer.

No. 630 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

4 July 1997.

*Order.*

HAVING heard Ms McGinty on behalf of the Applicant and there being no appearance by the respondent, the Commission pursuant to the Industrial Relations Act 1979 hereby orders that—

1. Within 14 days of the date of the Order the Respondent pay to the Applicant outstanding contractual benefits being—
  - (a) \$1700 (less tax) for work performed from 21st February 1997 to 4th March 1997;
  - (b) \$133.60 being reimbursement of money expended by the Applicant on behalf of the Respondent in effecting mechanical repairs and the purchase of oil on vehicle 9CG022.
2. Within 14 days of the date of this Order the Respondent pay to the Applicant the amount of \$1838.80 as compensation for unfair dismissal from employment.

(Sgd.) W.S. COLEMAN,

Chief Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Frances Catherine Ladner

and

Focus Marketing International Pty Ltd trading as The Rug Shoppe.

No. 1612 of 1996.

COMMISSIONER P. E. SCOTT.

1 July 1997.

*Reasons for Decision.*

THE COMMISSIONER: By this application, Frances Catherine Ladner claims that she was unfairly dismissed from her employment with the Respondent.

The background to this matter is that the Respondent commenced operating his business as a retailer from a shop in Wangara in around August 1993. The business proprietors were, in effect, Murray John D'Arcy and Bernadette D'Arcy. Murray D'Arcy worked in the business until approximately April 1994 when he took up full time employment elsewhere. Mrs D'Arcy's daughter, and Mr D'Arcy's step daughter, Alison Bryant, then worked at the shop as a sales assistant from April until November 1994 when she went to live in Dunsborough.

At that time, the Applicant was working for Mr and Mrs D'Arcy as a domestic cleaner and Mrs D'Arcy knew her to be honest and reliable so offered her the position as a full time sales assistant working Monday to Friday. She commenced in this position on the 14 November 1994. Other casual employees worked during the weekends. The relationship between the D'Arcy's and the Applicant and her husband was friendly and they mixed together socially.

The D'Arcy's intention in starting the business was to develop it with a view to establishing a chain of stores which would provide them with income for their future. However, the business did not thrive and in around September 1994, Mr

D'Arcy began looking at the prospect of moving premises, as the Wangara location was not profitable. In April 1995, the business moved to new premises in Joondalup, which while incurring a higher rent cost, was intended to have a greater passing trade.

The Applicant says that Mr D'Arcy told her that he expected that the change in location would not result in an immediate increase in business, but he was prepared to allow six months for improvement. She also says that she was aware that the business was not making significant profits. During his evidence, Mr D'Arcy submitted documentation and gave verbal evidence as to the financial state of the business. The business's accountant, Graham Trevor Lean, also gave evidence as to the state of the business which he described as marginal. He also gave evidence that he had advised Mr D'Arcy to sell the shop when he took up his full time position, and of his advice to reduce costs including labour costs and to look at other options such as relocation. He said that while things were not getting worse, the business was not producing enough income to pay a proprietor. Mr D'Arcy's evidence included that he had considered selling the business but did not want a "fire sale" which would cost the business between \$50,000 and \$60,000, whereas the relocation cost was \$10,000. By April 1996, the business had not significantly improved. Mr D'Arcy gave evidence that creditors and suppliers were losing patience with the business and demanding payment, and suppliers were refusing to supply further stock. Mr D'Arcy made a couple of injections of his personal cash into the business.

During the period of her employment, for a number of reasons, the Applicant asked Mr D'Arcy for reassurance as to her job security and these assurances were given. Further detail is provided later in these Reasons.

At around the end of April 1996, Alison Bryant returned home and was living with Mr and Mrs D'Arcy. During discussions about the state of the business, Alison said that she was prepared to assist by working in the shop without wages for six months, in exchange for living at home without cost. Mr D'Arcy says that he considered this offer and decided, without advising Mrs D'Arcy or Alison Bryant, that he would terminate the Applicant's employment, and take up Alison's offer. In this way, he says, he could use what would otherwise have been wages to pay creditors. He also took other steps such as renegotiating the lease and rent, as a means of reducing costs. He says that, in the meantime, he would look at the business on a month by month basis with a view to selling it. Having made the decision to terminate the Applicant's employment, Mr D'Arcy moved to implement his decision immediately. He telephoned the Applicant and advised her that he needed to speak with her and then he met with her at the shop. Mr D'Arcy advised her that he was reluctantly terminating her employment, and he gave the Applicant four weeks notice. He told her the reasons he was terminating her employment was that he intended to sell the shop, and that Alison was going to work there for six months without pay. Mr D'Arcy also showed the Applicant a statement of income and expenditure of the business. The Applicant decided against working out this notice period and left at the end of the week. She was paid an additional week's pay and other award entitlements.

The Respondent says that it had a valid reason for the termination for the Applicant's employment, being the operational requirements of the business, and that it did not abuse its lawful right to terminate by doing so in an unfair manner.

The Applicant raised a number of other issues which she says make the dismissal unfair and she seriously questions the validity of the reason given for dismissal. The Applicant says that after December 1995, Bernadette D'Arcy became aggressive and cold to her. She accused the Applicant of having an affair with her husband. The Applicant denied this, and upon leaving work in a distressed state visited her doctor who provided her with a medical certificate for an absence of four days. The Applicant then telephoned Mr D'Arcy and advised him of what had happened. He advised her to ignore Mrs D'Arcy and her accusation, and reassured her about her job security.

On about the 10th or 11th of April 1996, upon returning to work earlier than the four days prescribed by the doctor, at Mr D'Arcy's request, the Applicant says that she found a note in Bernadette D'Arcy's handwriting on the desk in the shop. It

contained the telephone number of the Department of Productivity and Labour Relations and stated the following—

“Employee T/As  
Conduct/Behaviour  
- Downturn in business  
Process  
1 2  
Verbal/Written  
Explaining  
1 week”

(Exhibit 1)

The Applicant took this note to mean that Mrs D’Arcy had telephoned the Department of Productivity and Labour Relations to seek information about terminating her employment. The Applicant again spoke to Mr D’Arcy who advised her to ignore the note and again assured her that her job was safe. The Applicant gave evidence that she believed that if the issue of the affair had not been raised then Bernadette D’Arcy would have found another reason to have her employment terminated. The Applicant then had some difficulty with her pay which caused further problems between herself and Mrs D’Arcy. She said that Mrs D’Arcy became more aggressive and rude towards her. It was three weeks after this that Mr D’Arcy advised the Applicant that her employment would be terminated.

A number of other matters were raised during the hearing. Mr D’Arcy said in evidence that his wife had been involved in a serious accident some years ago. Mrs D’Arcy was taking drugs due to her injuries, and according to Mr D’Arcy, these drugs affected Mrs D’Arcy and resulted in her allegations of the affair, an allegation made by her on another previous occasion, which I take to mean unrelated to the Applicant. Mrs D’Arcy was also pursuing litigation regarding this accident. The Applicant gave evidence that she may have been called by the insurance company to give evidence in that matter. The action was settled out of court. The Respondent asked the Commission to draw an inference that the Applicant had not intended to pursue a claim against the Respondent as she believed she would have an opportunity to give evidence against Mrs D’Arcy and in this way “settle a score”. When that matter was settled, she was denied that opportunity, and knowing that the D’Arcys had then received money as a result of the settlement, decided to pursue her claim. This, according to the Respondent, explains the late filing of the application.

In her evidence, the Applicant says that she did not file her claim either in the Australian Industrial Relations Commission or this Commission for some months after the termination of her employment because at the time of dismissal, she had believed that Mr D’Arcy was genuine in his advice to her that he intended to sell the business. She says that she did make clear to him that if the business was not sold that she may pursue action against the business. When, after a number of months, the business had not been sold, she decided that he had not been genuine, that the reason given for her dismissal was not legitimate and therefore that he had treated her unfairly. Her application to the Australian Industrial Relations Commission, stamped as being received on the 11 September 1996, gave her reason for seeking an extension of time to lodge the application as—

“Murray told me they could no longer keep me as they were selling the shop. I had no reason not to believe him. But as yet nothing has been done to this effect and the person who was employed before me is taking my place.”

(Exhibit 2)

The Respondent says that this demonstrates that the Applicant did not believe until some months after her dismissal that anything was amiss. Whereas, the Applicant says that she had made it clear to Mr D’Arcy that if she believed the reason for her dismissal was not genuine, she would take action.

The other matter of contention involves an offer of employment made to the Applicant by Peter Donnelly, operator of Wallplan, the business next door to the Rug Shoppe in Joondalup. Mr Donnelly gave evidence that when they discussed his plans to engage staff for his new shop the Applicant indicated to him that she was not feeling secure in her job, and gave him a Rug Shoppe business card with her home telephone number on the back. The Applicant says that when Mr Donnelly came into the shop, she had discussed with him that she might be looking for work because “Bernadette gave me no option”.

Having observed the witnesses, I find Mr D’Arcy a most credible witness. As to the evidence of the Applicant, I believed that she acted on assumptions which, from her perspective, were clear, but when viewed in an objective manner, were not so clear. It is not unusual in cases such as this that there are at least two perspectives. I find that the Applicant’s perspective on some matters was limited to her own interests and was not objective, however, I found her to be a credible witness also.

I take the Applicant’s claim to be on a number of grounds—

1. That the Respondent’s reason for her employment being terminated related to Mrs D’Arcy’s accusation against her; and
2. That Mr D’Arcy’s failure to sell the shop quickly, or to pursue its sale immediately, was a demonstration of a lack of good faith; and
3. That she had been assured on a number of occasions of her job security, and had been given no forewarning about a change to that situation.

In considering a claim of unfair dismissal, the Commission is to apply a number of tests. The first is whether the employer has exercised its legal right to terminate the employment in a manner which is harsh or oppressive and constitutes an abuse of that right. (*Miles and Others trading as Undercliffe Nursing Homes v. Federated Miscellaneous Workers Union of Australia* (1995) 65 WAIG 385 at 386). Another is whether there has been “a fair go all round”. (*Loty and Holloway v Australian Workers Union* (1971 AR NSW 951). The Commission is to consider all of the circumstances of the dismissal and weigh those in its determination.

As to the Applicant’s first ground I find no substance in this, although I am sure that the Applicant was distressed by the accusations, and may have felt under threat as a result of this having been made. I find that the Respondent had good cause to terminate the employment of the Applicant. I am satisfied from the evidence of Mr D’Arcy and Mr Lean that the reason for dismissal of the Applicant related to the financial state of the business and Ms Bryant’s offer to work for six months without pay and not any other reason. Mr D’Arcy took a number of reasonable, genuine and responsible steps to reduce the business’s costs.

As to the second ground upon which the Applicant bases her claim, it seems to be a large part of the Applicant’s claim that because Mr D’Arcy did not act to sell the business as quickly as she had believed he would, then she assumed that he had acted in bad faith and thus that her dismissal was unfair. Clearly, Mr D’Arcy had the opportunity of staffing the shop without the cost of full time employees for a period of six months. Although he indicated an intention to sell the business, this offer of labour without cost was the reason for the decision to terminate. Whether the business eventually sold or not, or sold quickly is not relevant to this matter other than in whether Mr D’Arcy followed through with his stated intention. He was entitled to either change his mind depending upon the way the business developed or to look at the situation on an ongoing basis, which he did. The failure to sell the business immediately does not make the dismissal unfair. I understand from Mr D’Arcy’s evidence that if it were not for Alison’s working without wages he would have had to sell as soon as possible. Without the labour cost, the urgency was reduced. In any event, the business was sold to Alison Bryant in January 1997.

As to the third ground, it is not contested by the Respondent that in a response to a number of enquiries by the Applicant regarding the security of her job, Mr D’Arcy gave reassurances. At the time he gave those reassurances there was no indication that he would soon, without warning, receive an offer from Alison Bryant who had worked in the shop before, to run the shop without the labour cost of a full time employee. It is hard to imagine that an employer in this circumstance, faced with this offer, would choose to retain a full time employee on wages. It seems that Mr D’Arcy is a cautious businessman and does not generally rush in to making decisions. The decisions to relocate the business and eventually sell it, were decisions which took a considerable amount of time. However, when the opportunity of having the wages component of his costs significantly reduced due to Ms Bryant’s offer, he considered this made his decision and acted almost immediately. He did not give the Applicant any forewarning.

Although the matter of an alleged breach of Minimum Conditions of Employment Act is not before me and I make no findings in that regard, I am satisfied that Mr D'Arcy acted promptly. I find that this was an aspect of unfairness in that the Applicant was re-assured of her job's security on a number of occasions a short time before the termination of her employment.

At the time of termination, Mr D'Arcy recognised that four weeks notice was reasonable in the circumstances, and offered it. In evidence, he said "I gave her 4 weeks' notice which I said previously that I would do if it ever came to pass that she was to be terminated" (Transcript page 49). When the Applicant rejected it and chose to leave at the end of the week, he did not pay her for the period of notice he had previously been prepared to allow. When asked why he had not paid the four weeks Mr D'Arcy said—

"All I could think of is that at that time my requirement was to pay her one week extra. I could obviously not afford to pay her then. I could not afford to pay her four weeks without having some return for it."

(Transcript page 50)

I am satisfied that in the circumstances of the reassurances given to the Applicant regarding her job's security, that termination of her employment was unfair. I am not satisfied that any other aspect of the termination of employment could be considered to be unfair in all of the circumstances.

When considering what relief, if any, should be granted to the Applicant, I note that the Respondent has since the termination of the Applicant's employment sold the business. On this basis there is no other position for the Applicant to be returned to, if reinstatement were a real consideration. In fixing compensation in cases of this nature, regard should be had to the circumstances of termination, the length of service of the Applicant, and other matters.

The Respondent, at the time of termination recognised that four weeks would have been a reasonable period of notice. In the circumstances, too, it was not unreasonable that the Applicant should wish to leave as soon as possible. I find that the Respondent's original offer of four weeks notice ought to have been applied to the Applicant by way of pay in lieu of notice. That is not to say that an employee is entitled to leave once notice has been given by the employer, and still expect that the employer will pay out in lieu of the notice period not worked by the employee at the employee's choice. However, in this case, the Applicant had been given assurances of her job's security in the face of Mrs D'Arcy's approach to her and it is not surprising that she should wish to leave sooner rather than later. On this basis, I find the Respondent ought to have lived up to the offer of four weeks notice. That was a reasonable period bearing in mind the circumstances and is also reasonable bearing in mind the Applicant's length of service. A larger amount is not warranted, as in all respects other than relating to the reassurances about job security, the Respondent dealt with the termination in a reasonable and considerate manner. As I understand the evidence, one weeks pay has been paid. Accordingly, an Order shall issue for the payment of a further three weeks pay. There was no evidence as to the Applicant's rate of pay so I will assume that it was \$430.70 per week as suggested by the notice of application and the parties can advise me to the contrary if that is not correct.

The Respondent's counsel asked the Commission to draw certain inferences as to the Applicant's motives in this matter. I note that in the circumstances encountered by her in her dealings with Mrs D'Arcy in the weeks prior to the termination of her employment, the Applicant had some reason to at least wonder about the grounds for the termination of her employment. There were questions to be answered by the Respondent as to the reasons for and circumstances of the Applicant's termination of employment. It has answered those questions. I have found that the Respondent had grounds upon which to terminate the Applicant's employment, and those grounds relate to the operational requirements of the business, however, the circumstances of termination resulted in an element of unfairness. If there had been any question as to the late filing of the application which genuinely required consideration then that question ought to have been raised at the time the late application was dealt with.

Appearances: Mr M Jenson on behalf of the Applicant.  
Mr R Wilenski on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Frances Catherine Ladner  
and

Focus Marketing International Pty Ltd trading as The Rug Shoppe.

No. 1612 of 1996.

COMMISSIONER P. E. SCOTT.

7 July 1997.

*Order.*

HAVING heard Mr M Jenson on behalf of the Applicant and Mr R Wilenski on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

- (1) Declares that the Applicant was unfairly dismissed from her employment with the Respondent in that she was dismissed following reassurances as to her job security;
- (2) Orders that the Respondent pays to the Applicant the sum of \$1,292.10, being three weeks pay, within 7 days.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ann Little

and

Illyarrie Nominees Pty Ltd trading as Goddard Real Estate.

No. 1524 of 1996.

COMMISSIONER P. E. SCOTT.

24 June 1997.

*Reasons for Decision.*

THE COMMISSIONER: This matter is an application by Ann Little pursuant to s.29(1)(b)(ii) of the Industrial Relations Act 1979 that she is owed certain benefits under her contract of employment with the Respondent.

This matter has a complicated and unfortunate history which includes that the Applicant did not attend the hearing which had been set down for 16 April 1997 and, on that basis I indicated my intention to dismiss the application. The Respondent then sought costs and I indicated that those costs may be awarded however, a letter was to be sent to Ms Little providing her with an opportunity to be heard in the matter of costs. On 17 April, 1997, upon becoming aware that the matter had been dealt with the previous day, the Applicant contacted the Commission and indicated that she had not realised that the matter was to go ahead for a hearing on 16 April 1997. She sought a reopening of the hearing on that basis.

On 1 May 1997, I heard from the parties as to the Applicant's application for the matter to be reopened and for the reasons noted then, which related mainly to a misunderstanding between the Applicant and her then agent, Mr Crossley, as to whether the matter was to go ahead, I agreed to the reopening of the hearing.

The background to the employment relationship between the parties is that the Applicant was employed by the Respondent in either October or November 1995. There is dispute between the parties as to which month is correct. Her employment was to be as a real estate sales representative. At the time the

parties were entering into the employment relationship, the Applicant, another employee, Robert Treacy, and the Respondent's principal, Bernice Goddard, were considering entering into a partnership arrangement in January 1996. In the mean time, they were to work together in Ms Goddard's business and consider their options. In January/February 1996, the parties mutually agreed not to proceed to a partnership.

At the commencement of the employment relationship, it seems that the payment arrangement between the parties was that the Applicant would be paid 60% of commissions earned from sales made by her, and that advertising costs and superannuation would be paid by the Respondent. However, there is contention between the parties as to whether this arrangement was reviewed when the parties decided against entering into a partnership. The Respondent says that at the end of February 1996, costs were calculated and as at 1 April 1996 the two sales representatives, being the Applicant and Mr Treacy were to go on to 60% commission and the costs to be charged to them. There is evidence from the Respondent that in Mr Treacy's case, arrangements were made for the costs of advertising to be charged to him, and the Respondent says that the same arrangement applied to the Applicant.

The Applicant and the Respondent are at odds as to whether the Applicant's commission rate was to drop from 60% to 57% from 1 July 1996, to cover the increase in the superannuation contribution rates. There is dispute between the parties as to the date of termination, however, it would appear to have been no later than early June 1996. The parties are now in dispute as to the commissions earned and payable, and about deductions made from those earnings.

The claims by the Applicant are as follows—

1. 21 Roberts Road  
The Applicant is claiming payment of commission of \$5,385.00.
2. 14 Cawston Road  
A shortfall in payments already made of \$370.98.
3. 12 Stock Road  
A shortfall in payments already made of \$409.75.
4. 49 Eckersley Heights  
An unauthorised deduction of \$1,000.00 for advertising.
5. 34 Warragoon Crescent  
An unauthorised deduction of \$2,504.70 for advertising.
6. 27 Booker Street  
\$5,000.00 commissions owed but not paid.

As to 21 Roberts Road Attadale, it seems that there was some difficulty regarding the sale which resulted in the vendor being "compensated" to the amount of \$3,200. The Applicant said that the problem arose because Ms Goddard, as licensee, should have checked a particular aspect of the offer and acceptance form and failed to do so. Ms Goddard denies that it was her responsibility to undertake this checking.

The Applicant's calculation is that the total commission payable to the Respondent's business was \$8,975.00 and her entitlement was to 60% of that being \$5,385.00 (Exhibit 2). Even if \$3,200.00 is deducted from this, she would still be entitled to \$2,185.00.

Ms Goddard said in evidence that—

"... The outcome was that settlement was delayed to a lot of inconvenience to everyone and considerable expense. We had deducted out of our fee by the solicitors \$3200.

Yes?—Therefore Anne's commission was calculated on the 60 per cent of what we received less the \$3100...(On tape)... that Bailey Ashdown had deducted from the fee some months before.

And that left a balance of \$3100. Is that what you're saying?—No. The \$3100 was debited— Anne's share of 57 per cent was \$2714.

Yes?—After I deducted the \$3100 it left her a debit situation of 385.75.

Oh, I see?—And that was with nil tax.

Yes?—It's noted that that sale did not settle till the 25th of September.

SCOTT C: Did Miss Little agree to the deduction of the \$3100?—It was a legal situation. Anne had left me—left our company when she went to the UK in early June. I looked after all her sales from that time on— from June right up until the last one settled—the 25th of September, and it was not my decision or Ann's decision; it was a legal decision.

So the applicant was no longer employed at the time that one settled?—Correct."

(Transcript page 35 & 36)

The Respondent's document shows the following—

"Selling Fee	57%	\$2714.25
Paid	\$3,100.00	Advance of Selling Fee deducted by Solicitor
		May '96 (385.75) overpaid."

(Exhibit 6)

So, it would seem there is dispute between the parties as to the total commission payable, the Applicant's share of that amount, whether the Respondent was entitled to make the deduction, whether the Applicant, having left the Respondent's employ prior to settlement is entitled to any or all of the commission payable, who was responsible for the error which resulted in the "compensation" to the vendor, and in summary, whether the Applicant is entitled to any amount at all.

In respect of 14 Cawston Road, the Applicant says that she was underpaid. The Applicant had drawn up a claim showing that the commission paid to her was short by \$624.10, and presented it to Ms Goddard. The Respondent says she paid this amount, and submitted a bank statement, as part of Exhibit 5, which shows the payment of cheque number 2267 on 14 August 1996, for \$624.10. The Applicant now contends that this figure was wrong and claims a further \$370.98.

The claim relating to 12 Stock Road is that the Applicant calculates this as follows—

"Total Commission	15,575.00
Less Vendors discount	15,000.00
60% to Applicant	9,000.00
Paid to the Applicant as per payslip produced	
May 1997	8,590.25
Shortfall of	<u>409.75"</u>

(Exhibit 2)

In evidence, the Applicant described the calculations as follows—

"... 12 Stock Road, Attadale—sale price, \$660,000—total commission, \$15,575—vendor had a discount of \$575. This left total commission—\$15,000. 60 per cent to applicant would be \$9000. Paid to applicant as per pay slip produced 1st of May, 1997, \$8590.25. Shortfall of \$409.75. May I continue?"

(Transcript page 14)

The Respondent's calculations are that the Applicant was entitled to a commission of 57% of the fee being \$8,877.75, from which an amount of \$287.50 was noted as being "Refund to Mrs Hope" leaving an amount paid of \$8,590.25. Ms Goddard says that she and the Applicant each contributed half of the cost of a discount of \$575 provided to the client, and this explained the deduction of \$287.50 (Transcript page 38). However, this does not explain the different methods of calculation. The difference would appear to be in whether commission was 57% or 60%, and on whether the discount is deducted before or after the calculation of commission.

As to the claim that deductions were made from monies due on account of advertising costs incurred, it is clear that the Respondent deducted \$2,504.70 for advertising from the commission due on 34 Warragoon Crescent and \$1,000 for advertising from commission due on Eckersley Heights. The Respondent says that the deduction from the Eckersley Heights sale was on the basis that there was agreement for the Applicant to pay advertising costs, as noted earlier, but that she could not afford for the whole lot to be deducted at once and that this was one instalment on that cost. As to 34 Warragoon Crescent, the Respondent says that the parties had agreed for the balance of advertising and other costs to be deducted from

this sale's commissions. I note, too, that there are some irregularities with the deductions made for taxation purposes, both in these two transactions and in the way in which payments were generally made to the Applicant.

In regard to 27 Booker Street, this was a house in which Ms Goddard had an interest. The Applicant says that there was an agreement that she be paid \$5,000 commission for its sale because of the work she put into that sale. The Respondent denies that there was any such agreement for the payment of this \$5,000. Further Ms Goddard says that the Applicant was no longer employed by the Respondent at the time the sale was brought to conclusion and that she finalised the sale in the Applicant's absence. She says that at the time the Applicant left her employ, there was no contract for the sale but that she, Ms Goddard, resurrected the sale by communications with the purchaser. The sale was concluded and settled in October 1996.

#### Conclusions

The onus is on the Applicant to prove her case. She must demonstrate the nature of the contract between herself and the Respondent, the terms of that contract, the basis upon which certain amounts were due to her, and that she did not receive them. The Commission is to judge the evidence on the balance of probabilities. This is explained as follows—

"If the evidence is such that the tribunal can say "we think it is more probable than not" the burden is discharged, but if the probabilities are equal it is not" [Davies v Taylor (1974) AC 207 per Denning LJ at 219]

That is the standard of proof applicable. It is not for the Respondent to disprove what the Applicant alleges until the Applicant has proven, on balance, that what she says is so. As to the evidence of the Applicant, I found her case difficult to understand as she was more intent upon criticising Ms Goddard and her management of the business than on answering questions or making submissions which went to prove her case. Ms Goddard conducted her case in a like manner. I found the evidence of both the Applicant and of Ms Goddard extremely difficult to follow. I make no particular criticism of them in that regard as neither of them was experienced in putting such a case or in dealing with evidence however, this has not made an analysis of the evidence at all easy. As to Exhibit 4, a statement by Mr Treacy, Mr Treacy was not available to be cross examined or clarify any of the matters in his statement. Further, this document is not a sworn statement and its veracity is not able to be qualified in any way. On this basis, I give it no weight.

I am not satisfied from the evidence of the Applicant or the documents submitted as to any of those things which she is required to prove. That is not to say that I disbelieve her or that she has been dishonest, but rather that there was little evidence to prove what she says to be true and her evidence was countered equally by the Respondent. The disputes between the parties about matters involving calculations are not clarified in any way. The exhibits and evidence did very little if anything to satisfy me one way or the other.

Having considered the evidence, studied the transcript and exhibits, I am not satisfied to the standard required that there was an agreement between the parties that the Applicant was entitled to \$5,000 for the sale of 27 Booker Street. Even if such an agreement existed, as the Respondent says, the Applicant was not in employment at the time the sale was brought to a conclusion and Ms Goddard concluded it in the Applicant's absence.

Where there was dispute as to the commission payable to the Respondent's business, amongst other things, in respect of 21 Roberts Road, I am unable to even commence the calculation. There was nothing upon which I could verify that the commission claimed to be payable to the Respondent's business was correct, or how it was calculated. The other matters in dispute between the parties relating to this sale are also not able to be resolved on the basis of the evidence before me, which seems to conflict in every respect, as noted earlier.

As to 14 Cawston Road, it appears from the documents contained in Exhibit 5, that the difference between the parties in this matter lies in the way in which, and the point at which, taxation and superannuation deductions were made. I am satisfied from those documents that the Applicant has been paid, by a total of monies received by her, taxation and superannuation deductions made, the amount of commission she says was

owed. Whether those taxation and superannuation amounts are correct is not for the Commission to decide. If an amount has been deducted for superannuation which, according to the contract of employment was required to be paid by the employer, then that is another matter which shall be dealt with later in these reasons.

In respect of 12 Stock Road, the reduction in commission rate to 57% and the deductions relating to advertising, my comments regarding the standard of proof apply equally here. Because of some unusual practices, some errors in calculations, a complete lack of clarity and disputes as to methods of calculation and other matters, I am not satisfied that in respect of claims for commissions owed or underpayments, that any particular amounts are due to the Applicant. They may be, but from what was put to me, I am unable to draw any conclusion. In all of these circumstances, I am not satisfied to the standard required that the Applicant has proven any of the aspects necessary to demonstrate her case. Accordingly, the application will be dismissed.

At the conclusion of the hearing on 1 May 1997, I indicated that upon reaching my decision, should either of the parties wish to deal with the matter of costs they would be invited to do so. Any submission regarding costs are to be received no later than 4.00pm on Tuesday, 1 July 1997. Should no submissions be received by that time, the Order of dismissal shall issue forthwith.

Appearances: Ms A Little on her own behalf.

Ms B Goddard on behalf of the Respondent.

#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ann Little

and

Illyarrie Nominees Pty Ltd trading as Goddard Real Estate.

No. 1524 of 1996.

COMMISSIONER P. E. SCOTT.

7 July 1997.

#### Supplementary Reasons for Decision.

THE COMMISSIONER: By my reasons for decision dated 24 June 1997, I noted that this matter had been set down for hearing on 16 April 1997 however, the Applicant had failed to attend and I indicated my intention to dismiss the application. The Respondent sought costs and I indicated that I was inclined to do that subject to hearing from the Applicant on that matter. Subsequently the Applicant sought to have the hearing of her application re-opened and on 1 May 1997, I agreed to that and heard from the parties as to the substantive application pursuant to s29(1)(b)(ii) of the Industrial Relations Act ("the Act") by which the Applicant claimed certain contractual entitlements. My reasons for decision in that matter were in essence that the Applicant had not discharged the onus of proof which fell to her and that whilst it may have been that the Applicant was owed some or all of the amounts claimed, I was not satisfied to the standard necessary that she had demonstrated her case.

I invited the parties, in accordance with my comments during the hearing of 1 May 1997 to make submissions regarding costs should they wish to do so. The Respondent by letter dated 25 June 1997 submitted a claim for costs as set out below—

" RE: REIMBURSEMENT COSTS—ANN LITTLE—  
ILLYARRIE NOMINEES PTY LTD

I wish to apply for costs for the three occasions relating to the hearing, incurred by myself—**Bernice Goddard (No., 1524 of 1996)** as set out below.

Bernice Goddard Time = \$140.00 per hour (Includes Stress Factor)

#### TIME LOSS

Pre Hearing Conference	=3 hours	420.00
Initial hearing	=3 hours	420.00
Second hearing	=3 hours	420.00

## RESEARCH AND PREPARATION

Bernice Goddard	
2 Nights = 10 hours	1400.00
14.4.97 1 night = 4 hours	560.00
15.4.97 1/2 day = 4 hours	560.00
Twenty Seven hours total	\$3780.00
Receptionist full day at research 8 hours x \$10.75	86.00
TRAVELLING AND PARKING	50.00
TOTAL	\$3916.00

The Commission then advised the Applicant that such a submission had been received and she was advised by letter dated 30 June 1997 to provide any submission to the Commission by the close of business on Friday, 4 July 1997. On Wednesday, 2 July 1997 the Applicant sought an extension of time in which to prepare a submission and this extension was granted to enable the Applicant to make the submission by 4.00pm on Tuesday 8 July 1997. Her submission was received on Monday, 7 July 1997.

In essence, the Applicant submitted that—

- the Applicant's claim was not dismissed on the basis of it being trivial or vexatious, but rather that the Applicant had not discharged the onus of proof; and
- there were no adverse findings as to the Applicant's credibility or honesty as a witness; and
- a litigant cannot generally claim for time to prepare for a case; and
- the amount claimed by the Respondent was excessive and unsubstantiated; and
- there can be no consideration of stress in such a claim.

The Commission's powers to order costs are set out in s27(1)(c) of the Act which states—

“27. (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it —

- ...
- ...
- 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;”

The question of costs has been dealt with on a number of occasions by the Full Bench of the Commission. In *Denise Brailey v Mendex Pty Ltd trading as Mair and Co Maylands*, it noted—

“The application, too, must be determined under s.26 of the Act. However, part of that equity and good conscience includes what is settled law in industrial matters that costs ought not to be awarded, except in extreme cases, (eg) where proceedings have been instituted without reasonable cause (see *Hospital and Benevolent Homes Award (1983) AILR 409* where costs were awarded in a matter where the applicant terminated the proceedings after putting the respondent to the expense of defending without obtaining an order).”

(73 WAIG 27)

That circumstance referred to in the *Hospital and Benevolent Homes Award Case* is not dissimilar from this matter as it stood at the time the Commission first indicated that it would deal with the question of costs, that is on 16 April 1997 when the Applicant had failed to attend for the hearing and had put the Respondent to considerable costs. However, the Commission then considered the circumstances in which the Applicant had been placed by a difficulty associated with her communications from her former agent and decided that the Applicant should have an opportunity to put her case. That being the situation, the relevance of the *Hospital and Benevolent Homes Award Case* is diminished significantly.

Another case which also involved the question of costs was before the Full Bench in *Hazart Pty Ltd t/a Southern Cross Koala and St Croix Pty Ltd t/a Southern Cross Koala v Leigh Mullan* (73 WAIG 51). In this particular case as noted by the Full Bench in that matter the submissions were based on the fact that questions of credibility were involved and those questions of credibility were clearly resolved upon appeal in favour

of the Respondent. The Full Bench went on to say that simply because the appeal in that case was unsuccessful did not of itself provide sufficient justification to persuade them to award costs.

The matter currently before the Commission was resolved, as noted earlier on the basis that the Applicant was unable to discharge the onus of proof placed upon her, that whilst including questions of credibility, involved consideration of a dispute as to the facts. As in the case of *Hazart* (op cit), I find that this is not sufficient to persuade me to award costs to the Respondent. I made particular note in my reasons for decision that the application was not being dismissed simply on the basis that the Applicant had no case. There was no question of the matter being frivolously or vexatiously prosecuted. It was noted that in fact the amounts claimed may or may not be owed to her but she had simply not discharged the onus placed upon her to the standard required.

On this basis the application for costs will be dismissed.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ann Little

and

Illyarrie Nominees Pty Ltd trading as Goddard Real Estate  
No. 1524 of 1996.

COMMISSIONER P. E. SCOTT.

7 July 1997.

*Order.*

HAVING heard Ms A Little on her own behalf and Ms B Goddard on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

- That the Applicant's claim for non award contractual benefits is dismissed; and
- That the Respondent's claim for costs is dismissed.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rita Mortimer

and

Skilled Engineering Limited  
No. 28 of 1997.

COMMISSIONER P. E. SCOTT.

11 June 1997.

*Reasons for Decision.*

THE COMMISSIONER: This is an application pursuant to s.29 of the Industrial Relations Act, 1979 (“the Act”) that the Applicant has been unfairly dismissed from her employment with the Respondent. The background to this matter is that the Applicant applied for employment with the Respondent by letter dated 3 July 1996 in response to an advertisement for receptionists. This advertisement sought a receptionist/telephonist at the Burswood office of the Respondent on a job share arrangement. The Applicant attended for interview and was successful in obtaining one of these job share positions, her hours of work being from 12.15pm to 5.00pm daily. The other employee was to work the morning hours and there was a hand over period where the two worked together for a short time each day. The Applicant's employment commenced on 15 July 1996. In her evidence, the Applicant recalled that the arrangement was to be trialed as job sharing because of previous experience of receptionists/telephonists finding that the demands of the job were too great for one person. The Applicant received a letter dated 11 July 1996 which set out her

conditions of employment including that her status was as "Part-time Permanent" with a probation period of 3 months. (Exhibit 2) The notice of termination during the probationary period was one week by either side and there afterwards to be two weeks by either side. It is clear that arrangement for the trialing of the job share arrangement was known to and understood by the Applicant at the time of her engagement.

By letter dated 5 August 1996, from the Skilled Engineering Social Club, the Applicant was invited to become a member (Exhibit 3). By a memorandum dated 24 October 1996 and a document headed Employee Counselling—Record of Interview, and from the evidence, it is clear that on 25 October 1996, the Applicant was counselled about failing to wear the reception headset and about swearing in the reception/counter area. She was advised that she must remain cool and calm and if there were any problems, to see the supervisor. The Applicant acknowledged that the record of interview was an accurate one. This record of interview indicated that her conduct would be reviewed on Friday 22 November 1996 "to assess whether the change has occurred". (Exhibit 4) It was noted in evidence, however, that this formal review did not take place. The evidence conflicts as to whether the Applicant continued with the sort of behaviour about which she was warned in her first written warning, however, no formal action was taken in that regard had she continued to offend.

The Applicant's probationary period was due to expire on 15 October 1996, however, on 7 October 1996 she received a memorandum from Joanne Day, her supervisor, who is also the Personal Assistant and the Private Secretary to the General Manager of the Respondent. This memorandum stated—

"Skilled Engineering wish to advise that your probationary period is due to expire on 15 October 1996. By mutual agreement this will be extended to 15 January 1997.

This should not be taken as an indictment of your work performance to date but is more in line with Skilled trialing the dual job share role of Receptionist."

(Exhibit 5)

The Applicant acknowledged in evidence that she had received this although there is dispute between the evidence of the Applicant and Joanne Day as to whether this was in a sealed envelope left for her at reception or whether she received it in other circumstances, and whether or not there were discussions, and the nature of any discussions between herself and Joanne Day. Joanne Day's evidence is that she advised both the Applicant and the other job share receptionist that they were to consider the proposal put in the memorandum and that they may wish to take it home and discuss it with their families before responding the next day. Exhibit 5 shows that the Applicant agreed to the proposal put in the memorandum, and her evidence was that she supposed that it was reasonable to extend the arrangement by mutual agreement, to 15 January 1997 as it was not a reflection on her performance (Transcript page 22). She signed the memorandum, indicating her agreement. The Applicant says that she believes that if she had refused to sign this agreement her employment would have been terminated sooner.

By application dated 7 October 1996, the Applicant applied for annual leave from 24 to 30 December 1996 and from 16 to 28 January 1997. This was approved. Further, the Applicant received an invitation to attend a "Skilled Ladies Golf Day" to be held on Thursday 30 January 1997 and she was to respond to Joanne Day by 3 January 1997. This invitation is undated (Exhibit 7). There is contention between the parties as to whether these matters indicate an intention on the part of the employer for the Applicant's employment to continue beyond the date on which termination occurred.

The evidence was also that on 28 November 1996, the Applicant and another employee sought a meeting with Joanne Day to seek clarification regarding problems associated with answering the telephone in the operations area of the organisation and the transfer of calls to that area. Joanne Day took the opportunity to discuss with the two employees a view that was being formed about the job structure.

The Applicant's evidence was—

"MR KEOGH: Sorry, could we just go back to that meeting. You called a meeting and as best you recall it, what happened in that meeting?—We happened to mention

about the operations department. Joanne did say something that they were looking at restructuring the reception and completely splitting the two jobs and making the telephonist as one job and a separate section and reception in another section.

Now, this meeting was called by yourself, was it?—That's correct.

Was anything specifically put to you about your future during the course of this meeting?—No, not that I can point you to.

Were there any questions asked about your preference?—There may have been. There may have been talk. I might have said, you know, I prefer part-time, but there was nothing definite about the position. The position was — as — they said, they might be looking at changing it in the near future, restructuring the position.

Was anything told to you to the effect that your job was in jeopardy?—Not at all.

In this meeting, was there any formal procedure to it? Was there any written notes of it that you held or—?—Not at all. Nothing.

So did you leave that meeting feeling your job was in jeopardy?—Yeah.

Did you feel your job was in jeopardy or did you feel your job was safe?—I felt my job was safe. It was just an informal talk we had."

(Transcript page 11)

The Applicant also said in cross examination that the issue of restructuring the position was raised, that one of the options being considered was to create two separate full time positions, one receptionist position handling clients through the door and doing word processing, and a switchboard operator to be located in the main office. The Applicant says that her preference was for part time work, but that if she had known her position was in jeopardy she "would have certainly jumped at the idea of taking full time work". She said—

"MR JONES: Did you tell the company that the preference was part-time?—I would have only spoken to Joanne Day at that time in the office. My preference was part-time.

And did you make that— did you make Joanne Day fully aware of that preference on that date?—I don't recall that, no.

Did you say to her that if the job was restructured and it was a full-time job only that you would want to be considered for the full-time job?—I believe I did.

You did? Did you therefore tell her that your preference was, however, for part-time work?—I don't recall..

Well, why would you have told her that you would want to be considered for a full-time position?—Because it was— first of all, it was 6 months ago. From what I recall, that was a very brief meeting. My preference was part-time. I would prefer part-time. Because it was an informal meeting and things were just being thrown around—what might happen, what might not happen, what could happen, what could not happen—I'd— my preference, as I said, was for part-time but if I had known my job was in jeopardy, or if I had known that was the decision then and there, they needed to know yes or no, I would have said "Yes". I want full-time work".

...

... You told Joanne that your preference is part-time work. Are you now agreeing that you said that?—I think so, yes. I recall.

Right, and did you actually say on the 28th of November to Joanne that if a full-time job is created, you'd like to be considered for it?—I think I did, I recall.

But you're not sure?—No, because it was 6 months ago."

(Transcript pages 24 and 25)

Joanne Day says that the Applicant indicated clearly that she was not interested in a full time position, that she wanted part time work and further that she was not interested in the telephonist position as described in the meeting. (Transcript pages 75, 85, 85a and 85b). Her fellow employee, Ms Speck, said in that meeting that she would be interested in a full time

position subject to speaking with her husband about their domestic arrangements.

There is dispute between Joanne Day and the Applicant as to this discussion and the importance to be placed on it. The Respondent views this as it advising the Applicant of its considerations for the future of her position and that of the other job share receptionist and providing opportunity for her to make comment. The Applicant however, portrays this as a very informal discussion from which no conclusions can be drawn. Ms Day says that between that time and 19 December 1996, she and Mr Moffatt discussed the arrangement further and that on 19 December 1996, they put to the General Manager a written recommendation that the two job sharing positions be abolished, that a full time telephonist be appointed to work in a different location from the reception area, being in the administrative area, in a booth to be constructed for the purpose, and a new position be created for a full time receptionist who would also do the word processing duties already referred to. Ms Day believes that in this recommendation to the General Manager there was also reference to the recommendation arrived at between herself and Mr Moffatt that the other job share receptionist, Ms Speck, be offered the position as full time receptionist. This was because her performance was better overall than the Applicant's, there had been no need for counselling, she had expressed an interest in a full time position and was skilled in computing. The position of telephonist was to be advertised on the basis that Ms Day and Mr Moffatt had concluded that the Applicant's temperament was not suited to her being isolated in a telephonist booth on a full time basis, that she had already indicated that she was not interested in full time work and, in any event, she was not interested in the telephonist position.

Ms Day then took leave in the Christmas/New Year period and returned to work on the 31 December 1996. In the period between 19 December and 31 December, Mr Moffatt was advised by the General Manager that the recommendation had been accepted and that they could move to implement it. He awaited the return of Ms Day from annual leave on 31 December at which time they discussed the matter. That morning, Mr Moffatt met with Ms Speck and advised her that her part time employment was to terminate and she was offered, and she accepted, the full time reception position.

Upon her arrival, the Applicant was interviewed by Mr Moffatt and Ms Day. She was advised that the trial period had come to a conclusion, that the position as a job share arrangement was not working, that her employment would terminate and that two full time positions were to be created. There is dispute in the evidence about what was said in respect of her finishing that day or working the remainder of the week however, she was not required to work for the remainder of that week and she did not do so. She was paid for the remainder to that week and one week's pay in lieu of notice. The Applicant also says that she had expected them to offer her one of the full time positions. She says she was shocked to learn that her employment was to be terminated and that she was not to be offered one of the full time positions. When she queried this, she was told that she could apply for the telephonist position when it was advertised but that she would not automatically gain that position but would be considered should she apply. She later found out that Julie Speck had been offered the full time receptionist position. The position as telephonist was advertised three times over the ensuing months and was finally filled.

Ms Day says that the Applicant's performance was not one of the considerations in the decision to terminate her employment, it was simply due to the restructuring of the positions following the trial period. However, her performance was mentioned as one of the considerations for her not being offered another position. In evidence, Ms Day says that the purpose built telephonist booth was not completed for some time into January 1997, and that a full time telephonist was not engaged for some ten weeks after the Applicant's termination of employment because a suitable person could not be found. The employment arrangements which eventuated upon the termination of the Applicant's employment were that Ms Speck took on the full time receptionist/telephonist job (with the support of a number of casual employees who relieved during lunch, morning and afternoon tea breaks and during some of Ms Speck's leave) as well as doing some other duties, until the full time telephonist commenced work.

The Applicant says that her employment was unfairly terminated. The decision being based upon the restructuring is questioned and the method of implementation is also challenged. The Applicant says that she has been unfairly dismissed and seeks the maximum amount of compensation available in accordance with the Act. The Respondent rejects the claim.

I make the following findings in this matter—

1. Having observed the witnesses, I find that where there is any conflict in the evidence between that of John Steele Moffatt and the other two witnesses I prefer the evidence of the other witnesses. I found Mr Moffatt to be an unreliable witness. As to the conflicts in the evidence between the Applicant and Joanne Day, I accept the version of events put forward by Ms Day. This is not to say that I find the evidence of Ms Mortimer to be misleading or that she has not been truthful, rather that her evidence was equivocal on some important matters, her recollection of some matters was not as clear as that of Ms Day, and generally that Ms Day was a more reliable witness.
2. That the Applicant's employment was not on a probationary basis for the whole of the period in which she was engaged. There has been a misuse of term "probation" as it is generally accepted. I accept probation as being that described by Fielding C in *Westhafer and Marriage Guidance Council of WA (1985) (65 WAIG 2311)*, where he noted—

"The concept of probationary employment is well known and well understood in employment law. It is that an employer by engaging someone on probation throughout the period of probation retains a right to see whether he wants the employee or not in his employment as if the employee was still at the first interview. Hence there is no obligation on the employer to even objectively consider whether or not he should re-engage an employee at the end of the probationary period. The principles associated with probationary employment are now so well established that it is sufficient to refer in passing to in re *Alchin and South Newcastle Leagues Club Limited (1977) AR (NSW) 236*, a case with many features in common with this one and also to the *New South Wales Teaches Federation and the Education Commission of New South Wales (NSW Industrial Commission Application No. 969 of 1984; 13 September 1984)*, where it was pointed out that probationary employment is but a step in the selection process and should be distinguished from permanent employment [see too: *Ex parte Wurth case (supra)*]."

I am satisfied that the employer had assessed the Applicant and decided that it wished to continue to employ her but this was subject to the continuing trial of the arrangement of the job sharing between Ms Mortimer and Ms Speck. The memorandum of 7 October 1996 (Exhibit 5) makes it clear that the purpose was to continue "trialing the dual job share role of Receptionist". It was also that "this should not be taken as an indictment of your work performance to date". On this basis, I find that the term "probationary period" for the period 15 October to termination is not an accurate description of that arrangement. The probationary period proper, in the general usage of the term, ceased at that point. Further, for a position such as receptionist, I find that a period beyond three months would be unreasonable, unless there were exceptional circumstances. In this case, I find that the Applicant's employment was no longer probationary, although her position was being trialed. On this basis, at the time of termination, the Applicant was entitled to the non-probationary period notice of two weeks. Therefore, she is owed the difference between the amount paid and two weeks pay.

3. It was clear from the out set that the employment structure of the job share arrangement was on trial.

This was confirmed by the memorandum of 7 October 1996, which the Applicant agreed was a reasonable extension of that trial. On 28 November 1996, notwithstanding that the meeting was called for a different purpose, Ms Day raised with the two employees what was currently in the mind of the employer about the future arrangement of the job. The Applicant was invited to comment. I am satisfied that she made clear her preference for part time work and her rejection of the position of telephonist as described to her.

Ms Speck, indicated interest in a full time position subject to discussing the matter with her husband. It is my view that the employer was entitled to then act on the basis of having consulted the two employees as to their views of the job, their preferences and desires. The Applicant was free, and obliged, at that time to indicate her views. Both she and Ms Speck did so. Ms Speck clearly understood the import of the discussion and considered her future. She asked for time to speak with her husband, and did so. This should have provided the Applicant with a lead if one were necessary. The employer then made a decision, taking account of the views of the employees. There is no need or requirement for such decisions, albeit that they are important, to be the subject of a formal notice, agenda and minutes. On 31 December 1996, the Applicant's employment was terminated. I find that the Applicant had no entitlement to believe that her employment would continue indefinitely.

It is important at this point to deal with a question asked of Ms Day by Mr Keogh in cross examination. He said—

“So it was in the context of general comment that Rita made the comment that she'd prefer full time work?”

Ms Day said—

“That's right”.

(Transcript page 85b)

I have considered this particular question and answer in the context of all of Ms Day's evidence, and the manner in which she gave that evidence, and conclude that her answer related to the “context of general comment” rather than the “full time work” aspect. Ms Day's evidence was otherwise clear and unequivocal, and she stated a number of times, as noted earlier in these reasons that Ms Mortimer had said that she preferred part time work. (Transcript pages 75, 85 and 85(a)). Ms Mortimer's own evidence on that matter was that her recollection of that meeting was far from clear.

4. In the circumstances of her position being trialed, the approval of the Applicant's application for annual leave made on 7 October 1996, (the same day as the memorandum regarding the extension of the trial period of the job sharing role, and after she was employed understanding that the job sharing role was on trial) can not be taken as any indication that her employer was offering her employment for an indefinite period. Further, while she may have had an expectation that she had employment up until the 15 January 1997, as Mr Jones for the Respondent points out, the employer is entitled to terminate the employment, in accordance with the appropriate tests, upon notice prior to that time as this was not a fixed term contract of employment. The employer was not obliged to continue with a trial period once it has undertaken sufficient testing of the arrangements upon which to arrive at a decision.
5. As to the Exhibits 3 and 7, these matters cannot be taken as an indication of anything other than that the Applicant was invited to participate in employment related activities and no more can be read into them. The Applicant does however, rely upon the comment of Joanne Day that she would not be able to attend the golf day on the basis that she would be working that afternoon. This comment must be taken in the context

of the employment arrangement and cannot, of itself, change the arrangements between the parties.

6. The Applicant's performance was not a consideration in the decision to terminate the Applicant's employment although it was one of a number of considerations as to why she was not to be offered another position, along with such matters as her suitability, her stated desire not to undertake full time work, or the telephonist job, and the employer's decision (a decision which it was entitled to make) to prefer to employ the other job share receptionist, Ms Speck, on a full time basis in the receptionist.
7. The Respondent had a valid reason for its decision to terminate the Applicant's employment being the restructuring of a position which was clearly not working to the benefit of the organisation, to remove the stresses which had been placed upon the receptionist/telephonist, be that as it was occupied by a full time employee prior to Ms Mortimer's engagement, or by Ms Mortimer and Ms Speck on a job share arrangement. The decision itself was sound, defensible and well founded (Gilmore and Cecil Bros (76 WAIG 4434)).

The Applicant says that there is another aspect of this matter which relates both to the validity of the decision to terminate and to the fairness of the matter, and that is that although the Applicant's employment terminated on 31 December 1996, the restructuring was not implemented for some ten weeks. This occurred for two reasons. Firstly, the purpose built booth was not available for occupation for some three weeks or so after the Applicant's termination of employment. The second reason was that a suitable full time telephonist was not engaged until ten weeks after the Applicant's employment terminated. The Respondent had not been able to find a suitable person to fill the position. However, the work in which the Applicant and her job share partner had been engaged was still being done from the main reception desk for a period of ten weeks after the Applicant's termination, and was being performed by the other job share person with the assistance of casuals for that period. The addition of clerical/computing role to be attached to that reception job likewise did not commence for that ten week period because of the lack of a full time telephonist. I note that the Applicant agreed to the continuation of her employment on the basis that the trial period was extended. The trial period ceased on 31 December 1996. The Respondent had obviously hoped to fill the position of telephonist quickly, but was not successful in doing so. With hind sight it may have chosen to continue with the Applicant until a telephonist was engaged but did not do so. An employer is not obliged to continue with an unsatisfactory arrangement while new arrangements are being made and implemented. This is the only aspect of possible unfairness which I find, and in the scheme of things, I am not satisfied that it is significant consideration.

As to whether the employer adopted a fair process in bringing about the dismissal, it is true that the rules of natural justice apply, and this is an element to be considered in determining whether the dismissal was harsh or unjust. (Shire of Esperance and Mouritz (1991)(71 WAIG 891 at 895)). I find that it has not been demonstrated that this process was unfair, on the basis of the Applicant having been informed upon engagement of the trial nature of the job, and that this was reinforced by the memorandum of 7 October 1996 (Exhibit 5) where the employer sought the Applicant's agreement to the extension of the trial period, which the Applicant agreed to. On 28 November, 1996, the employer outlined its likely intention and sought the input of the Applicant, which was given, noted and acted on.

In all of the circumstances, when the matter is weighed as required by the authorities in Miles and Others trading as Undercliffe Nursing Home and Federated Miscellaneous Workers Union (1985) (65 WAIG 385 at 386), I find that there has been a fair go all round, and that the employer has not so abused its right to terminate the Applicant's employment such as to justify the Commission's intervention in its decision.

Appearances: Mr M Keogh on behalf of the Applicant.

Mr D Jones on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rita Mortimer

and

Skilled Engineering Limited.

No. 28 of 1997.

COMMISSIONER P. E. SCOTT.

11 June 1997.

*Order.*

HAVING heard Mr M Keogh on behalf of the Applicant and Mr D Jones on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter be and is hereby dismissed.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bradley Rickard Smith

and

CDM Australia Pty Ltd.

No. 170 of 1997.

25 June 1997.

*Reasons for Decision.*

COMMISSIONER A.R. BEECH: Mr Smith was employed by the respondent company between 28th March 1995 until his dismissal on the 17th January 1997. The respondent is in the business of office supplies and Mr Smith had been employed as its Warehouse Manager.

The decision to dismiss Mr Smith was taken by Ms Lever, the Acting Divisional Manager of the respondent, following her understanding of what had occurred in an incident that day. The letter of termination given to Mr Smith required him to leave the premises that same day. The letter noted that "although not necessary by law, the payment of salary up to the 31st January 1997 can be taken as notice". When Mr Smith lodged his claim in the Commission, the Notice of Answer and Counterproposal lodged by the respondent said merely "gross misconduct".

It was not suggested that Mr Smith's employment was governed by an award. I find therefore that Mr Smith was employed pursuant to a common law contract of employment. I infer from Ms Lever's letter that the contract of employment was terminable by either party giving to the other two weeks' notice of termination. However, because Ms Lever's letter indicates that the respondent did not consider itself obliged at law to pay notice I find that the respondent summarily dismissed Mr Smith for gross misconduct. The payment of money in lieu of notice which the employer is not obliged to pay does not thereby convert a summary dismissal into a dismissal with notice. Mr Smith was not dismissed with notice. He was summarily dismissed and the respondent treated the balance of his month's wages already paid to him as notice. He was subsequently paid his outstanding pro-rata annual leave entitlements although, by the same reasoning, the respondent was not obliged to do so. Although Ms Lever stated in her evidence that she took into account other matters in reaching her decision, they being a failure by Mr Smith to notify the manager of errors, a failure to ensure Warehouse Dispatch/Error Report Forms were completed on errors advised, reading the newspaper when he ought not to be, a failure to adequately supervise staff and orders left incomplete for an over-allowed period of time (exhibit 5), these matters did not warrant, in her view, Mr Smith's dismissal. Rather, they of themselves warranted only a warning. The decision to dismiss therefore turns upon the incident which is alleged to have occurred as set out in Ms Lever's letter.

At the commencement of the hearing the respondent accepted that it has the initial onus of demonstrating that the circumstances existed to justify the dismissal, while the applicant retains the overall onus of demonstrating that the dismissal was unfair (*Shire of Esperance v. Mouritz* (1991) 71 WAIG 894 (IAC); *Winkless v. Bell* (1986) 66 WAIG 847 at 848; *Federated Brick Tile and Pottery Union v. Bristile Limited* (1982) 62 WAIG 2926 at 2928; *Pastrycooks Employees, Biscuit Makers Employees & Flour & Sugar Goods Workers Union (NSW) v. Gartrell White* (1990) 35 IR 70 at 83).

The incident arises in this way. Since at least September 1996, in a bid to have the warehouse work more efficiently, the respondent had introduced a bonus system in the warehouse. Each month the bonus system provided 120 points, each point being worth \$10.00. Points were allocated in areas such as General Warehouse Appearance, Stock Location and Layout, Punctuality and Accuracy of Picking (exhibit E). Each time an error or non-conformity occurred, one point was deducted. At the end of the month, the number of points left were converted into a dollar amount and paid to all the warehouse staff, including Mr Smith, in accordance with a particular formula. In September 1996, for example, the bonus paid to Mr Smith was \$315.00 (exhibit H). Part of the operation of the bonus scheme required a "Warehouse/Dispatch Report Form" to be completed and submitted to the Operations Manager whenever a customer complaint is received (exhibit F). Indeed these forms are seen by the company as so much part of company procedure that their completion was made part of each employee's job requirement. The completed forms would go to Ms Lever who would review whether the warehouse was at fault or not. If it was at fault a point was deducted from the monthly bonus. If it was not, the bonus would be unaffected by the complaint.

On the 17th January 1997 a customer complaint was received by the sales representatives' assistant, Ms Jouana. Ms Jouana's evidence is that she had been employed with the respondent since February 1996. Her duties, amongst other things, include filling out the first part of the form when a complaint is received and she would then go to the warehouse and hand the form to Mr Smith. This had been explained to her by Ms Lever at a meeting shortly after she commenced employment. Ms Jouana gave evidence that she was instructed that it was compulsory to do so. On this occasion, when she handed the form to Mr Smith, he asked what it was for. She explained as much as she knew. Her evidence is that Mr Smith then stated that the completion of the form was not necessary and he asked whether Ms Lever knew of the form. When Ms Jouana said that she did not, she alleges that Mr Smith said that he was going to throw the form in the bin and her evidence is, indeed, that in front of her he screwed it up and threw it in the bin. He then stated to her that she was not to fill in any more of those forms but rather to relay the complaint to him verbally. Ms Jouana's evidence is that she became very upset because "no-one had ever spoken to me like that in the company before". When she went upstairs a sales representative, Mr Norman, spoke to her and reassured her that she had not done anything wrong. She was contacted then by Ms Lever who spoke to her.

Mr Smith denies Ms Jouana's version of events. Mr Smith states that, when Ms Jouana came to him with the form, he noted the identity of the complaining company and checked his book. He saw at once that the error was not a warehouse error. Rather, it was a courier error. Mr Smith therefore said to Ms Jouana that it was not necessary to fill out the form. When Ms Jouana stated that she had been told "by Terri [Lever] to fill out the form" he asked whether Ms Lever had seen this form because, in his own view, he could not understand why the form had been made out. He indicated to her that filling out the form was not necessary and there was no need to do it when it was a courier error. His evidence is that he then completed the balance of the form and left it on his desk to be taken to Ms Lever the next time he went to the office.

It is apparent that there is much common ground between the events as described by both Ms Jouana and Mr Smith. It is clear that Ms Jouana brought Mr Smith the form, he queried whether it was necessary and asked whether Ms Lever had seen it. He informed Ms Jouana that it was not necessary to fill out a form when it was only a courier error. However, there are differences in their evidence. In Ms Jouana's evi-

dence Mr Smith screwed up the form, put it in the bin and told her not to fill out a form in future but merely to tell him about it. There is also a difference in the emphasis placed by both Ms Jouana and Mr Smith on the words that occurred. Ms Jouana states that Mr Smith spoke to her aggressively about the subject. Mr Smith says that he spoke to her in a normal tone of voice.

Overall I am inclined to accept Ms Jouana's evidence over that of Mr Smith. Ms Jouana gave her evidence very positively and very clearly. She is quite clear in her recollection of what she saw, particularly that Mr Smith screwed up the form and threw it into the bin. She maintained her evidence in cross-examination. She states that she became quite upset and could not understand what she had done wrong to warrant Mr Smith speaking to her "in that way". The evidence of Mr Norman is clear that, when he saw Ms Jouana, she was quite upset and in tears, complaining about Mr Smith's attitude. This was prior to her speaking to Ms Tofan, not after as Mr Smith suggests. I therefore conclude that Mr Smith spoke to Ms Jouana in a far more aggressive manner than he would have the Commission believe that he did. If he had spoken in a normal tone of voice then there would have been no reason for Ms Jouana to become upset. But she clearly did become upset. I do not find her evidence exaggerated when compared with Mr Norman's recollection of what Ms Jouana had told him. Even though she could not recall the name of the customer who had complained I am not inclined to discount her evidence of what she saw with her own eyes.

Further, Mr Smith's evidence was not entirely consistent. He stated that the forms were still completed even if it turned out to be a courier error and yet he also stated that he could not understand why a form had been made out by Ms Jouana when it was not a warehouse error. Exhibit G is proof that the forms were filled out when the error was not a warehouse error. If, as he says, "if the form was made out I completed it" I am at a loss to understand why he would ask Ms Jouana about the form and particularly whether Ms Lever had seen it. The evidence before me is that the forms had been in operation since February 1996. Ms Jouana had filled out "a whole lot of them" in her time. Ms Jouana frequently brought forms down to Mr Smith, he would complete the forms and forward them to Ms Lever. I cannot understand why, on this occasion, Mr Smith was interested in whether Ms Lever knew of this particular form unless he realised that the complaint was not, in fact, a warehouse error and he did not want the form to go forward for Ms Lever's consideration. I am unable to accept Mr Smith's evidence that he believed that the form was not necessary where there was no error on the part of the warehouse. Exhibit G is an indication that Mr Smith knew otherwise. Logic suggests that, at the time that Ms Jouana receives a complaint from a customer, she would be unaware whether the cause for the complaint was a warehouse error or not. That would only be known after it was investigated. One of the functions of the form is to investigate the customer complaint and therefore Ms Jouana was, very properly, complying with the instructions given to her by her employer in filling out the form. She was also quite correct in reporting her conversation with Mr Smith to Ms Lever. Ms Jouana's evidence that "every time Mr Smith got one he was grumpy" (transcript p. 99) was not challenged and as a result of the evidence overall I find the incident occurred much as she has related to the Commission. I therefore tend to prefer Ms Jouana's evidence over that of Mr Smith.

It follows that I find that Mr Smith did, indeed, speak to Ms Jouana as Ms Jouana has indicated. That is, Mr Smith queried why the form had been brought down, and informed her that she was not to bring any more forms down but, rather, was to telephone him. I also find that Mr Smith did screw up the form: the form is, apparently, not in existence and although Mr Smith might observe that it is convenient for the respondent that it is no longer in existence, the fact that Ms Jouana's direct evidence is that she saw him throw it in the bin is consistent with the form not being found. I have no other explanation before me.

After Ms Lever had spoken to Ms Jouana she took advice on what she thought the factual situation was based on Ms Jouana's conversation. She decided that, if it was true, Mr Smith would be dismissed. She prepared a letter of termination for that eventuality. She then went to the warehouse and asked to speak to Mr Smith. During the conversation she put

to Mr Smith what Ms Jouana had stated. Her evidence is that Mr Smith agreed that it had occurred much as Ms Jouana had related. Mr Smith's evidence is that, in fact, he replied that Ms Jouana's evidence was not how it happened. Ms Lever then said that, in the circumstances, she had no alternative in her view other than to dismiss Mr Smith and she produced the letter and gave it to him. Mr Smith was dismissed at that point. Ms Lever then told Mr Smith about the other matters referred to earlier in these reasons and set out in exhibit 5. Mr Smith then left.

In attempting to instruct Ms Jouana in the manner that he did and in destroying the form, Mr Smith acted in breach of the trust imposed in him as an employee to act in the best interests of his employer. That is a serious matter aggravated by Mr Smith's position as the Manager in the warehouse. The respondent has established that the gross misconduct upon which it relied to dismiss Mr Smith occurred. Gross misconduct is a ground of dismissal and I find that the respondent has shown that there is a ground upon which the Commission could find that the dismissal was justified.

Mr Smith complains that the dismissal was unfair. Even if there are grounds for terminating Mr Smith's contract of employment, it is still open to the Commission to examine the severity or otherwise of the step of dismissal. The Commission has done so in the past and has intervened to order re-instatement, or compensation, where, because of mitigating circumstances or past good conduct, termination has been shown to be too harsh a consequence (*BHP Iron Ore v Transport Workers Union* (1993) 73 WAIG 529 at 531). That is even more the case where the dismissal which occurred was a summary dismissal for gross misconduct. Summary dismissal carries with it a stigma which is not removed merely by the paying of two weeks' wages in lieu of notice. The respondent points to Mr Smith's status as Warehouse Manager. The respondent argues that that position calls for a high standard of conduct on the part of Mr Smith. With that, I am disposed to agree. If any criticism can be made of the respondent's action, it is that Ms Lever's action in preparing the letter of termination prior to speaking to Mr Smith is consistent with her having prejudged the issue. Indeed, Ms Lever has given evidence that at the time she considered what to do about Mr Smith she had in mind some incidents which had occurred on an earlier occasion and which had prompted her to decide to give Mr Smith two verbal warnings. I have no difficulty in drawing the conclusion that, in Ms Lever's mind, the incident on the 17th January was seen as a further incident on top of a number which warranted disciplinary action and which in total warranted dismissal. However, Mr Smith was unaware of this. He was unaware that the respondent had intended to issue him with two formal warnings on that day.

When the Commission reviews what happened in this matter it takes into account not just the interests of the employer in dealing with the misconduct that occurred but also with the circumstances from the point of view of Mr Smith. It is harsh to dismiss Mr Smith for reasons which included those of which he was previously unaware. While I accept that Ms Lever's evidence is that she decided to dismiss on the strength of the single incident reported to her by Ms Jouana, her own evidence is that she would not have considered summarily dismissing Mr Smith for gross misconduct if she had not been aware of the previous incidents. Indeed, her evidence is that things would not have developed so quickly and that, although Mr Smith would have warranted be dismissed, it would have been in the interests of the company to discuss it and attempt to resolve the issue.

It is also the case that the respondent did not suffer any loss as a result of Mr Smith's action. I am satisfied on the evidence brought by Mr Smith that the error was not a warehouse error. The calculations of Mr Smith's bonus would not have been affected. Mr Smith ensured that the error by the courier was rectified and that the cause for the client's complaint was rectified. What was lost was the respondent's confidence in Mr Smith and for that, he has only himself to blame. But I am quite sure that the effect of a summary dismissal upon Mr Smith was not considered by the respondent. If it was, there is no evidence before the Commission to that effect. Mr Smith has given evidence that he is aged 48. He has produced evidence of his financial commitments. I accept that the termination of a person's employment is likely to have

unfortunate consequences for the employee. That does not mean that the employee can never be dismissed. But that does not remove an obligation on the employer to at least consider whether there are alternatives to dismissal or, indeed, the consequences of the dismissal upon the employee. For the above reasons, I am led to the conclusion that overall the dismissal of Mr Smith for gross misconduct for the incident related by Ms Jouana was a harsh exercise of the employer's legal right to dismiss him.

Mr Smith claims reinstatement. However, I accept the evidence of Ms Lever that her trust in his ability to manage the warehouse and to abide by the company's administrative procedure has been damaged. She already had doubts about whether they could continue to work together. She regarded his apology as insincere. I find that Mr Smith's actions were destructive of the necessary confidence which needs to exist between an employer and an employee in a management capacity. I think that reinstatement is impracticable for that reason.

I turn to consider the question of compensation. Given that Mr Smith was the architect of his own misfortune there is little reason to award a substantial compensation for his summary dismissal. I take into account Mr Smith's age. His length of service is not long. Mr Smith has found it difficult to find alternative employment and is still unemployed. I accept that Mr Smith owns a fish and chip shop and that he works in that shop in the evenings. However, that seems to have been the case during the period of his employment and I cannot see that fact as a reason for influencing my thinking in this matter. I take into account also that Mr Smith was paid for two weeks past the 17th January and that his pro-rata annual leave was paid to him. These last two points mean that Mr Smith was paid the same as if he had been given notice of termination in the ordinary course of events. In that case he has been paid more than he would strictly be entitled to be paid for a dismissal for misconduct. Taking all of that into account I decide

that Mr Smith should be paid a further one month's wages by way of compensate for the unfairness of the dismissal which occurred. A Minute of Proposed Order now issues to that effect.

Appearances: Mr G. Bartlett (of counsel) appeared on behalf of the applicant.

Mr P. Arns (of counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bradley Rickard Smith

and

CDM Australia Pty Ltd

No. 170 of 1997.

COMMISSIONER A.R. BEECH.

27 June 1997.

*Order.*

HAVING heard Mr G. Bartlett (of counsel) on behalf of the Applicant and Mr P. Arns (of counsel) on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

- (a) DECLARES that Bradley Rickard Smith was unfairly dismissed by the respondent; and
- (b) ORDERS that Mr Smith be paid within 14 days of the date of this Order, by way of compensation, the sum of \$2,333.00.

(Sgd.) A. R. BEECH,  
Commissioner.

[L.S.]

## SECTION 29 (1) (b)—Notation of—

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Abbott M.	Frank Jasper	349/1997	Cawley C.	Discontinued
Apai H.	Fujitech (WA) Pty Ltd	402/1997	Beech C.	Discontinued
Ashworth I.	RE & OM Treasure and Sons	296/1997	Scott C.	Dismissed
Axford M.	Kraus Fishing Co Pty Ltd	667/1996	George C.	Dismissed
Baron R.	Dampier Salt Pty Ltd	1693/1996	Beech C.	Discontinued
Baron S.	Candrin Pty Ltd t/a Matilda Bay Restaurant	688/1997	Beech C.	Discontinued
Barton G.N.	B & K Coatings	1734/1996	George C.	Dismissed
Best A.	Fisons Pharmaceutical's Pty Ltd	1833/1996	Beech C.	Discontinued
Bettio D.	Fortron Automotive Treatments	1796/1996	Crawley C.	Discontinued
Birch L.T.	Binthalya Holdings Pty Ltd t/a Drillwest	646/1997	George C.	Discontinued
Blackie M.	Quality Press t/a Mercury Enterprises	20/1997	Beech C.	Discontinued
Bond J.R.	Karidiam Pty Ltd and Trenstyle Holding Pty Ltd t/a Cafe Marina	755/1997	Beech C.	Withdrawn
Bouteloup C.	Chateau Commodore Hotel	1606/1996	Beech C.	Discontinued
Bower R.	Container Handlers Pty Ltd t/a Coleman Transport Services	674/1997	Fielding S.C.	Discontinued
Boyes T.	York Place Hotel	1308/1996	Cawley C.	Discontinued
Brendish R.	TMP Worldwide Pty Ltd	587/1997	Beech C.	Discontinued
Bright M.	Hampton Transport	71/1997	Cawley C.	Discontinued
Buchholz B.	Consolidated Business Media	1403/1996	Cawley C.	Granted
Butler L.F.	Health Export Unit, King Edward Memorial Hospital and Princess Margaret Hospital	77/1997	Beech C.	Discontinued
Byrne A.M.	UDC Group Pty Ltd	681/1997	George C.	Dismissed

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Carter W.R.J.	John Holland Construction Group Westrail Maintenance Project	366/1997	Gregor C.	Dismissed
Chye P.G.H.	Kareelya Property Group	124/1997	Scott C.	Dismissed
Clark A.F.	Ausfront P/L	1608/1996	Cawley C.	Discontinued
Cleary T.L.	Jenny & Lisa's Retreat	301/1997	Coleman C.C.	Dismissed
Colledge G.J.	Pinnacle Services Pty Ltd	855/1997	Gregor C.	Granted
Cone D.J.	Kwinana Recycling Service	379/1997	Beech C.	Discontinued
Cooper S.	Carol Whitehead, Merredin Realty	1843/1996	Cawley C.	Discontinued
Cox D.	Ming Lou of Shangri-La Chinese Self Serve	693/1997	Scott C.	Dismissed
Cox R.	Jayma Industries	315/1997	Gregor C.	Dismissed
Cranley L.	Artifex Australia	106/1997	Scott C.	Dismissed
Crone R.J.	Carine Swim and Health Centre	1862/1996	George C.	Dismissed
Curry S.	Globetrotter Pty Ltd	48/1997	Scott C.	Dismissed
Damon J.A.	Rostov Pty Ltd	257/1997	Scott C.	Dismissed
Darcy-Evans C.	Henry and Walker Contracting	1810/1996	Cawley C.	Discontinued
Day D.	Karata Holdings Pty Ltd	144/1997	Beech C.	Discontinued
Doupe M.J.	Northside Nissan Pty Ltd	1770/1997	Parks C.	Dismissed
Dower B.	Australian Home Loans Limited	1762/1996	Beech C.	Discontinued
Downes L.	Bob Devereux's Camera House	275/1997	Gregor C.	Discontinued
Duck L.E.	TAB Transport Pty Ltd	682/1997	Gregor C.	Discontinued
Duncan P.T.	Curtin Student Guild	490/1997	Gregor C.	Discontinued
Dunn R.J.	Steve Dunn (Brick Restoration)	258/1997	George C.	Dismissed
Edwards A.	Playgirls Pty Ltd t/s Sunset Strip Entertainment	1884/1996	Scott C.	Dismissed
Edwards L.	Constable Care Child Safety Project	811/1997	Scott C.	Discontinued
Elliott C.E.	Pagoda Investments Pty Ltd	535/1996	Coleman C.C.	Dismissed
Elliott D.	Barbeques Galore Pty Ltd	318/1997	Beech C.	Discontinued
Elix A.C.	Midland Exhaust Centre	253/1997	Cawley C.	Discontinued
Evans H.J.	Gibson Maxwell chemicals Ltd	1437/1995	Gregor C.	Discontinued
Falloon J.D.S.	McKimmie Jamieson and Partners (Aust) Pty Ltd	382/1997	Coleman C.C.	Dismissed
Fareso S.L.	Cliff Britton Motors	457/1997	Beech C.	Discontinued
Farquarson I.A.	Honourable Attorney General	1076/1995	George C.	Withdrawn
Farrelly D.	Minesite Catering Pty Ltd	452/1997	Gregor C.	Withdrawn
Fear N.L.	RepcO Commercial Investigators	567/1997	Beech C.	Discontinued
Fidzewicz H.	West Australian Petroleum Pty Ltd	324/1997	Fielding S.C.	Discontinued
Finley E.M.	Jeans West	1807/1996	Cawley C.	Discontinued
Francesca J.	Michael P. Bell Pty Ltd	291/1997	Beech C.	Discontinued
Gardiner B.W.	Longbow Pty Ltd t/a Moscarda Cabinets	38/1997	Scott C.	Dismissed
Girdler D.	Drilling Equipment (Int) Pty Ltd	447/1997	George C.	Granted
Goble H.	Midwaste Pty Ltd	407/1997	Gregor C.	Discontinued
Goodchild D.	Undercar Personnel	297/1997	Coleman C.C.	Dismissed
Grasby J.	Supa Stik Labels and Labelling Systems Pty Ltd	36/1997	Beech C.	Discontinued
Gregory P.A.	Western Australian Department of Training	476/1997	Beech C.	Discontinued
Gusakoski V.	Audiocom	409/1997	Fielding S.C.	Dismissed
Hamilton J.R.	Tangibar Pty Ltd t/a Glenn Low Real Estate	496/1997	Gregor C.	Dismissed
Harmer F.W.	Sheraton International Incorporated	18/1996	Gregor C.	Withdrawn
Harrison T.E.	Artmode Holding Pty Ltd t/a King Kong Sales	21/1997	Parks C.	Discontinued
Hawkins K.	James Construction (WA) Pty Ltd t/a Amberley Homes	408/1997	Fielding S.C.	Withdrawn
Hillier S.	Elle Back Skin Fitness Centre	419/1997	Gregor C.	Granted
Hortle C.	Bell Personnel	133/1997	Gregor C.	Dismissed
Hudson S.	Gropak Australia Pty Ltd	232/1997	Scott C.	Dismissed
Hyslop I.J.	Ingham's Enterprises	774/1997	Gregor C.	Granted
Ironside K.	Mr Simon Overton—The Cheesecake Shop	1865/1996	Cawley C.	Discontinued
Jacks L.	Australian Window Furnishings (WA) Pt Ltd	351/1997	Beech C.	Discontinued

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Johnson S.M.	Ultra Trace Pty Ltd	1011/1997	Gregor C.	Discontinued
Jones J.H.	Sure Sales Systems (Australasia) Pty Ltd	525/1997	George C.	Granted
Kalani A.	BCA Consultants	1845/1996	Parks C.	Discontinued
Kalis C.	Manford Record Management Pty Ltd t/a Compu-Star	800/1997	Parks C.	Discontinued
Kastropil T.	Ocean Reef Holdings t/a Malaga Tavern	441/1997	Gregor C.	Dismissed
Kelso D.	Cottesloe Beach Hotel	1165/1996	Cawley C.	Discontinued
Kenworthy J.K.	Multisweep	386/1997	George C.	Dismissed
Kittson C.	Summit Realty	1840/1996	Scott C.	Dismissed
Knocker K.	Mandy's Day Care Centre	495/1997	Fielding S.C.	Granted
Kowalick G.A.	Faulding Healthcare Pty Ltd	519/1997	Beech C.	Discontinued
Krmpotic K.	Perth Imaging	584/1997	Parks C.	Discontinued
Lalich D.	Micro Bros Pty Ltd t/a Sub-Zero Night Club	1515/1996	Cawley C.	Discontinued
Larder C.W.	Parry Wilmot	1754/1996	Cawley C.	Discontinued
Lee J.	Deamont Drilling	426/1997	Coleman C.C.	Dismissed
Lodge M.	Anjali Abbott Owner Bayswater Childcare Centre	892/1996	Cawley C.	Discontinued
Love N.I.	Ritz Holding (WA) Pty Ltd	101/1997	George C.	Dismissed
Lucas S.	Cook's Construction Pty Ltd	1080/1996	Beech C.	Discontinued
Mamudoski F.	Balfern Nominees Pty Ltd t/a Stylistic Cleaning Service	651/1997	Beech C.	Discontinued
Manifis P.	Wilbar Enterprises Pty Ltd t/a The Loose Box Restaurant	329/1997	Beech C.	Discontinued
Marek R.A.	Rockingham Beach Resort	549/1997	Beech C.	Discontinued
McKenzie A.	Jetset Travel	489/1997	Gregor C.	Discontinued
McLeod M.A.	Arrow Holdings Pty Ltd	302/1997	Gregor C.	Discontinued
McPolin M.D.	West Australian Locomotive Engine Driver's, Firemen's and Cleaner's Union of Workers	479/1997	Scott C.	Dismissed
Metals and Engineering Workers' Union	Anodisers WA & Others	1378/1993	George C.	Withdrawn
Meyers W.E.	Lyon Davey Pty Ltd t/a Davey Real Estate	375/1997	Beech C.	Discontinued
Morice W.	Petersville Industries Limited	53/1997	Scott C.	Dismissed
Morton G.R.	Electroplaters Pty Ltd	7/1997	Cawley C.	Discontinued
Murrie S.J.	BGC Roofing (Tiles)	246/1997	Beech C.	Discontinued
Nealie D.	Inglewood Hotel	1784/1996	George C.	Dismissed
Newton T.	Midas Australia Pty Ltd	317/1997	Coleman C.C.	Dismissed
Nguyen T.T.M.	Koast Corp	954/1997	Scott C.	Discontinued
Nimmo V.	Cocktails	427/1997	Coleman C.C.	Dismissed
O'Rourke L.E.	The Equestrian Federation of Australian, Western Australian Branch	321/1997	Beech C.	Discontinued
Osborne P.	Crown Mushrooms	361/1997	Gregor C.	Discontinued
Owen J.A.	Baroid Australian Pty Ltd	31/1997	Beech C.	Discontinued
Parker N.	Indigo Hotels Pty Ltd	1419/1996	Cawley C.	Granted
Parsons A.	AG & AM Brookes	39/1997	Beech C.	Discontinued
Parsons A.J.	Webster's Restaurant	9/1997	Parks C.	Granted
Pattle D.J.	Pace Assembly Pty Ltd	378/1997	Beech C.	Withdrawn
Paulton M.	Fairway Tavern	1763/1996	George C.	Dismissed
Perris A.	Cockburn Bowling & Recreational Club (Inc)	1404/1996	Cawley C.	Discontinued
Petrovic R.	Temps and Co	1740/1996	Beech C.	Discontinued
Plank J.	The Rhein Donau Club Inc	433/1997	Gregor C.	Dismissed
Plenderleith D.	Paulownia Trees Pty Ltd	284/1997	Beech C.	Discontinued
Posa I.	Austal Ships Pty Ltd	790/1997	Gregor C.	Granted
Poynter L.L.	Northcourt Holdings Pty Ltd t/a West Coast Office Equipment	546/1997	Beech C.	Discontinued
Prior D.G.	A.D. Coote and Co (Sheetmetal) Pty Ltd	900/1997	Gregor C.	Discontinued
Pullella R.	Eva's Garden Cafe	695/1997	Gregor C.	Granted
Rattenbury P.M.	Galluccio Griggs & Bowker	333/1997	Beech C.	Granted

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Rebeck N.	Gobbles Nightclub	142/1997	Coleman C.C.	Granted
Reed N.	Welcome Stranger Mining Company NL	843/1997	Gregor C.	Discontinued
Reimers J.P.	Swan Taxis Co-operative Ltd	140/1997	Beech C.	Discontinued
Rich R.G.	Gregory Wayne Lloyd c/o Pearsons Spraypainters	1818/1996	Cawley C.	Withdrawn
Ridley S.R.	Rentco Sales and Hire WA	40/1997	George C.	Dismissed
Robertson J.S.	Flynn Investments Pty Ltd t/a Jason Mazda	1684/1996	Beech C.	Discontinued
Robins H.G.	Concorde Nursing Home	129/1997	George C.	Dismissed
Robinson W.	Colli & Sons	435/1997	Coleman W.	Dismissed
Rodrigues N.	Live Clothing Pty Ltd	550/1997	Beech C.	Discontinued
Rogerson K.	Impact Data Service	374/1997	Parks C.	Dismissed
Rothaus M.	Talleris Pty Ltd as Trustee for the JJ Unit Trust	179/1997	Coleman W.	Adjourned
Ryan C.	Curtain University of Technology	787/1997	George C.	Dismissed
Sanford S.B.	Sunlakes Investments Pty Ltd t/a Dale Produce	994/1997	Scott C.	Dismissed
Sawyer G.J.	Marley's Transport	1786/1996	Cawley C.	Discontinued
Scott D.	Peters and Browns Group	467/1997	Gregor C.	Discontinued
Sheppard V.B.	G.E.C. Australia Pty Ltd, Electrical Division W.A. Branch	1614/1996	Cawley C.	Discontinued
Simmons A.	Fiori Gourmet Cafe	672/1997	Beech C.	Discontinued
Slater I.W.	S & J Melville t/a S & J Towing Service	507/1997	Gregor C.	Granted
Smart A.	GBC Windows	417/1997	Gregor C.	Granted
Smit M.	Gianfranco Design Management Pty Ltd	342/1997	Gregor C.	Discontinued
Smit S.J.	Gianfranco Design Management Pty Ltd	343/1997	Gregor C.	Discontinued
Smith D.J.	North Western Protective Security Pty Ltd	1632/1996	George C.	Granted
Smith F.A.	John L Realty Pty Ltd t/a Ray White Kwinana	628/1997	Parks C.	Dismissed
Smith K.L.	Diadrill Mining Supplies	51/1997	Cawley C.	Discontinued
Smith M.J.	Coffee Corner	397/1997	Beech C.	Discontinued
Sokolenko S.	Ming Lou of Shangri-La Chinese Self Serve	694/1997	Scott C.	Dismissed
South K.L.	Anne Aylward-Rowe	458/1997	Beech C.	Withdrawn
Southern T.	Pet Stop Whitfords	1006/1997	Parks C.	Discontinued
Stampono F.	Farmco Pty Ltd t/a Action Motors	764/1997	Beech C.	Discontinued
Stewart B.J.	Rocky's Bodyworks	1709/1996	Scott C.	Dismissed
Stewart N.	BC & SP Embrey Pty Ltd	330/1997	Beech C.	Discontinued
Storer D.J.	Morgan & Co Pty Ltd	78/1997	Cawley C.	Discontinued
Suckling M.A.	Chicken Treat Narrogin	76/1997	Cawley C.	Discontinued
Sunderland M.	Caltex Stratton	464/1997	Beech C.	Discontinued
Taylor D.	Country Style Meats	1720/1996	Cawley C.	Discontinued
Thobaven H.S.	AWP Contractors	1876/1996	Cawley C.	Discontinued
Thomas C.J.	R & D Moltoni, Pilbara Bakeries, Radeb Nominees	15/1997	Cawley C.	Discontinued
Tincknell C.R.	New Broadcasting (96.1 Triple M)	1744/1996	Scott C.	Dismissed
Tsagalis A.	Boart/Longyear Pty Ltd	236/1997	Cawley C.	Discontinued
Turner D.S.	Ed Blakeney Trucking Services	463/1997	Gregor C.	Discontinued
Turner S.	Busselton Fresh Market	373/1997	Cawley C.	Discontinued
Ulyatt M.P.	Vox Retail Group	631/1997	Beech C.	Discontinued
Vanderweide C.L.	Geraldton Sexual Assault Referral Centre Inc	181/1997	Cawley C.	Discontinued
Vine S.J.	Doepel and Associates	1836/1996	Coleman C.C.	Dismissed
Vinson J.J.	Sons of Gwalia Mine	153/1997	Coleman C.C.	Dismissed
Waldek D.	MacMahon Contractors (WA) Pty Ltd	325/1997	Beech C.	Discontinued
Watterston K.	John Lombardo of Turkey Town	1274/1995	Cawley C.	Discontinued
Wei-Chien G.H.	ERM (Investments) Pty Ltd	575/1997	Gregor C.	Discontinued
Wells B.	Burswood Resort Hotel	861/1997	Parks C.	Discontinued

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Wetton A.C.	Glassblowers Import/Export Pty Ltd	231/1997	Beech C.	Discontinued
Weymes D.	Midway Bricklaying Services	348/1997	Coleman C.C.	Dismissed
Wild A.	John Ansell Hack t/a Central Transport Services (WA)	736/1997	Parks C.	Granted
Wills T.A.	Statewest Credit Society Ltd	460/1997	George C.	Discontinued
Wright M.P.	Cockburn Corefleet Pty Ltd	49/1997	Cawley C.	Discontinued
Young A.	Loongana Lime Pty Ltd (subsidiary of David Mitchell Ltd)	511/1997	Cawley C.	Discontinued
Young P.	Loongana Lime Pty Ltd (subsidiary of David Mitchell Ltd)	512/1997	Cawley C.	Discontinued
Zaragoza P.M.	Westfield Carousel	1561/1996	Parks C.	Dismissed
Ziegler R.E.	Western Australian Basketball Federation Incorporated	1852/1996	Beech C.	Discontinued
Zubrinich K.	Auto Classic WA Pty Ltd	429/1997	Parks C.	Discontinued

## CONFERENCES— Matters arising out of—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

Australian Railways Union of Workers, West Australian Branch

and

Western Australian Government Railways Commission  
trading as Westrail  
No. C 184 of 1997.

COMMISSIONER P. E. SCOTT.

18 June 1997.

*Order.*

WHEREAS on 18 June 1997 the Commission convened a conference of its own motion pursuant to section 44 of the Industrial Relations Act 1979, on the basis that industrial action was being undertaken by employees of the Western Australian Government Railways Commission; and

WHEREAS at such conference the Commission sought to conciliate between the parties; and

WHEREAS the Commission, having heard from representative of the Australian Railways Union of Workers, West Australian Branch ("the Union"), of the Western Australian Government Railways Commission, and of employers whose business were being affected by the industrial action; and

WHEREAS the Commission is of the opinion that the following orders will prevent the deterioration of the industrial relations and enable conciliation or arbitration to resolve the dispute between the parties;

NOW THEREFORE, I the undersigned pursuant to the Industrial Relations Act 1979, and in particular section 44(6)(ba), do hereby order—

- (1) THAT the Western Australian Government Railways Commission shall take no action to advertise or otherwise deal with positions in the depot and yard sections; and
- (2) THAT the Union and the Western Australian Government Railways Commission shall meet in conferences to be convened by the Commission for the purpose of resolving an industrial agreement for registration pursuant to section 41 of the Industrial Relations Act; and

- (3) THAT the working arrangements of employees in yards and depots of the Western Australian Government Railways Commission as they applied on Thursday 12 June 1997 shall continue to apply for the term of this order; and
- (4) THAT the Western Australian Government Railways Commission shall lift any stand downs instituted as a result of this industrial action from the time of the lifting of industrial action.
- (5) THAT each of the employees members of the Union, employed by the Western Australian Government Railways Commission who are engaged in industrial action concerning the matters, the subject of these proceedings, cease industrial action as soon as may be, but in any event, no later than 1300 hours on Thursday the 19th day of June 1997, and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter; and
- (6) THAT the Union and its officials take all such reasonable steps as may be necessary to ensure that the members of the Union comply with the terms of paragraph (5) of this Order, including, but without limiting the generality of that obligation, the obligations to—
  - (a) call meetings of the employees of the Western Australian Government Railways Commission, members of the Union for no later than 12 noon on Thursday the 19th day of June 1997,
  - (b) advise the employees of the terms of this Order; and
  - (c) counsel the employees to return to work in accordance with the terms of paragraph (5) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings.
- (7) THAT this Order shall operate for a period of three months from today's date provided that the Union or the Western Australian Government Railways Commission may, on giving 24 hours' notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S.]

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Municipal, Administrative, Clerical and  
Services Union of Employees, Western Australian Clerical  
and Administrative Branch

and

Nonferral (WA) Pty Ltd.

No. C 133 of 1997.

25 June 1997.

*Order.*

WHEREAS an application was lodged in the Commission pursuant to section 44 of the Industrial Relations Act;

AND WHEREAS a conference between the parties was convened;

AND WHEREAS an agreement was reached at the conference;

AND WHEREAS the Commission adjourned the conference on the understanding that an order discontinuing this application would issue if nothing is heard from the applicant within a specified period of time;

AND WHEREAS that period of time has lapsed and the Commission has not heard from the applicant;

AND HAVING HEARD Mr G. Trotter on behalf of the applicant and Mr S. Foy on behalf of the respondent;

NOW THEREFORE, I the undersigned, 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.

Perth Zoological Gardens

and

The Australian Liquor, Hospitality and Miscellaneous  
Workers Union, Miscellaneous Workers Division, Western  
Australian Branch.

No. C 159 of 1997.

27 June 1997.

*Order.*

WHEREAS the parties to this matter are also parties to the Zoological Gardens (Operations Employees) Enterprise Bargaining Agreement 1996 (No. AG 340 of 1996);

AND WHEREAS arising from the requirements of that Agreement the parties have been negotiating the development of a new competency based classification structure for gardening and horticultural staff employed at the Zoo and have sought the assistance of the Commission in resolving issues between them arising from those negotiations;

AND WHEREAS the parties have now developed a new competency based classification structure for gardening and horticultural staff employed at the Zoo and agreed an implementation timetable which provides for the phased introduction of commensurate wage in the terms of the document titled "Performance Criteria/Competency Standards for the Perth Zoo Horticultural Career Structure 1997" attached to this Order as Schedule A;

AND WHEREAS the parties have requested the Commission to make an Order pursuant to s.44(8) of the Act in the terms of that agreement;

AND HAVING heard Mr S. Newman on behalf of the applicant and Ms S. Jackson on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, and by consent, hereby orders—

1. That notwithstanding the rates of pay set out in Appendix A of the Zoological Gardens (Operations Employees) Enterprise Bargaining Agreement 1996 (No. AG 340 of 1996) the new structure and wage rates shall operate in accordance with the attached Schedule B.
2. That the transition to the new classification structure shall be in accordance with the following—
  - (a) Employees shall transfer (without a competency appraisal) from their current classification to the nearest higher or equal rate of wage in the new classification structure effective from 23rd March 1997.
  - (b) The wage rates will be increased on 1st January 1998 to achieve a common wage rate structure for Horticultural and Keeping staff.
  - (c) All horticultural staff will undergo a competency appraisal in March-April 1998 to determine the employee's competency level and proper placement in the new classification structure. Where the appraisal results in a reclassification, the increase in the wage rate for the employee shall operate from the 31st March 1998.
  - (d) There shall be an appeal process available to any employee who is not satisfied with the outcome of their appraisal. The appeal process shall be that used for the Keeper Classification Structure.
  - (e) None of the above shall alter the anniversary date of any employee.
4. That any question, dispute or difficulty arising under this Order shall be settled in accordance with Clause 23.—Dispute Settlement Procedures of the Zoological Gardens (Operations Employees) Enterprise Bargaining Agreement 1996 (No. AG 340 of 1996).
5. That this order shall operate from the beginning of the first pay period on or after 23rd March 1997.

[L.S.]

(Sgd.) A.R. BEECH,

Commissioner.

## SCHEDULE A

Performance Criteria/Competency Standards for the Perth Zoo Horticultural Career Structure 1997

FINAL DRAFT NO: 12—17/2/97

Horticulture Career Structure

Competencies and standards.

Gardener Grade One—level One

Unit of Competence	Element	Performance Criteria (Standards)
<b>1. HORTICULTURAL SKILLS</b>	1. Developing skills to assist in the preparation, planting and maintenance of horticultural exhibit areas as well as off-limit areas. This includes— - Watering - Mowing - Mulching - Weeding - Clearing - Cleaning - Planting	1.1. Watering to be done effectively as directed 1.2. Malfunctions in automatic reticulation systems that water at night to be detected and reported 1.3. Mowing, weeding, mulching, cleaning, to meet presentation standards of Perth zoo
	2. Developing skills in the knowledge and selection of plants for specific purposes	2.1. Eg: plants for various bio climatic and Zoo-geographic habitats 2.2. Bedding plants 2.3. Plants for indoor, shade, full sun
	3. Developing skills in the establishment and maintenance of grassed areas	3.1. Rubbish collected & weeds removed in accordance with supervisor's instructions and disposed of in accordance with enterprise guidelines 3.2. Grass mown and edges trimmed to meet presentation standards of the Zoo 3.3. Tools and equipment cleaned and maintained in good working order after use and returned to toolshed / workshop
	4. Developing skills to assist in maintaining the Zoo's Plant Nursery	4.1. Watering, fertilising, transplanting, repotting, various soil mixtures used 4.2. Shadecloth requirements for hardening off plants 4.3. Pest & disease problems eg: scale, mealy bugs, fungus, grubs, insects 4.4. Handling plants correctly
	5. Developing a working knowledge of irrigation and reticulation methods particular to the Zoo property	5.1. Repairs to poly pipe watering systems. 5.2. Assist with general reticulation repairs 5.3. Basic knowledge of ring main and scheme water layout
<b>2. EQUIPMENT USE AND MAINTENANCE</b>	1. Safe care and working knowledge of hand and power tools, eg— • Hand tools • Mowing equipment • Brush cutter • High Pressure Cleaner • Blower Vac • Cushman vehicle	1.1. Training has been undertaken to ensure safe care and use of hand tools & power tools
	2. Ability to drive and operate a roadsweeper effectively and safely	2.1. A class drivers licence. 2.2. Training has been undertaken 2.3. Roads cleaned to acceptable zoo standards 2.4. Basic maintenance carried out
	3. Clean vehicles, workshop / toolsheds	3.1. Vehicle tray swept or hosed out 3.2. Vehicle exterior hosed down washed & dried off 3.3. Cab cleaned out 3.4. Benches racks and floor in workshop kept tidy, tools & equipment properly stored 3.5. Toolsheds kept tidy
	4. Explain the functions of and identify equipment used in environmental and operational programs such as— Composting Worm Farming Harmony Farmhouse Butterfly House Recycling	4.1. Function or purpose and equipment used by the various operations can be described accurately.
	5. Identify different fuels, fuel mixtures and their use	5.1. Diesel / petrol can be identified clearly by colour. 5.2. All equipment to be labelled (by senior staff ) to aid in the identification of fuel mixes used by each motor 5.3. Fuel mixtures can be identified in their labelled containers.

Gardener Grade One—level One—*continued*

Unit of Competence	Element	Performance Criteria (Standards)
	6. Prepare fuel mixes under direction	6.1. Training undertaken
	7. Identify & report maintenance requirements for machinery	7.1. Verbal report to immediate supervisor 7.2. or a written note in his or her absence 7.3. Attach danger tag if necessary
<b>3. Garden/exhibit design, development &amp; maintenance</b>	1. Develop skills to assist with the maintenance of specific garden and exhibit areas such as— Harmony farm Bushwalk Bush verge gardens Japanese gardens Rainforest	1.1. Eg. Clean pathways, weeding, watering, mulching, tend to compost and worm bins, ponds and dam cleaning, lawn maintenance to supervisor's instructions and acceptable Zoo standards
	2. Develop skills to assist with the maintenance of the butterfly house	2.1. Eg: watering, cleaning, path maintenance, pond cleaning, pump & filter maintenance, window & curtain washing, feeding, food preparation, species recognition, pupae care, vermin control, pest identification and control methods, temperature & ventilation controls, crowd control to supervisor's instructions and acceptable zoo standards
	3. Develop skills to assist with the maintenance of the permaculture gardens	3.1. Eg: cleaning, watering, weeding, pond cleaning, planting, mulching, feeding to supervisor's instructions and acceptable zoo standards
	4. Contribute to discussions on the development of garden and exhibit areas	4.1. Discussions input can be demonstrated
	5. Assist with the landscape development works of new gardens and exhibit areas	5.1. Eg: clearing, levelling, reticulation installation, planting, mulching, fencing to supervisor's instructions and acceptable zoo standards
<b>4. Park maintenance &amp; hygiene</b>	1. Assist with cleaning public /staff amenities, pathways, roadways, playground, storage areas, buildings & fixtures.	1.1. To supervisor's instructions and acceptable zoo standards eg: vacuum cleaning/blowing, sweeping, dusting, mopping, scrubbing, washing, wiping, cobwebbing, window cleaning, storing, supplying, ordering
	3. Maintain personal hygiene	3.1. Appearance in accordance with guidelines
	4. Observe security requirements of animal areas	4.1. Safety restrictions, knowledge of policy and procedures
	5. Operate, clean, store and maintain tools as directed	5.1. Tools stored in tool shed in a safe and orderly fashion
	6. Identify & report verbally to supervisor areas requiring maintenance	6.1. Items requiring maintenance in all areas under Horticultural jurisdiction to be reported
	7. Follow set guidelines of hygiene standards and tidy appearance of zoo grounds both public and off limits areas	7.1. Daily removal of rubbish, clean bins, take bins to collection sites 2-3 times a week, sweep paths daily, pressure clean brick paved areas when directed 7.2. Clean toilets, picnic tables occasionally as directed 7.3. Barbeques cleaned twice a week—before / after weekend, empty grease buckets weekly
	8. Assist with fire control procedures	8.1. Participation in fire drills in African Savannah Exhibit 8.2. Knowledge of fire hydrants and fire hoses can be demonstrated—both locations and operation
	9. Treat vermin, pests and diseases as directed.	9.1. Treatment carried out satisfactorily as per supervisor's instructions
<b>5. Interpretation &amp; education</b>	1. Develop skills and knowledge to conduct personal interaction with zoo visitors .	1.1. Customer service training has been completed in-house 1.2. (horticultural questions and directions, direct people to Information Centre, Zoo Library)
	2. Conduct personal interaction with zoo visitors in a courteous manner.	2.1. Capability to answer queries correctly, clearly and concisely and in a courteous manner
<b>6. Departmental management</b>	1. Communicate and cooperate within the workplace	1.1. Effective communication skills can be demonstrated eg, oral, two-way, notebooks, etc
	2. Work in a team	2.1. Teamwork participation to supervisor's satisfaction
	3. Undertake zoo orientation, including - introduction to staff - location of facilities - time keeping procedure - forms—leave, etc - off-limit areas - procedures followed - rosters	3.1. Have received staff induction manual and have read staff instruction manual 3.2. A staff induction course has been attended

Gardener Grade One—level One—*continued*

Unit of Competence	Element	Performance Criteria (Standards)
	4. Answer visitor questions about facilities & orientation	4.1. Knowledge of facilities and orientation to supervisor's satisfaction
	5. Use two-way radios	5.1. Protocol read and understood
	6. Participate in workplace meetings fortnightly and some input noted	6.1. Regular attendance at staff meetings held
<b>7. Safety</b>	1. Develop a working knowledge of safe work procedures and practices	1.1. Horticultural. Safety training lectures attended
	2. Develop a working knowledge of emergency procedures	2.1. Good understanding of zoo emergency procedures and pesticide/ herbicide spill procedures
	3. Able to identify, use and maintain protective clothing and equipment	3.1. The need, use and maintenance of protective clothing and equipment can be demonstrated eg: 3.2. Gloves 3.3. Half and full face masks 3.4. Earplugs & earmuffs 3.5. Safety helmets 3.6. Goggles and visors 3.7. Leggings for chainsaws
	4. Observe safe procedures and practices when handling hazardous chemicals	4.1. Understanding of material safety data sheets and instruction labels on products
	5. Able to identify and report hazards	4.2. Knowledge of storage requirements and guidelines 5.1. Ability use hazard identification forms
<b>8. Animal food production</b>	1. Assist with the collection of animal browse material	1.1. Basic knowledge of edible fodder plants and where to obtain them
	2. Apply correct harvesting techniques of fodder plants under direction	2.1. Fodder plants pruning techniques training undertaken
	3. Assist in the development & maintenance of animal food production areas.	3.1. Eg: planting, weeding, watering, mulching, fertilising to supervisor's instructions

Horticulture career structure  
Competencies and standards.

## Grade one—level two

Unit of competence  
**Competencies required to enter grade 1—level 2**  
**1. Horticultural skills**

Unit of competence	Element	Performance criteria (standards)
<b>1. Horticultural skills</b>	1. Continue developing skills to maintain the zoo's plant nursery	1.1. Watering, fertilising, transplanting, repotting, various soil mixtures used 1.2. Shadecloth requirements for hardening off plants 1.3. Pest & disease problems eg: scale, mealy bugs, fungus, grubs, insects can be detected and treated under supervision 1.4. Handling plants correctly
	2. Continue developing a working knowledge of irrigation and reticulation methods particular to the Zoo property	2.1. Repairs to poly pipe watering systems. 2.2. Ability to do general reticulation repairs on small systems 2.3. Knowledge of ring main layout, control valves and various automatic systems can be demonstrated
	3. Continue developing skills in the selection of plants for specific purposes	3.1. Knowledge of plant selection increased 3.2. Various plant species can be identified that are used in specific exhibit areas
	4. Developing skills in the understanding of soil composition, plant nutrition and fertilisers	4.1. Fertilisers can be identified and the need for their application described 4.2. Soil requirements by plants can be demonstrated
	5. Developing skills in correct pruning practices	5.1. Attend pruning training demonstrations
	6. Developing skills in the propagation of plants	6.1. Some propagating methods can be identified and demonstrated
<b>2. Equipment use and maintenance</b>	1. Perform basic maintenance on equipment	1.1. Eg. Machine cleaned, oil changed, spark plug cleaned and changed, minor repairs carried out (whipper-snipper, blower vac, small lawn mower, edger etc)
	2. Drive the tractor / front-end loader	2.1. 'A' class Drivers licence 2.2. Tractor / front-end loader skills training course attended and completed successfully (I.F.A.P.)
	3. Attach and operate tractor implements as directed	3.1. Sprayer, grab, fertiliser spreader, lawn corer can be used satisfactorily
	4. Safe use and maintenance of chain saws, turf cutter, ditch witch	4.1. Chain saw safety and maintenance course attended (I.F.A.P) 4.2. Chainsaw sharpened and maintained after each use.

Grade one—level two—*continued*

Unit of competence	Element	Performance criteria (standards)
<b>3. Garden/exhibit design, development &amp; maintenance</b>	1. Under direction, identify And calculate quantities of materials for specific projects	1.1. Sand, soil, mulch, bark, fertiliser, reticulation materials and plant quantities can be calculated
	2. Assist with the maintenance of environmental programmes and specific garden exhibit areas such as— Composting Worm farming Recycling Harmony farm Bushwalk Bush verge gardens Japanese gardens Rainforest	2.1. Eg., Tend to compost, worm bins and recycling collection sites, clean pathways, weed, water, mulch, clean ponds and dam, maintain lawn to supervisor's instructions and acceptable Zoo standards
	3. Assist with the maintenance of the permaculture gardens	3.1. Eg: clean, water, weed, plant, mulch, to supervisor's instructions and acceptable zoo standards 3.2. Herb and fruit trees identification can be demonstrated
	4. Assist with the maintenance of the butterfly house	4.1. Eg: daily watering, cleaning, path maintenance, pump & filter maintenance, window & curtain washing, feeding, food preparation, species recognition, pupae care, vermin control, pest identification and control methods, temperature, humidity & ventilation controls, crowd control to supervisor's instructions and acceptable Zoo standards 4.2. Pond cleaning as required 4.3. Daily reports and accurate records on climatic control kept
<b>4. Park maintenance &amp; hygiene</b>	1. Assist in the control of vermin and noxious weeds	1.1. In conjunction with the overall park vermin control programme 1.2. Noxious weeds can be identified and removed
	2. Implement the control procedures for vermin	2.1. Baiting and trapping program is carried out on a regular monthly basis, resulting in a visual reduction of vermin
<b>5. Departmental management</b>	1. Liaise with other sections and departments as required and directed	1.1. Effective communication and co-operation with other sections can be demonstrated
	2. Keep records as required	2.1. Note book, butterfly house records, works requisitions, hazard identification forms
<b>6. Interpretation &amp; education</b>	3. Attend and contribute to meetings as required and directed	3.1. Full staff day meetings, environmental services staff meeting, committee meetings
	1. Assist in the preparation and presentation of zoo talks as required	1.1. Informal talks for visitors in butterfly house, permaculture gardens
<b>7. Animal food production</b>	1. Assist in the development & maintenance of animal food production areas	1.1. Fodder collected daily from zoo grounds, Byford property, local district, private gardens.
	2. Assist with the provision of information to pr/ media	2.1. When requested
<b>8. Habitat ecology</b>	1. Develop a basic understanding of the principles of an eco-system	1.1. Sand, clay and peat can be identified 1.2. Climatic conditions of desert and rainforest can be described 1.3. Examples of plants from arid and rainforest areas can be given and links made to appropriate watering requirements for each
	2. Develop an understanding that plant communities have a direct link to their country of origin	2.1. Reasons are given to justify why plants are grouped according to geographical and climatic origins eg. African Savannah, Japanese Gardens
	3. Develop a working knowledge of weed species	3.1. Able to give an example of a herb, bush and tree as a weed

Horticulture career structure  
Competencies and standards.

## Grade one—level three

Unit of competence	Element	Performance criteria (standards)
<b>Competencies required to enter grade 1—level 3</b>		
	<b>1. Horticultural skills</b>	
	1. Continue developing skills in the selection of plants for specific purposes	1.1. Choices of palatable and non—palatable plants can be made when designing and landscaping exhibits. 1.2. Knowledge of poisonous plants that could harm animals and humans can be identified 1.3. Barrier planting knowledge can be demonstrated

Grade one—level three—*continued*

Unit of competence	Element	Performance criteria (standards)
<b>2. Equipment use &amp; maintenance</b>	1. Assist in the development of equipment /vehicle maintenance programs 2. Ability to drive zoo truck	1.1. Familiarity with equipment /vehicle maintenance servicing requirements 2.1. Training provided to acquire 2.2. class licence for Zoo truck
<b>3. GARDEN/EXHIBIT DESIGN, DEVELOPMENT &amp; MAINTENANCE</b>	1. Undertake basic concept drawings for garden and exhibit developments	1.1. Understanding of the brief. 1.2. Demonstrate ability to produce drawings
<b>4. DEPARTMENTAL MANAGEMENT</b>	1. Write requisitions, memos & letters	1.1. As directed and required
<b>5. ANIMAL FOOD PRODUCTION</b>	1. Assist in the selection of plant species for both planting and harvesting for animal food production	1.1. Eg: Eucalypts, acacias, bananas, ficus, acalyphas, coprosma, grasses, bamboo etc. Can be identified 1.2. Knowledge of specific animal fodder requirements

Horticulture Career Structure  
Competencies and standards.

## Grade Two—level One

(Must have Trade Certificate or Equivalent)

Unit of Competence	Element	Performance Criteria
<b>Competencies required to enter grade 2—level 1</b>		
<b>1. HORTICULTURAL SKILLS</b>	1. Develop skills in the identification of pests, weeds and diseases and the understanding and selection of pesticides and their safe use.  2. Develop skills in operating and maintaining the Zoo's Plant Nursery  3. Ability to select plants for Zoo specific purposes  4. Undertake lawn maintenance practices  5. Working knowledge of soil composition, plant nutrition and fertilisers  6. Correctly carry out pruning practices  7. Working knowledge of irrigation and reticulation methods particular to the Zoo property  8. Developing skills in tree surgery	1.1. Knowledge of pests, weeds and diseases can be demonstrated 1.2. Appropriate pesticides for Zoo purposes are used together with environmentally friendly alternatives around fodder plants, animal exhibits and aquatic areas in the Zoo.  2.1. Soil mixtures used can be identified 2.2. Plants propagated 2.3. Knowledge of plant stocks 2.4. Recommendations re ordering of plants and equipment 2.5. Pest & disease problems such as scale, mealy bugs, fungus, grubs and insects can be detected and treated correctly  3.1. Fodder, barrier, landscaping, bio climatic zones, non -palatable plants, ornamental plants, shade provision  4.1. Reticulate, fertilise, level, weed control, core and verticut lawn, remove and replace lawn as required 4.2. Knowledge of various types of grasses for use in public areas  5.1. Soil profiles can be described 5.2. Plant nutrition deficiencies can be recognised and rectified with appropriate fertilisers and trace elements  6.1. Reasons for pruning identified 6.2. Correct pruning practices can be demonstrated inc. Timing, type of pruning required, tools used.  7.1. Ability to understand and operate the electrical reticulation control systems 7.2. Good knowledge layout and operation of bores, ring main, isolation valves and solenoid valves can be demonstrated  8.1. Tree surgery requirements can be identified eg: Recognising potential of dangerous and diseased trees (termites, borers, Lerps, split trees, storm damaged) in your work section and throughout the Zoo
<b>2. EQUIPMENT USE &amp; MAINTENANCE</b>	1. Select appropriate machinery to perform specific task 2. Assist with training of Grade One employees and apprentices 3. Assist with recommendations for new equipment purchases	1.1. Appropriate machinery selected to perform specific task can be demonstrated 2.1. Staff trained in the appropriate use of machinery, using self as a role model 3.1. Input on requirements of new equipment is provided.
<b>3. GARDEN/EXHIBIT DESIGN, DEVELOPMENT &amp; MAINTENANCE</b>	1. Under direction, identify and calculate quantities of materials for specific projects	1.1. Sand, soil, mulch, bark, fertiliser, reticulation materials and plant quantities can be calculated

Grade Two—level One—*continued*  
(Must have Trade Certificate or Equivalent)

Unit of Competence	Element	Performance Criteria
	2. Ability to operate and maintain environmental exhibits and programs such as: Harmony Farm Composting Worm Farming Recycling Wetlands	2.1. Knowledge and requirements of programs such as Harmony Farm, composting, worm farming, and recycling can be clearly demonstrated.
	3. Ability to maintain the Permaculture Gardens	3.1. Knowledge of permaculture and maintenance and upkeep of these gardens can be demonstrated 3.2. Herb and fruit trees identification can be demonstrated
	4. Ability to maintain and operate the Butterfly House	4.1. Eg: daily watering, cleaning, path maintenance, pump & filter maintenance, window & curtain washing, feeding, food preparation, species recognition, pupae care, vermin control, pest identification and control methods, temperature, humidity & ventilation controls, crowd control to supervisor's instructions and acceptable Zoo standards 4.2. Pond cleaning as required 4.3. Daily reports for animal health and accurate records on climatic controls are recorded and passed on
<b>4. PARK MAINTENANCE &amp; HYGIENE</b>	1. Maintain park hygiene to an acceptable standard	1.1. Zoo grounds are cleaned daily to agreed high standard
	2. Maintain & repair landscape features, enclosures and barriers/restraints where appropriate	2.1. Landscape features and enclosures to be maintained to a high standard—visibly attractive and barriers/restraints to be kept in good working order for safety reasons.
<b>5. DEPARTMENTAL MANAGEMENT</b>	1. Assist the supervisor with supervision of staff up to level 2 and in the training of apprentices, non-trade staff, Work Experience students and volunteers	1.1. On the job training is provided for staff and volunteers in skill areas as directed by Supervisor—skill levels have first been identified, training given, evaluation carried out
	2. Identify and report problems requiring maintenance attention including the appropriate paperwork	2.1. Maintenance requisition forms and hazard identification forms are used 2.2. Problems are identified and reported across the whole Zoo
	3. Conduct small meetings as required	3.1. Meeting chaired efficiently, effectively and fairly 3.2. Minutes of the meetings need to be recorded—self or delegate this task 3.3. Minutes to be kept on file
<b>6. INTERPRETATION &amp; EDUCATION</b>	1. Contribute to the preparation and presentation of zoo talks as required	1.1. Talks on specific topics can be carried out for specific audiences eg. Community class, school groups, horticulture TAFE students, special interest groups 1.2. Talks need to demonstrate sound planning / preparation eg: logical sequence, beginning & end, introduce self with name and credentials 1.3. Attendance at training session on presentation skills
	2. Conduct tours as appropriate	2.1. Tour guiding skills can be demonstrated
<b>7. OCCUPATION HEALTH &amp; SAFETY</b>	1. Knowledge of work place & environmental safety requirements	1.1. Health and safety lectures are attended 1.2. Familiarity with the General Duty of Care in the workplace 1.3. Protective clothing and equipment used 1.4. Sun protection utilised daily
	2. First Aid Certificate	2.1. Course to be attended and completed successfully.
	3. Observe commercial work practices & legislation	3.1. Public liability, work contractors on the property and basic knowledge of the Occ. Health and Safety Act and Regulations
<b>8. ANIMAL FOOD PRODUCTION</b>	1. A working knowledge of animal food production techniques and requirements	1.1. Requirements established in consultation with Animal Health and keeping staff, eg: ( type and quantity), selection of growing sites, production, harvesting and distribution

<b>OR</b>		
Unit of Competence	Element	Performance Criteria (Standards)
<b>Competencies required to enter grade 2—level 1</b> <b>1. HORTICULTURAL RETICULATION AND IRRIGATION SKILLS</b>	1. Assist with the development and installation of programs on automatic reticulation controllers as directed	1.1. Watering programs are developed, installed and documented as directed 1.2. Watering guidelines are adhered to
	2. Make recommendations for upgrading or improving an existing irrigation /reticulation system	2.1. Sketch plans submitted with written recommendations
	3. Under direction carry out the upgrading and installation of new reticulation systems	3.1. Installation carried out in accordance with plans developed with supervisor 3.2. Timelines and budget constraints adhered to 3.3. Liaison with other sections undertaken
	4. Under direction initiate the repairs and maintenance of bore water equipment in the Zoo	4.1. All faults to ring main, bore pumps, reticulation systems, controllers, solenoid valves are identified and reported immediately to Supervisor 4.2. Safe work practices are employed 4.3. Waste materials are disposed of in accordance with legislative and Zoo requirements 4.4. An "A" Grade Electrical Workers licence obtained. 4.5. Equipment hired, leased or borrowed for period of anticipated use is returned promptly and in good working order
	5. Initiate cyclic maintenance programs for bores, pumps and control panels	5.1. Forward planning for maintenance programs is documented and communicated 5.2. Servicing and repairs carried out according to manufacturer's recommended schedules 5.3. Equipment serviced according to manufacturer's guidelines and tools selected are appropriate to each task
	6. Participate on project teams with input on water management	6.1. From a reticulation & water management perspective, contribute sound ideas and information
	7. Determine the cost of reticulation systems for specific projects	7.1. Knowledge of bore water supply and various reticulation systems and their associated applications and costs can be demonstrated 7.2. Reports and recommendations provided for supervisor
	8. Under direction provide up to date drawings showing the complete layout of all water and reticulation systems in the entire Zoo	8.1. Detailed accurate schematic plans for pumps, ring main layout, stop cocks and solenoid valves, water mains, reticulation systems produced and distributed to supervisor & appropriate staff
	9. Ensure sufficient materials for emergency repairs on ring main and reticulation systems are in stock	9.1. Recommended stock ordered as required 9.2. Storage facilities for consumables and equipment maintained in orderly fashion 9.3. Stock reserves maintained at agreed quantities at all times (subject to budget restraints)

Horticulture Career Structure  
Competencies and standards.

Grade Two—level Two	Element	Performance Criteria (Standards)
<b>Unit of Competence</b> <b>Competencies required to enter grade 2—level 2</b> <b>1. HORTICULTURAL SKILLS</b>	1. Assist in developing an annual maintenance program for a garden/ grounds area	1.1. Program developed in conjunction with Supervisor to include timelines, tasks, personnel, resources required, budget constraints, and is kept on computer file for updating
	2. Assist in developing strategies for enhancing & protecting wildlife in parks areas	2.1. Provision of flowering native plants to attract wildlife 2.2. Use of environmentally friendly pesticides and control methods
	3. A working knowledge of operating and maintaining the Zoo's Plant Nursery	3.1. Knowledge of operating and maintaining the Plant Nursery can be demonstrated eg— 3.2. Various soil mixtures used 3.3. Propagating plants 3.4. Knowledge of plant stocks held 3.5. Ordering of materials and equipment 3.6. Pest & disease problems such as scale, mealy bugs, fungus, grubs and insects can be detected and treated correctly
	4. Modify soil structure	4.1. Compost, worms, river sand, gypsum used to enrich soil as needed

Grade Two—level Two—*continued*

Unit of Competence	Element	Performance Criteria (Standards)
	5. Make recommendations for upgrading or improving an existing irrigation /reticulation system	5.1. Recommendations are brought to the Supervisor's attention and then acted upon as directed
<b>2. GARDEN/EXHIBIT DESIGN, DEVELOPMENT &amp; MAINTENANCE</b>	1. Liaise with animal husbandry staff on horticultural and landscape development and maintenance within and near animal exhibits	1.1. Project meetings are attended, appropriate input initiated, advice given to the project team as requested. 1.2. Consultation with keepers is sought regarding animal behaviour, when carrying out horticultural duties in or near animal exhibits.
	2. A working knowledge of managing the Butterfly House	2.1. Daily reports and accurate records on climatic controls are completed and passed on 2.2. Maintenance requests and recommendations for improvements are made 2.3. Recommendations on the purchasing of pupae are made 2.4. In-house breeding of butterflies will be undertaken
<b>3. ANIMAL FOOD PRODUCTION</b>	1. A working knowledge of fodder plant management and maintenance of fodder plant production areas	1.1. Assist with the strategic planning of fodder plant management 1.2. Implement and oversee viable fodder production for the Zoo's requirements
<b>4. DEPARTMENTAL MANAGEMENT</b>	1. Communicate and liaise effectively with other sections and staff within the zoo	1.1. Elementary computer skills can be demonstrated to operate internal computer system eg: E-Mail
<b>5. HABITAT ECOLOGY</b>	1. Develop a knowledge of fire ecology in bushland areas 2. Knowledge of plant communities, plant identification, and plant selection associated with habitat ecology	1.1. Information session at Kings Park has been attended 2.1. Knowledge of specific habitats can be demonstrated. 2.2. Eg: Provide example of plant communities in Australian Wetlands, Tuart Woodlands, Jarrah Forest
<b>6. RESEARCH</b>	1. Assist with the collection of data	1.1. Records maintained 1.2. Directions by supervisor or researcher followed
<b>7. OCCUPATION HEALTH &amp; SAFETY</b>	1. Assist with the development of policy & procedures for the Environmental Services section	1.1. Knowledge of safety issues within the section 1.2. Discusses and contributes towards resolving safety issues

Horticulture Career Structure  
Competencies and standards.

## Grade Two—level Three

Unit of Competence	Element	Performance Criteria (Standards)
<b>Competencies required to enter grade 2—level 3</b>		
<b>1. HORTICULTURAL SKILLS</b>	1. Develop a watering program suitable for a garden/grounds area	1.1. Implement a watering programme to ensure adequate watering of gardens/grounds areas 1.2. Appropriate use of reticulation systems can be demonstrated 1.3. Plan and document watering needs of various plant communities
	2. Determine the drainage requirements for a garden/grounds area	2.1. Knowledge of soil structure/profile 2.2. Materials and methods used to rectify problem areas can be identified
	3. Develop an annual pest, disease and weed prevention and control program for a garden/grounds area	3.1. Chemical and non-chemical treatments chosen which provide a suitable response to infestations having regard to cost of damage, cost of infestation and sustainable horticulture practices 3.2. Liaison with other conservation staff essential
<b>2. EQUIPMENT USE &amp; MAINTENANCE</b>	1. Diagnose and rectify common mechanical faults.	1.1. Faults are diagnosed from mechanical symptoms and repaired where they do not require specialist attention
<b>3. HABITAT ECOLOGY</b>	1. Assist in the regeneration of a specific habitat area	1.1. Assist with the development of plans which include research of species, plant communities, 1.2. Documentation recorded 1.3. Attend bush regeneration course, eg: APACE
	2. Assist in the management, implementation and maintenance of bush regeneration, revegetation and bushland management	2.1. Knowledge of techniques eg: burning off, seed collection, colonisers and natural progression can be demonstrated
<b>4. INTERPRETATION &amp; EDUCATION</b>	1. Presentation of Zoo Talks	1.1. Regular talks on a range of horticultural topics prepared and presented 1.2. Content demonstrates sound knowledge of topics 1.3. Talks conform to well structured format

Grade Two—level Three—*continued*

Unit of Competence	Element	Performance Criteria (Standards)
<b>5. GARDEN/EXHIBIT DESIGN, DEVELOPMENT &amp; MAINTENANCE</b>	2. Assist with critical analysis of interpretation & education within the Horticultural section.	2.1. Make recommendations and prepare and present reports as required
	3. Contribute to the improvement or development of interpretive and educational material	3.1. Attend and contribute to project meetings 3.2. Plant information & labels are accurate and informative
	1. Under direction, research plant species and habitats to complement animals displayed	1.1. Sketch plans and recommendations for landscaping animal exhibits have been prepared and can be demonstrated

Horticulture Career Structure  
Competencies and standards.

## Grade Two—Level Four

Unit of Competence  
**Competencies required to enter grade 2—level 4**  
**1. HORTICULTURAL SKILLS**

Unit of Competence	Element	Performance Criteria (Standards)
<b>2. EQUIPMENT USE &amp; MAINTENANCE</b>	1. Recognise and describe the cultural requirements of a broad range of ornamental plants suitable for use in the garden/grounds environment	1.1. Cultural requirements of ornamental plants eg location and aspect, preparation, propagation, pests and diseases, soil type etc. can be recognised and described accurately
	2. Develop an ornamental planting program for garden/grounds areas	2.1. Design, availability, timelines, costs, season & resources is incorporated into the ornamental planting program
	3. Propagate plants for habitat and specific purposes	3.1. Successful plant propagation carried out for habitat specific purposes- Butterfly House, fodder plants, immersion experience eg African Savannah 3.2. Healthy stock can be identified
	1. Initiate and carry out scheduled servicing for motorised equipment	1.1. Servicing carried out according to manufacturer's recommended service schedules 1.2. Machinery serviced according to manufacturer's guidelines and tools selected are appropriate to each task 1.3. All faults identified and reported to Supervisor 1.4. Safe work practices are employed 1.5. Waste materials are disposed of in accordance with legislative and Zoo requirements
	2. Make recommendations for new equipment purchases	2.1. Options/availability for new equipment is researched and brochures, specifications and prices are obtained
<b>3. GARDEN/EXHIBIT DESIGN, DEVELOPMENT &amp; MAINTENANCE</b>	1. Assist with preparation of site analysis	1.1. Notes are prepared on site requiring analyses—to include terrain, soil type, present and proposed vegetation and buildings in liaison with other staff
	2. Cost a small project not requiring extensive landscaping	2.1. Establish needs such as materials required, equipment purchased or hired 2.2. Establish costs of materials, equipment and labour
<b>4. DEPARTMENTAL MANAGEMENT</b>	1. Assist Supervisor with preparation of documentation	1.1. Rosters prepared and information collated for budgets under direction of supervisor 1.2. Increased level of computer skills demonstrated
<b>5. HABITAT ECOLOGY</b>	1. Monitor vegetation in bushland areas	1.1. Diversity of species is documented as directed 1.2. Identification and control of pests, weeds and diseases is undertaken according to Government regulations on an annual basis. 1.3. Adequate fire breaks are maintained annually 1.4. Fire regeneration

Horticulture Career Structure  
Competencies and standards.

## Grade Three—Level One

Unit of Competence  
**Competencies required to enter grade 3—level 1**  
**1. HORTICULTURAL SKILLS**

Unit of Competence	Element	Performance Criteria (Standards)
<b>1. HORTICULTURAL SKILLS</b>	1. Assist with planning & supervision of maintenance programs for lawns and grassed areas	1.1. Programme developed to include turf care, time lines, budgeting constraints, available resources impact on visitors, Zoo functions
	2. Demonstrate understanding of the arboricultural requirement of trees in large gardens and public open space	2.1. Programme developed and documented to ensure optimum health and vigour of trees—public safety, aesthetics, root disturbance, watering requirements
	3. Develop a physical resources inventory to aid garden management	3.1. Computer program to be set up to aid a physical resources inventory

Grade Three—Level One—*continued*

Unit of Competence	Element	Performance Criteria (Standards)
	4. Develop work programmes and schedules for garden maintenance and Zoo events	4.1. Daily and fortnightly work schedules are developed in consultation with supervisor and made available to staff
	5. Establish and maintain plant communities	5.1. Design incorporates natural/heritage issues and aims to recreate a pre-existing environment, as required, in accordance with Zoo guidelines 5.2. Design allows for staged implementation and development, where appropriate, in accordance with Zoo guidelines and site requirements 5.3. Native and local fauna are provided for in the plant community design 5.4. Pre-existing flora are taken into consideration to be included or excluded in design 5.5. Design is prepared using horticultural conventions and the intention is clear to any user. 5.6. The plant community design is ratified by Supervisor
<b>2. DEPARTMENTAL MANAGEMENT</b>	1. Assist the Supervisor with supervision of personnel	1.1. In the absence of the Manager Environmental Services and his Assistant the staff member is capable of assuming some of the responsibilities and duties eg:—assigning work—monitoring personnel performance—monitoring section performance—plan daily work routines
	2. Chair meetings	2.1. Establish an agenda, appoint a scribe to take minutes 2.2. Balance the views and contribution of all members effectively to achieve commitment to solutions in a timely manner 2.3. Minutes distributed to members and kept on file
	3. Preparation of letters, memos minutes and reports, including stores & works requisition	3.1. Ideas and information expressed clearly and consistently within institutional objectives 3.2. Copies to be kept on file 3.3. Documents prepared on computer
	4. Assist with overall management of section.	4.1. Knowledge and skills can be demonstrated including preparation of rosters, preparation and maintenance of department budgets
	5. Training of staff (preparation, delivery and review of training) eg—work experience students, apprentices, trainees, induction of new employees and staff learning new tasks	5.1. <b>Preparation.</b> 5.2. Training needs identified and measurable outcomes defined 5.3. Training structure developed, methods defined, monitoring processes established 5.4. Trainees notified of training schedule and workplace requirements catered 5.5. <b>Delivery.</b> 5.6. Trainees prepared-objectives established, application of learning to the work area defined and assessment process defined 5.7. Training delivered in a systematic fashion, feedback provided 5.8. Opportunities for practical application provided, personal assessment encouraged 5.9. <b>Review training</b> 5.10. Training sessions evaluated through trainee feedback on difficulties, applicability of learning outcomes, personal assessment in relation to session objectives 5.11. Training records maintained 5.12. Information on completed current or proposed training provided to relevant individuals in a timely and efficient manner
	6. Implement Emergency Procedure and OHS policies	6.1. Sound knowledge of emergency procedures and an understanding of procedure rationale is demonstrated 6.2. Thorough knowledge of potential hazards on section 6.3. Staff training and co-ordination of section personnel in emergency procedures is undertaken. 6.4. OHS standards and other relevant legislative requirements are maintained. 6.5. Safe, efficient and effective work practices are maintained
	7. Contribute to the formulation of goals and priorities for the department within Perth Zoo guidelines	7.1. Goals and priorities are set according to the Business Plan objectives 7.2. Recommendations and reports are prepared and presented as required

Grade Three—Level One—*continued*

Unit of Competence	Element	Performance Criteria (Standards)
		7.3. Allocation of resources is identified
		7.4. Time frame for priorities is established
		7.5. Monitor progress
		7.6. Outcomes achieved
	8. Supervise individuals and teams	8.1. Contribute to planning of work and methods to achieve goals
		8.2. Organise individuals and teams to meet goals
		8.3. Delegate responsibility
		8.4. Contribute to the establishment of new services or the improvements of existing services

Horticulture Career Structure  
Competencies and standards.

Grade Three—Level Two, Three & Four  
(can be done in any order)

1. A) Garden/Exhibit Design, Development & Maintenance
- B) Interpretation and Education
2. Research
3. Animal Food Production and Habitat Ecology

Garden/Exhibit Design, Development &  
Maintenance and  
Interpretation and Education

Unit of Competence	Element	Performance Criteria (Standards)
<b>1. GARDEN/EXHIBIT DESIGN</b>	1. Initiate concept plans of new and existing gardens and exhibits	1.1. Do adequate technical drawings as required
	2. Develop horticultural aspects of new and existing exhibits and garden areas	1.2. Demonstrate well researched clear thinking
		2.1. Advice is given to Zoo Designer and project teams
	3. Undertake project management and co-ordination including staff and contractors	2.2. Research and source the availability of exhibit requirements
		2.3. Formulate plans and make recommendations as required
	4. Monitor and obtain materials and services	2.4. Ensure plans are carried out according to agreed specifications
		3.1. The role of project leader is undertaken effectively and appropriately for a small project within the section
5. Formulate detailed costing of landscape works	3.2. Desired outcomes are achieved	
	6. Formulate maintenance programs for landscape works	4.1. Consumables monitored for signs of deterioration and or depletion
7. Initiate critical review of works undertaken		4.2. Recommendations made for orders to be placed
	1. Contribute to the preparation and presentation of guided tours/ horticultural talks and presentation	4.3. Storage facilities for consumables and equipment maintained
2. Assist with the provision of information to internal groups as directed		4.4. Equipment hired, leased or borrowed for period of anticipated use
	3. Contribute to media presentations	5.1. Detailed costing of all elements required (include the use of contractors if appropriate) submitted to supervisor
		6.1. Programs are realistic, achievable and clearly communicated to staff
	6.2. Programs to be documented and distributed to supervisor & appropriate staff	
	7.1. Make recommendations and prepare and present reports as required	
	7.2. Competent use of word processor	
	1.1. Co-ordinate and conduct guided tours/horticultural talks/presentations for the section, providing talks regularly as requested	
	1.2. Work closely with Public Education Officer in the development of public presentation	
	1.3. Participate in the training of Grade 2 level 1 staff	
	1.4. Co-ordinate and assess the staff's development in the area of public presentations	
	1.5. Provide information inhouse as directed	
	2.1. Talks on horticulture related issues are provided to Docents, students, visitors and staff on a regular basis	
	3.1. Co-operate with the P.R. Department	
	3.2. Appropriate information provided to form the basis of press releases within deadlines	
	3.3. Media appearances made as required	
	3.4. Zoo is presented to media in a competent manner	

Unit of Competence	Element	Performance Criteria (Standards)
	4. Contribute to the improvement or development of interpretive materials	4.1. Actively participate in project teams 4.2. Make recommendation and prepare and present reports as required 4.3. Species information to be researched documented and filed

**RESEARCH**

Unit of Competence	Element	Performance Criteria (Standards)
<b>1. RESEARCH</b>	1. Initiate informational research projects within a Zoo context	1.1. Identify areas of need where knowledge is lacking in the section, stay up to date with technology applicable to amenity and habitat horticulture through journal reading and other scientific papers 1.2. Communicate your project topic, plans and rationale ( why do it ) to Manager for approval 1.3. Establish procedures for research project 1.4. Follow all standard Zoo policy guidelines for research, in consultation with Manager
	2. Prepare descriptive papers and presentations with assistance	2.1. In consultation with manager— 2.2. Identify reason for paper eg: scientific, plant ecology, landscape design, conservation or any other Zoo related topic relevant to research 2.3. Identify publishing source 2.4. Liaise with publisher 2.5. Forward copy of paper via Director Conservation
	3. Assist with the preparation of research projects proposals by external students	3.1. Liaise with researchers as required 3.2. Maintain database as required 3.3. Use a database as required 3.4. Use and maintain appropriate research equipment as directed 3.5. Take an active role in the collection of data to support the project
	4. Assist with the critical analyses of the research needs of a section	4.1. Make recommendations and prepare reports as required

**ANIMAL FOOD PRODUCTION AND HABITAT ECOLOGY**

Unit of Competence	Element	Performance Criteria (Standards)
<b>1. FOOD PRODUCTION</b>	1. Manage and maintain programs for food production areas	1.1. Strategic plans for fodder plant management are developed implemented and maintained 1.2. Requirements for continual quantity and quality are met 1.3. Future demand for fodder is anticipated by forward planning and planting
	2. Assist with the development of techniques to maximise food production	2.1. Harvesting and watering techniques to maximise harvesting are demonstrated and documented 2.2. Research carried out what fodder other zoo's are using and results entered on database
<b>2. HABITAT ECOLOGY</b>	1. Initiate the regeneration of a specific habitat area	1.1. Develop plans which include research of species, plant communities, 1.2. Documentation recorded 1.3. Bush regeneration strategies are implemented
	2. Training of staff in habitat ecology skills	2.1. Training guidelines (preparation, delivery, review) as outlined in Interpretation / education training of staff to be followed here (Grade 3.1)
	3. Analyse "weed" potential of plants proposed for projects	3.1. Ability to identify plant characteristics which could lead to weed infestation eg: rapid colonisers
	4. Undertake critical review of habitat ecology practices by the Zoo	4.1. Make recommendations and reports as required

**SCHEDULE B**  
**WEEKLY RATE OF WAGE**

Classification Structure	Column A \$	Column B \$	Column C \$	Bonus Payments as at 1st January 1998			
				3%	2.5%	2%	1%
Grade 1.1	435.69	448.76	465.11	479.06	476.73	474.41	469.76
Grade 1.2	447.09	460.50	476.08	490.36	487.98	485.60	480.84
Grade 1.3	459.33	473.11	487.05	501.66	499.22	496.79	491.92
Grade 2.1	470.52	484.63	500.98	516.01	513.50	511.00	505.99
Grade 2.2	480.53	494.94	513.81	529.23	526.66	524.09	518.95
Grade 2.3	490.33	505.04	526.87	542.67	540.04	537.40	532.13
Grade 2.4	498.95	513.92	539.92	556.12	553.42	550.72	545.32
Grade 3.1	522.81	538.49	552.97	569.56	566.80	564.03	558.50
Grade 3.2	528.24	544.09	566.03	583.01	580.18	577.35	571.69
Grade 3.3	533.03	549.02	579.08	596.45	593.56	590.66	584.87
Grade 3.4	540.00	556.20	592.35	610.12	607.16	604.20	598.28

The rates of wages shall have effect in accordance with the following—

- Column A shall operate on and from 23 March 1997.
- Column B shall operate on and from 23 March 1997.
- Column C shall operate on and from 1 January 1998.

## CONFERENCES— Matters referred—

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

Lucon (Australia) Pty Ltd and Another.

No. CR 375 of 1996.

11 June 1997.

*Order.*

HAVING heard Mr J.K. Ferguson as agent for the Applicant  
and Mr T.J. Dobson as agent for the Respondent, and by con-  
sent, the Commission, pursuant to the powers conferred on it  
under the Industrial Relations Act 1979, hereby orders—

THAT the application be and is hereby, by leave, dis-  
continued.

(Sgd.) G.L. FIELDING,  
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Esteso Brick and Blocklayers Co.

No. CR 403 of 1996.

COMMISSIONER P. E. SCOTT.

9 April 1997.

*Reasons for Decision.*

THE COMMISSIONER: The matter before the Commission  
is set out in the Schedule attached to the Memorandum of  
Matters Referred for Hearing and Determination which states—

“The Union says that it had an agreement with the em-  
ployer for the payment of a site allowance of \$1.45 per  
hour flat rate, (or 90 cents per hour all purpose) to be paid  
to employees of the employer for work on Midland Shire  
Offices site.

The Union seeks a determination by the Commission of—

1. Whether the agreement was made between the parties;
2. If so, whether the employer has complied with the agreement.

If the employer has not complied with such agreement,  
the Union seeks an Order that the employer comply.

The employer denies that such agreement has been made.  
It also says that some of the employees concerned were  
covered by Workplace Agreements pursuant to the  
Workplace Agreements Act 1993 and that the conditions  
of employment of such employees is not a matter for the  
Commission.

The employer objects to the determinations and order  
sought.”

The Commission convened a hearing for the purpose of dealing  
with preliminary matters of jurisdiction, as to whether what was  
sought by the Union was properly dealt with by the Commission.

Mr Giffard for the Union noted that the matter does not re-  
late to the enforcement of an award, industrial agreement or  
order made pursuant the Industrial Relations Act 1979, (“the  
Act”) so is not a matter for the Industrial Magistrate to deal  
with in accordance with s.83 of the Act, and in particular there  
is no prohibition placed on the Commission dealing with this  
matter as set out in s.83(1)(a). He also says that the matter  
does not relate to non award contractual benefits negotiated  
and agreed between the employer and individual employees,  
but an agreement negotiated between the employer and the  
Union. On this basis, he says that the terms of s.29(1)(b)(ii)  
are not applicable. The Union says that there is no impedi-  
ment in the Commission dealing with the matter, and referred  
to the decision of Beech C in The Australian Builders Labour-  
ers Federated Union of Workers—Western Australian Branch  
and Sealrite Australia Pty Ltd (1994) (74 WAIG 675). Mrs  
Garcia for the Respondent, made no submissions.

The matter is before the Commission in accordance with  
s.44(9) of the Act which provides—

“(9) Where at the conclusion of a conference held in ac-  
cordance with this section any question, dispute, or  
disagreement in relation to an industrial matter has  
not been settled by agreement between all of the parties,  
the Commission may hear and determine that  
question, dispute, or disagreement and may make an  
order binding only the parties in relation to whom  
the matter has not been so settled.”

The matter to be dealt with must relate to an “industrial  
matter”, which is defined in s.(7)(1). The relevant part of that  
section provides—

““**industrial matter**” means, subject to section 7C, any  
matter affecting or relating to the work, privileges, rights,  
or duties of employers or employees in any industry or of  
any employer or employee therein and, without limiting  
the generality of that meaning, includes any matter relat-  
ing to —

- (a) the wages, salaries, allowances, or other re-  
muneration of employees or the prices to be  
paid in respect of their employment;”

This matter relates to an alleged agreement between the  
employer and the Union that the employer pay to its employ-  
ees at a particular site, a particular allowance. It requires the  
Commission to deal with a number of issues;

1. Whether the parties made an agreement.
2. Whether the employer has complied with any agree-  
ment made.
3. If there has been no compliance then an Order for  
compliance.

The matter before the Commission is an industrial matter,  
and the Commission has jurisdiction to deal with it subject to  
issues yet to be dealt with relating to Workplace Agreements  
made pursuant to the Workplace Agreements Act 1993. The  
Commission is not prohibited from dealing with the matter by  
s.83 because the matter is not for the enforcement of an award,  
industrial agreement or order. Further the matter is not one  
where the employees concerned are seeking to enforce the non  
award terms of their contractual arrangements with their em-  
ployer as these matters allegedly arise through the agreement  
between the employer and the Union, not between the em-  
ployer and the individual employees.

On this basis the matter will be listed for further hearing and  
determination.

Appearances: Mr G Giffard on behalf of the Applicant.

Mrs Garcia on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Esteso Brick and Blocklayers Co.

No. CR 403 of 1996.

COMMISSIONER P. E. SCOTT.

13 June 1997.

*Reasons for Decision.*

(Given extemporaneously at the conclusion of the hearing of  
an application for adjournment, as edited by the  
Commissioner)

THE COMMISSIONER: These are my reasons for decision in this matter. This matter arises from a conference application filed by The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers ("the Union") on the 16th of December 1996. Since that time there has been a number of conferences before the Commission in an attempt to resolve the matter by conciliation. There has also been a preliminary hearing after the matter was referred for hearing and determination on the 4th of March 1997 to deal with any restrictions on the Commission's jurisdiction. That matter was heard on the 20th of March 1997 and I issued my reasons for decision that there appeared to be no impediment to proceeding, on the 9th of April 1997.

Following that, at the request of the Union, there was a conference arranged for the parties to attempt to resolve differences regarding access to time and wages records and on the 23rd of May 1997 the Commission facilitated a meeting between the parties for the purpose of examining the time and wages records. By a Notice of Hearing dated the 16th of April 1997, the parties were advised of today's hearing. On my calculation, that notice of hearing was issued some 7 weeks ago.

Mr Pallett, as I understood it, is an organiser employed by the Union. I understand that there would be prejudice to the Union and in fact, as Mr Giffard says, the Union's application may well be fatally compromised by Mr Pallett's unavailability.

I take note of the authority referred to by Mr Giffard, being *Myers v Myers*, a decision of the Supreme Court of Western Australia of the 22nd of May 1968. I note too that the Commission received a request from Mrs Garcia for an adjournment of the hearing for the preliminary matter related to jurisdiction and that application was not granted.

I have heard nothing from the Union which would indicate any reason why Mr Pallett is not available other than that he has gone to Geraldton. There is no indication that there is any particular imperative in him being away at this time. As an employee of the Union, it is the Union's responsibility to ensure that he be available for today's hearing.

Notwithstanding that the Union may suffer prejudice as a result of a refusal to grant an adjournment, I am satisfied that this application does not have sufficient merit bearing in mind the process and the clear acrimony which has gone on between the parties in an attempt to resolve this matter; that the respondent has attended today, and as on other occasions, in spite of her protests in respect of the merit of the matter.

I simply say that I am not satisfied that there is good reason for Mr Pallett not to be here and available today and no submission has been made as to why his is not here other than that he is in Geraldton. I am not satisfied that that is sufficient reason to grant an adjournment. So on that basis, the adjournment application is to be dismissed.

Appearances: Mr G Giffard on behalf of the Applicant.

Mrs Garcia on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Esteso Brick and Blocklayers Co.

No. CR 403 of 1996.

COMMISSIONER P. E. SCOTT.

13 June 1997.

*Order.*

WHEREAS this is a matter referred for hearing and determination pursuant to Section 44 of the Industrial Relations Act 1979; and

WHEREAS at the commencement of the hearing of the matter on 5 June 1997, the Western Australian Builders Labourers, Painters and Plasterers Union of Workers ("the Union") sought an adjournment on the ground of the unavailability of its key witness; and

WHEREAS for reasons issued on that day the Commission refused the application for adjournment; and

WHEREAS the Union advised that it was unable to proceed;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this matter be, and is dismissed.

(Sgd.) P. E. SCOTT,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia  
Incorporated

and

Building Management Authority.

No. PSA CR 35 of 1995.

23 June 1997.

*Order.*

WHEREAS on 12 September 1995 this application was referred for hearing pursuant to section 44 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS the matter was listed to be heard on 6 November 1995; and

WHEREAS on 3 November 1995 the Commission received a facsimile request from the applicant that the hearing be adjourned; and

WHEREAS the respondent had no objection to the matter being adjourned; and

WHEREAS the hearing listed for 6 November 1995 was vacated;

AND WHEREAS on 17 June 1997 the Commission received a facsimile from the applicant advising that it "...will not be proceeding..." with the matter;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is wholly discontinued.

(Sgd.) C.B. PARKS,

Commissioner.

[L.S.]

**CONFERENCES—Notation of—**

	PARTIES	NUMBER— COMMISSIONER	DATE	MATTER	RESULT	
	Australian Workers Union	St Barbara Mines	Fielding S.C. C11/1997	24/4/97	Disadvantages in workplace	Concluded
	Australian Workers Union	WMC Resources Ltd	Beech C. C 405/1996	12/2/97	Termination	Referred
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Armadale Radiator Service	Fielding S.C. C 98/1997	N/A	Conditions of employ- ment	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Aviary Makers	Fielding S.C. C 37/1997	19/2/97	Wages	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries	CBI Constructors Pty Ltd	Fielding S.C. C 16/1997	24/2/97	Dismissal	Concluded
	Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union	Goldfields Contractors WA	Fielding S.C. C 57/1997	15/4/97	Discrepancies in entitlements to employees	Discontinued
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Goldfields Group Training	Fielding S.C. C 74/1997	8/4/97	Non-payment of costs and provisions of boots and overalls.	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Leighton Contractors Pty Ltd	Fielding S.C. C 97/1997	15/4/97	Non payment of travel and leading hand allowance	Withdrawn
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Leighton Contractors Pty Ltd	Fielding S.C. C 161/1997	10/6/97	Non payment for travelling time	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Lucon Australia and Another	Fielding S.C. C 193/1997	N/A	Industrial Action	Concluded
	Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union	Newtown Toyota	Fielding S.C. C 166/1997	19/6/97	Contractual benefits in overtime rates	Concluded
	Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union	Otraco (International) Pty Ltd	Fielding S.C. C 79/1997	7/4/97	Travel assistance	Concluded
	Automotive, Food, Metals, Engineering Printing and Kindred Industries Union	Roche Bros Pty Ltd and Another	Fielding S.C. C 122/1997	30/4/97	Dismissal	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Smith's Snackgood Company Pty Ltd	Fielding S.C. C 373/1996	9/12/96	Company not honouring commit- ment to avail train- ing to union members	Concluded
	Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union	Stratco ( WA) Pty Ltd	Fielding S.C. C 84/1997	27/3/97	Right of Entry	Concluded
	Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union	T and J Spraypainters	Fielding S.C. C 66/1997	9/4/97 15/5/97	Time and Wages Records	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	United Construction Pty, Ltd and Another	Fielding S.C. C 116/1997	17/4/97 23/4/97	Employment Contracts	Concluded
	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and Another	WESFI Manufacturing Pty Ltd (Wesboard Division)	Scott C. C 109/1997	3/4/97	Trial of Rostered Day Off System	Concluded
	Brick, Tile and Pottery Union	Metro Brick Armadale	Scott C. C 56/1997	27/2/97	Harassment of an Employee	Concluded
	Builders', Labourers, Painters and Plasterers Union	Catholic Agricultural College	Scott C. C 104/1997	N/A	Redundancy	Discontinued
	Builders' Labourers, Painters and Plasterers Union	Integrated Workforce	Scott C. C 65/1997	11/3/97	Enterprise Bargaining	Concluded
	Builders', Labourers, Painters and Plasterers Union	Manuel Painting Contractors	Scott C. C 68/1997	2/4/97	Time and Wages Records	Discontinued
	Builders' Labourers, Painters and Plasterers Union	Monavene	Scott C. C 73/1997	N/A	Outstanding Award and Wage Entitlements	Concluded
	Builders' Labourers, Painters and Plasterers Union	Scanlon Plastering	Scott C. C 45/1997	N/A	Site Allowance	Concluded

	PARTIES	NUMBER— COMMISSIONER	DATE	MATTER	RESULT
Builders' labourers, Painters and Plasterers Union	Total Corrosion Control	Coleman C.C. C 96/1997	20/3/97 26/3/97	Contravention of an Agreement	Concluded
Builders' Labourers, Painters and Plasterers Union	United Construction Pty Ltd	Coleman C.C. C 145/1997	15/5/97	Registering of an Agreement	Concluded
Builders' Labourers, Painters and Plasterers Union	Zinco Pty Ltd	Scott C. C 310/1996	N/A	Award Entitlement	Concluded
Civil Service Association	Agriculture Western Australia	Beech C. PSAC 66/1996	17/2/97	Safety in Workplace	Referred
Civil Service Association	Central Metropolitan College of TAFE	Beech C. PSAC 19/1997	26/5/97	Transfer of Employee	Referred
Civil Service Association	Director General, Education Department	Beech C. PSAC 64/1996	20/11/96 26/11/96 6/12/96 7/1/97	Replacement of Enterprise Bargaining Agreement	Concluded
Civil Service Association	Director General Ministry Of Justice	Beech C. PSAC 44/1996	24/9/96 2/10/96 9/12/96 10/3/97	Alternative Employment	Concluded
Civil Service Association	Western Australian Department of Training	George C. PSAC 75/1996	7/12/96 7/1/97 12/3/97 3/4/97	Annual Leave Loading	Concluded
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union	Metro Meat International	Fielding S.C. C 134/1997	N/A	Hours of work	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union	Metro Meat International	Fielding S.C. C 135/1997	N/A	Tea money	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union	Ralph M Lee (WA) Pty Ltd	Scott C. C 11/1997	20/1/97	Work Bans	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union	Riverton Engineering Co., A Division of Industrial Galvanizers Corporation Pty Ltd (Inc in NSW)	Fielding S.C. C 154/1997	10/6/97	Non-payment of leading hand allowance	Concluded
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union	Thermalec	Fielding S.C. C 103/1997	N/A	Payment for work completed	Discontinued
Construction, Mining, Energy, Timbryards, Sawmills and Wood- workers Union	Colin Challenor Builder	Beech C. C 85/1997	10/4/97	Award Entitlements	Concluded
Construction, Mining, Energy, Timbryards, Sawmills and Wood- workers Union	Hamersley Iron Pty Ltd	Beech C. C 72/1997	N/A	Roster and Meal Vouchers	Arbitration
Construction, Mining, Energy, Timbryards, Sawmills and Wood- workers Union	Jet Black Stonemasons	Scott C. C 94/1997	18/4/97	Award Entitlements	Discontinued
Construction, Mining, Energy, Timbryards, Sawmills and Wood- workers Union	Lucon Australia Pty Ltd	Fielding S.C. C 28/1997	7/03/97	Strike action	Concluded
Food Preservers Union	WA Egg Marketing Board	Scott C. C 114/1997	1/4/97 3/4/97 11/4/97	Enterprise Bargaining Negotiations	Concluded
Forest Products, Furnishing and Allied Industries Industrial Union	Bunnings Forest Products Pty Ltd.	Scott C. C 32/1997	N/A	Disciplinary Action	Concluded
Independent Schools Salaried Officers' Association	St Gerard's Primary School	Beech C. C 50/1997	10/4/97	Conditions of Employment	Concluded

	PARTIES	NUMBER— COMMISSIONER	DATE	MATTER	RESULT
Liquor, Hospitality and Miscellaneous Workers Union	Blowflex Pty Ltd	Scott C. C 58/1997	N/A	Enterprise Bargaining Negotiations	Concluded
Meat Industry Employees' Union	Metro Meat International (Katanning & Linley Valley Divisions)	Fielding S.C. C 28/1997	11/02/97	Working in severe temperatures	Concluded
Meat Industry Employees' Union	Metro Meat International (Linley Valley Division)	Fielding S.C. C 107/1997	27/3/97	Training Programme	Concluded
Meat Industry Employees' Union	Metro Meat International (Linley Valley Division)	Fielding S.C. C 151/1997	21/5/97	Dismissal	Concluded
Municipal, Administrative, Clerical and Services Union	Creative and Therapy Activities (CATA) Disabled Group Inc	Coleman C.C. C 139/1997	N/A	Contract of Employment	Concluded
Municipal, Administrative, Clerical and Services Union	Olympic Fine Foods P/L	Scott P. C 108/1997	16/4/97	Dismissal	Arbitration
Railways Union	West Australian Government Railways Commission	Scott C. C 126/1997	N/A	Transfer of Employee	Concluded
Railways Union	Westrail	Scott C. C 92/1997	9/4/97	Uniform	Concluded

## CORRECTIONS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Con Elias Antoniou  
and

Monadelphous Group Limited.

No. 579 of 1997.

COMMISSIONER J. F. GREGOR.

16 June 1997.

### Order.

WHEREAS on 24 March 1997, Con Elias Antoniou applied to the Commission for an order pursuant to Section 29 of the Industrial Relations Act, 1979 arising from the circumstances surrounding the termination of his employment by Monadelphous Group Ltd; and

WHEREAS on 16 June 1997, the Commission held a conference between the parties; and

WHEREAS at the conference the respondent offered to pay to the applicant the sum of \$1848.00 gross, being 7 weeks pay in full and final settlement of the claim; and

WHEREAS the applicant accepted the offer;

NOW THEREFORE the Commission pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby orders by consent—

THAT Monadelphous Group Ltd pay to Con Elias Antoniou \$1848.00 gross being 7 weeks pay in full and final settlement of this claim.

[L.S.] (Sgd.) J.F. GREGOR,  
Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Con Elias Antoniou  
and

Monadelphous Group Limited.

No. 579 of 1997.

COMMISSIONER J. F. GREGOR.

23 June 1997.

### Correcting Order.

WHEREAS on 16th day of June 1997, an order in this matter was deposited in the office of the Registrar; and

WHEREAS the said order had an error in that the time for payment was shown as 7 weeks; and

WHEREAS in the order the time for payment should have been shown as 7 days;

NOW THEREFORE the Commission pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby orders—

THAT the order should be corrected as above.

[L.S.] (Sgd.) J.F. GREGOR,  
Commissioner.

## PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Charles Blackborrow  
and

Action Water Tankers.

No. 277 of 1997.

COMMISSIONER J. F. GREGOR.

29 April 1997.

### Order.

WHEREAS on 12 March 1997 the Commission conducted a conference between the parties pursuant to Section 32 of the Industrial Relations Act, 1979; and

WHEREAS on the 26 March 1997 counsel for the applicant wrote to the Commission and advised that the respondent had failed to give discovery of documents and requested that a further conference pursuant to Section 32 of the Industrial Relations Act, 1979 be listed; and

WHEREAS a conference was held on 23 April 1997 at which time the parties discussed issues relating to the proper identification of the respondent, further and better particulars of that part of the claim relating to contractual entitlements and the applicant's claim for discovery of documents; and

WHEREAS it was agreed by Mr L H Pilgrim who appeared for the respondent that the respondent was properly identified as Action Water Tankers; and

WHEREAS the Commission directed that the applicant supply further and better particulars of its claim for contractual benefits; and

WHEREAS the Commission also advised the parties that it would issue orders for the production of documents but not to the extent requested by the applicant; and

WHEREAS the parties agreed that further and better particulars of the applicant's claims would be supplied to the respondent within fourteen (14) days of the date of this order and that the respondent supply to the applicant the documents subject to the order below within a further fourteen (14) days;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders—

- (1) THAT the applicant supply to the respondent further and better particulars of that part of the applicant's claim relating to contractual benefits.
- (2) THAT the further and better particulars referred to (1) hereof shall be supplied to the respondent within fourteen (14) days of the date of this order.
- (3) THAT the respondent supply to the applicant copies of payroll summaries showing hours of work, hourly rate, gross wages, income tax and net wages, together with Australian Tax Office, annual payment summaries showing gross annual wages paid and tax deducted.
- (4) THAT the production of documents referred to (3) hereof be supplied to the respondent within fourteen (14) days of receipt of the information relating to further and better particulars described in (1) hereof.
- (5) THAT the applicant specify the quantum of compensation being sought as part of the applicant's claim.
- (6) THAT the applicant supply to the respondent copies of all records held by the applicant relating to the terms of the applicant's employment and the payment of the applicant's wages.

[L.S.] (Sgd.) J. F. GREGOR,  
Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

Marcus Roza  
and

Classique Health Products Club X.  
No. 513 of 1997.

COMMISSIONER J. F. GREGOR.

16 June 1997.

*Order.*

WHEREAS on 12 March 1997, Marcus Roza applied to the Commission for an order pursuant to Section 29 of the Industrial Relations Act, 1979 arising from the circumstances surrounding the termination of his employment by Classique Health Products Club X; and

WHEREAS on the 12 June 1997 the Commission conducted a hearing of the application; and

WHEREAS Mr T. Kavenagh of counsel, who appeared on behalf of the respondent agreed to orders numbered (i), (ii), (iii), (iv), (the magnetic tape recording alleged to be a recording of conversation between the applicant and Q Alarms and (v), as listed in the application for production of documents and filed by the applicant in the Commission on 3 June 1997; and

WHEREAS the Commission has decided that the respondent should provide a copy of all documents which are or have been in its possession, custody or power relating to the matters mentioned in the proceeding citation; and

NOW THEREFORE pursuant to the powers contained in Section 27 of the Industrial Relations Act, 1979 the Commission hereby orders—

THAT within 7 days the respondent shall—

- (1) Provide access for the applicant and his solicitor to view and copy the applicant's time and wages records;
- (2) Provide to the applicant's solicitor, a copy of the applicant's employment contract;
- (3) Provide to the applicant's solicitor, a copy of the probationary period document;
- (4) Provide to the applicant's solicitor a magnetic tape of a conversation alleged to be a conversation between the applicant and Q Alarms;
- (5) Provide to the applicant's solicitor a copy of any written warnings or records of complaints made by Club X on 12 February 1997; and
- (6) THAT there be no orders as to production of documents numbered (vi), (vii) and (viii) of the application.

[L.S.] (Sgd.) J. F. GREGOR,  
Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

Australian Railways Union of Workers, West Australian  
Branch

and

W.A. Government Railways Commission.  
No. 1071 of 1997.

Railway Employees' Award No. 18 of 1969.

COMMISSIONER P. E. SCOTT.

11 June 1997.

*Order.*

WHEREAS this is an application to shorten the time for a Notice of Answer and Counter Proposal to be lodged in respect of Application 1071 of 1997, and;

WHEREAS a conference was convened on the 10th day of June 1997; and

WHEREAS the Respondent opposes the issuing of such an Order; and

WHEREAS the Commission, having heard from Mr R Wells on behalf of the Applicant and Mr A Hassell on behalf of the Respondent, and having considered the circumstances surrounding the application;

NOW THEREFORE, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the Respondent file a Notice of Answer and Counter Proposal in respect of Application 1071 of 1997 no later than 4.00pm on Tuesday, the 17th day of June 1997.

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

## NOTICES— Appointments—

### APPOINTMENT.

#### ADDITIONAL PUBLIC SERVICE ARBITRATOR.

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the Industrial Relations Act, 1979, hereby appoint, subject to the provisions of that Act, Commissioner S.A. Cawley to be an additional Public Service Arbitrator for a period of one year from 19 June 1997.

Dated the 19th day of June, 1997.

(Sgd.) W.S. COLEMAN,  
Chief Commissioner.

23. Junior Employees
24. Apprentices
25. Bar Work
26. Higher Duties
27. Uniforms and Laundering
28. Protective Clothing
29. Employees Equipment
30. Limitation of Work
31. Travelling Facilities
32. Record
33. Roster
34. Change and Rest Rooms
35. First Aid Kit
36. Posting of Award and Union Notices
37. Board of Reference
38. Superannuation

Appendix—Resolution of Disputes Requirement  
Appendix—S.49B—Inspection Of Records Requirements

## AWARDS/AGREEMENTS— Consolidation by Registrar—

### CATERING EMPLOYEES (NATIONWIDE FOOD SERVICE) AWARD 1990. No. A 31 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 13th day of June, 1997.

J. CARRIGG,  
Registrar.

Catering Employees (Nationwide Food Service) Award 1990

#### 1.—TITLE

This award shall be known as the Catering Employees (Nationwide Food Service) Award 1990.

#### 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

#### 2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
- 2A. State Wage Principles—September 1989
3. Area
4. Scope
5. Term
6. Definitions
7. Contract of Service
8. Hours
9. Additional Rates for Ordinary Hours
10. Overtime
11. Casual Employees
12. Part-time Employees
13. Meal Breaks
14. Meal Money
15. Sick Leave
16. Bereavement Leave
17. Maternity Leave
18. Holidays
19. Annual Leave
20. Long Service Leave
21. Payment of Wages
22. Wages

#### 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.

#### 3.—AREA

This award shall have effect throughout the State of Western Australian.

#### 4.—SCOPE

This award shall apply to all employees employed in the callings described in Clause 22 of this award, by Nationwide Food Service Pty Ltd only, in Restaurants and/or Tearooms and/or Catering Establishments, as defined in Clause 6 of this award. This award shall not apply in any establishment licensed as a hotel, limited hotel or tavern, pursuant to the Liquor Act, 1970, or to any person employed under the terms of the Industrial Catering Workers' Award No. 29A of 1974, as varied, or any replacement thereto.

#### 5.—TERM

The term of this award shall be for a period of one year on and from the 20th November, 1985.

#### 6.—DEFINITIONS

(1) "Restaurant and/or Tearoom" shall mean any meal room, grill room, coffee shop, tea shop, oyster shop, fish cafe, cafeteria or hamburger shop, and includes any place, building, or part thereof, stand, stall, tent, vehicle or boat in or from which food is sold or served for consumption on the premises and also includes any establishment or place where food is prepared and/or cooked to be sold or served for consumption elsewhere.

(2) "Catering establishment" shall mean any building or place where meals and/or light refreshments and/or drinks are served and provided for weddings, parties, dances, social functions, discotheques, cabarets, theatres, festivals, fairs, exhibition buildings, cultural centres, convention centres, entertainment centres, racecourses, showgrounds, sporting grounds, and the like, and shall include the provision of catering and ancillary services for any other purpose.

(3) "Bar Attendant" shall mean an employee over the age of 18 years who serves liquor for sale from behind a bar counter.

(4) "Chef" shall mean an employee who is a "Qualified Cook" (as defined in subclause (3) hereof), and who is appointed as such by his employer.

(5) "Qualified Cook" shall mean an employee who has completed and can produce appropriate documentary evidence to his or her employer to the effect that he or she has successfully completed an apprenticeship in cooking at an approved or recognised school or college, or who can provide documentary evidence or having served at least six years in Her Majesty's Armed Forces in the classification of Cook.

(6) "Cook Employed Alone" shall mean an employee who is employed when no other cook is employed during his or her shift.

(7) "Daily Spread or Shift" shall mean the time which elapses from the employee's actual starting time to the employee's actual finishing time for the day.

#### 7.—CONTRACT OF SERVICE

(1) Except for casual employees, the contract of service shall be on a weekly basis, provided that one day's notice of termination may be given on either side on any working day or, in the event of such notice not being given, by the payment by the employer or the forfeiture by the employee, as the case may be, of one day's pay. Provided that in respect to any employee who has been continuously employed for at least three years, one week's notice of termination should be given on either side on any working day or, in the event of such notice not being given, by the payment by the employer or the forfeiture by the employee, as the case may be, of one week's pay. Provided that any employee who is dismissed for misconduct, shall be entitled to be paid all wages due up to the time of dismissal only.

(2) (a) The foregoing provisions shall not affect the right of an employer to stand down employees without pay during all vacation periods when no work is available. In respect to the Tertiary Education Institutions the vacation periods will extend to include those weeks which are calendarised as non-teaching weeks and not requiring student attendance on campus.

(b) The employer shall advise the employee before the stand-down period has commenced the date of resumption of work. Employees who fail to advise the employer at least 48 hours before the date of resumption that they are ready, willing and available for work shall be deemed to have terminated their contract of employment.

#### 8.—HOURS

The ordinary hours of work shall be forty per week, not exceeding eight per day, to be worked over not more than five days of the week, within a daily spread of eleven hours, and subject to the additional rates prescribed in Clause 9 of this award. Each employee shall be entitled to two clear days off duty per week, provided that in respect to any employee employed as a Bar Attendant, ordinary hours shall not be rostered to be worked on a Sunday.

#### 9.—ADDITIONAL RATES FOR ORDINARY HOURS

(1) An employee who is required to work any of his ordinary hours between 7.00 p.m. and 7.00 a.m. Monday to Friday, both inclusive, shall be paid at the rate of an extra 96 cents per hour for each such hour, or part thereof worked, with a minimum payment of \$1.98 per day.

(2) 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.

#### 10.—OVERTIME

(1) All work done outside the daily spread of eleven hours, or beyond eight hours in any one day, or beyond forty hours in any one week, shall be overtime.

(2) Subject to the provisions of subclause (3) hereof, all overtime worked between Monday to Friday, both inclusive, and prior to twelve noon on a Saturday, shall be paid for at the rate of time and a half for the first four hours and double time thereafter. All overtime worked after twelve noon on a Saturday and all day on a Sunday, shall be paid for at the rate of double time.

(3) All work done on an employee's rostered day off shall be paid for at the rate of double time with a minimum payment as for four hours work.

#### 11.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged on an hourly contract of service, or who works at a racecourse, show or sporting ground.

(2) Casual employees shall not be engaged for less than two consecutive hours per time.

(3) Casual employees shall be paid at the rate of time and a half, provided that this rate shall be increased to double time and a half for all work performed on the holidays referred to

in subclause (1)(a) of Clause 18 of this award. Provided further that a casual employee employed as a Bar Attendant on a Sunday shall be paid at the rate of double time.

(4) The provisions of Clauses 9, 15, 16, 17, 18 and 19 shall not apply to a casual employee.

#### 12.—PART-TIME EMPLOYEES

(1) A part-time employee shall mean an employee engaged on a weekly contract of service, who works regularly from week to week for not less than three or more than seven consecutive ordinary hours per day, and not less than fifteen or more than thirty-five ordinary hours each week, over not more than five days of the week.

(2) Part-time employees shall be paid at the rate of time and a quarter, provided that this rate shall be increased to time and a half for all work performed on a Saturday or Sunday, and to double time and a half for all work performed on the holidays referred to in subclause (1)(a) of Clause 18 of this award. Provided further that a part-time employee employed as a Bar Attendant on a Sunday shall be paid at the rate of double time.

(3) A part time employee who is required to work any of his ordinary hours between 7.00 p.m. and 7.00 a.m. Monday to Friday, both inclusive, shall be paid at the rate of an extra 96 cents per hour for each such hour, or part thereof worked, with a minimum payment of \$1.98 per day.

(4) All time worked by a part-time employee beyond seven ordinary hours per day, thirty-five ordinary hours per week and/or five days per week, shall be overtime and paid for at the appropriate overtime rates prescribed in Clause 10 of this award.

(5) A part-time employee after twelve months continuous service shall be entitled upon request to be absent without pay for a period not exceeding four weeks. The period of absence shall be arranged at a time mutually satisfactory to the employer and the employee.

(6) The provisions of Clauses 9, 15, 16, 18 and 19 shall not apply to a part-time employee.

#### 13.—MEAL BREAKS

(1) Every employee shall be entitled to a meal break of not less than one half hour nor more than one hour, after not more than five hours of work, or after not more than 6 hours of work in respect to any casual employee who works at a racecourse. 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 ordinary hourly rate applying to such employee, until such time as the employee is released for a meal.

(2) In addition to breaks for a meal, there may be one other break of at least two hours during each shift. Such break of two hours may include a meal break.

#### 14.—MEAL MONEY

An employee who is required to work overtime for two hours or more on any day, without being notified on the previous day or earlier, that he or she will be so required to work such overtime, will either be supplied with a substantial meal by the employer or be paid \$5.80 meal money.

#### 15.—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) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extra-ordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee, or, failing agreement, shall be added to the employee's next period of annual leave, or, if termination occurs before then, be paid for in accordance with the provisions of Clause 19.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 19.—Annual Leave, shall be deemed to have been paid with respect to the replaced annual leave.

(6) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

#### 16.—BEREAVEMENT 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, brother, sister, child or stepchild be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of the employer if he so requests.

Provided that this clause shall have no effect while the period of entitlement to leave coincides with any other period of leave that may be due to the employee concerned.

#### 17.—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 the 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) The employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

## (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 the employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before the 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 the employer to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months qualifying period.

## 18.—HOLIDAYS

(1) (a) The following days shall be observed as paid holidays: 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 all work done on any such days shall be paid for at the rate of double time and a half, with a minimum payment as for four hours work.

(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) Where an employee's rostered day off coincides with any of the holidays prescribed in this clause, such employee shall receive one day's additional pay at ordinary rates from the employer on the next succeeding pay day.

## (3) 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.

## 19.—ANNUAL LEAVE

(1) Except as hereinafter provided, a period of four consecutive weeks' leave with payment as prescribed in this clause, shall be allowed annually to an employee by the employer after a period of twelve months' continuous service with the employer.

(2) 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.

(3) During a period of annual leave an employee shall receive a loading of 17.5 percent calculated on his ordinary rate of wage. Provided that where the employee would have received any additional rates for work performed in ordinary hours, as prescribed by this award, had he not been on leave during the relevant period and such additional rates would have

entitled him to a greater amount than the loading of 17.5 per cent, then such additional rates shall be added to his ordinary rate of wage in lieu of the 17.5 per cent loading. Provided further, that if the additional rates would have entitled him to a lesser amount than the loading of 17.5 per cent, then such loading of 17.5 per cent shall be added to his ordinary rate of wage in lieu of the additional rates. The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(4) If any prescribed holiday falls within an employee'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.

(5) Any time in respect of which an employee is absent from work, shall not count for the purpose of determining his right to annual leave, unless and only if it is an absence during which he is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award.

(6) (a) For the purposes of this clause service shall be deemed to be continuous notwithstanding—

- (i) any absence from work referred to in subclause (4) of this clause;
- (ii) 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;
- (iii) 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 fourteen 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 personally or by posting it to his 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 (4) of this clause, be taken into account in calculating the period of twelve months' continuous service.

(7) (a) In addition to any payment to which an employee may be entitled under paragraph (b) of this subclause, an employee whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this clause in respect of that qualifying period, shall be given payment as prescribed in subclauses (1), (2) and (3) of this clause 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 has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he had been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying twelve monthly period, an employee leaves his employment, or his employment is terminated by the employer through no fault of the employee, the employee shall be paid 3.08 hours pay at his ordinary rate of wage 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, 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 became entitled to the leave unless the employer agrees in writing that the wage be that applicable at the date the leave commences.

## 20.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 61 of the *Western Australian Industrial Gazette* at pages 22 to 27 both inclusive, are hereby incorporated in and shall be deemed part of this award.

## 21.—PAYMENT OF WAGES

(1) Wages shall be paid at least weekly during the employee's ordinary working hours. No employer shall hold more than two days wages in hand, provided that where by reason of this provision wages become payable on a Sunday or an award holiday, such wages may be held in hand until the next following working day.

(2) Employees 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.

(3) An employee who terminates his employment, or is dismissed by the employer for reasons other than misconduct, shall be paid all wages due to him by the employer on the day of termination of his employment.

(4) At the time of being paid each employee shall be issued with a statement by the employer showing the gross wages and allowances due to him and all deductions made therefrom.

## 22.—WAGES

The following shall be the minimum rates of wage payable to employees covered by this award—

### (1) Classifications (total wage per week)

	\$
(1) Chef	348.20
(2) Qualified Cook	323.50
(3) Cook employed alone	309.10
(4) Breakfast and/or Other Cooks	303.40
(5) Bar Attendant	306.10
(6) Waiter/Waitress	299.20
(7) Steward/Stewardess	299.20
(8) Cashier	306.10
(9) Counterhand/Kiosk Attendant	299.20
(10) Kitchenhand	296.30
(11) Laundry Worker	296.30
(12) Cleaner	296.30
(13) General Hand	296.30

### (2) Leading Hands—

An employee (other than a Chef) who is appointed and placed in charge of other employees, by the employer, shall be paid the following rates in addition to his or her normal wage per week—

	\$
(a) if placed in charge of less than 6 workers	8.10
(b) if placed in charge of 6 to 10 workers	10.70
(c) if placed in charge of 11 to 20 workers	12.30
(d) if placed in charge of more than 20 workers	20.60

## 23.—JUNIOR EMPLOYEES

(1) Subject to the provisions of the Liquor Act, 1970 male and female employees under the age of eighteen years may be employed as junior employees in any of the occupations covered by this award, other than an apprenticeship trade, in the proportion of one junior to every two or fraction of two adult employees, not being less than one adult employee, employed in the same occupation.

(2) The minimum weekly rates of wages for work in ordinary time to be paid to junior employees shall be as follows—

	Percentage of the lowest adult male or female total rate
Under 16 years of age	50
Between 16 and 17 years of age	60
Between 17 and 18 years of age	70
At 18 years of age and over	FULL ADULT RATES

(3) No junior female employee shall be employed after 8 pm on any day without permission in writing from one of the parents or guardian of such junior employee.

#### 24.—APPRENTICES

(1) Apprentices may be taken to the trade of cooking in the ratio of one apprentice for every two or fraction of two (the fraction being not less than one) journeymen employed and shall not be taken in excess of that ratio unless—

- (a) the Union so agrees; or
- (b) the Commission so determines.

(2) Wages (per week) expressed as a percentage of the "Tradesman's Rate"—

(a) Four Year Term—	%
First year	42
Second year	55
Third year	75
Fourth year	88
(b) Three and a Half Year Term—	
First six months	42
Next year	55
Next following year	75
Final year	88
(c) Three Year Term—	
First year	55
Second year	75
Third year	88

- (d) For the purposes of this subclause the term "Tradesman's Rate" means the total rate payable to a "Qualified Cook", as prescribed in Clause 22.—Wages, of this award.

#### 25.—BAR WORK

Any employee, other than a Bar Attendant, who in addition to his or her normal duties is required to dispense liquor from a bar, shall be paid a flat rate of sixty five cents per day in addition to the rate prescribed for such normal duties.

#### 26.—HIGHER DUTIES

(1) Any employee performing work for two or more hours in any one day on duties carrying a higher prescribed rate of wage than that in which he is engaged, shall be paid the higher wage for such day. If work is performed for less than two hours in any day, he shall be paid the higher wage for the time so worked.

(2) Any employee who is required to perform duties carrying a lower prescribed rate of wage, shall do so without any loss of pay.

#### 27.—UNIFORMS AND LAUNDERING

(1) Subject to subclause (2) hereof, where uniforms are required to be worn by the employer they shall be supplied and laundered by the employer and remain the property of the employer, provided that in lieu of the employer laundering same, the employee shall be paid \$3.00 per week for such laundering. Provided further that any employee employed as a Cook shall be paid \$4.00 per week for laundering.

(2) Where the employer requires that traditional hospitality uniforms be worn (black and whites and Chef's uniform) these shall be supplied at the employee's own expense.

#### 28.—PROTECTIVE CLOTHING

(1) Employees who are required to wash dishes, or otherwise handle detergents, acids, soaps or any injurious substances, shall be supplied with rubber gloves free of charge by the employer.

(2) Where the conditions of work are such that employees are unable to avoid their clothing becoming dirty or wet, they

shall be supplied with suitable protective clothing free of charge by the employer.

(3) All articles supplied shall remain the property of the employer and shall be returned when required, in good order and condition, fair wear and tear expected.

#### 29.—EMPLOYEE'S EQUIPMENT

All knives, choppers, tools, brushes, towels, and other utensils, implements and material which may be required to be used by the employee for the purpose of carrying out his duties, shall be supplied by the employer free of charge.

Provided that where an employee is required by the employer to use his own knives he shall be paid an allowance of \$6.00 per week.

#### 30.—LIMITATION OF WORK

(1) No female employee shall be required to climb ladders or any substitute therefor, for any purpose whatsoever.

(2) No female employee under the age of eighteen years shall be required to lift or carry weights in excess of eleven kilograms and no female employee over eighteen years of age shall be required to lift or carry weights in excess of sixteen kilograms.

#### 31.—TRAVELLING FACILITIES

(1) Where an employee is detained at work until it is too late to travel by the last ordinary bus, train or other regular public conveyance to his usual place of residence the employer shall provide proper conveyance free of charge.

(2) If an employee is required to start work before the first ordinary means of public conveyance (hereinbefore described) is available to convey him from his usual place of residence to the place of employment, the employer shall provide a conveyance free of charge.

(3) The provisions of this clause do not apply to an employee who usually has his or her own means of conveyance.

#### 32.—RECORD

(1) The employer shall keep, or cause to be kept, at the Registered Business Premises, a Time and Wages Record, wherein shall be entered the following information—

- (a) the full name, postal address and occupation of each employee employed and whether the employee is being employed on a full-time, part-time or casual contract of service;
- (b) The time each employee commences and finishes work each day, including any breaks in shift;
- (c) The number of hours worked each day by each employee and the total hours worked each pay period.
- (d) The wages and (if any) overtime and allowances paid to each employee each pay period.
- (e) The age of any employee employed on junior rates of pay.

(2) The Record shall be entered up by the employer from day to day and shall be signed, if correct, by the employee.

(3) The Record shall be opened for inspection to a duly accredited representative of the union from Monday to Friday, both inclusive, between the hours of 9.00 am to 5.00 pm, (excepting from 12.00 noon to 2.00 pm). Such representative shall be permitted time to inspect the Record and, if he requires, shall be allowed to take any extract or copy of any of the information contained in the Record, which shall be maintained by the employer on the business premises for a period of not less than twelve months.

#### 33.—ROSTER

(1) A roster of the working hours of each employee shall be exhibited in the office of each establishment and in such other place by the employer, so as it may be conveniently and readily seen by each employee.

(2) Such roster shall show—

- (a) the name and occupation of each employee;
- (b) the hours to be worked by each employee each day and the breaks in shift to be taken.

(3) The rosters shall be open for inspection to a duly accredited representative of the union during normal business hours.

(4) Such rosters shall be drawn up in such a manner as to show the working hours of each employee for at least one week 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.

#### 34.—CHANGE AND REST ROOMS

The employer will ensure that adequate change and rest rooms shall be provided where such are reasonably practicable.

#### 35.—FIRST AID KIT

In each establishment the employer shall provide and continuously maintain at a place easily accessible to all employees an adequate First Aid Kit.

#### 36.—POSTING OF AWARD AND UNION NOTICES

(1) A copy of this award, if supplied by the union, shall be exhibited by the employer on his business premises in such a place where it may be conveniently and readily seen by each employee.

(2) The Secretary of the union, or any other duly accredited representative of the union, shall be permitted to post notices relating to union business in such a place where it may be conveniently and readily seen by each employee.

#### 37.—BOARD OF REFERENCE

The Board of Reference referred to in this award is the Board of Reference constituted by the provisions of section 48 of the Industrial Relations Act, 1979.

#### 38.—SUPERANNUATION

##### (1) Definitions—

In this clause—

- (a) "Approved Occupational Superannuation Fund" means a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.
- (b) "Fund" means—
  - (i) The Spotless Superannuation Fund; or
  - (ii) The Hospitality Industry Portable Liquor Union Superannuation Trust (HOST-PLUS).
- (c) "Ordinary Time Earnings" means the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties, and any over award payments, together with any other all purpose allowance or penalty payment for work in ordinary time and shall include in respect to casual and part-time employees the appropriate loadings prescribed in the award, but shall exclude any payment for overtime worked.
- (d) "Eligible employee" means an employee whose employment is regulated by this award and who has completed at least one month's employment with the employer and who is employed on a regular basis for not less than an average of 12 hours per week.
- (e) "Trustee" means the trustee of the relevant fund.

##### (2) Contributions—

- (a) The employer shall contribute to the Fund, elected by the employee, in respect of each eligible employee who is a member of the Fund, an amount equal to 3% of that employee's ordinary time earnings each pay period with effect from the beginning of the first pay period commencing after the operation of this clause or the employee's commencement date, whichever is the later.
- (b) Employer contributions, together with any employee deductions, shall be paid monthly for pay periods completed in each month. Provided that payments may be made at such other time and in such other manner as may be agreed in writing between the trustee of the Fund and the employer from time to time.

(c) The employer shall not be required to contribute during any periods of unpaid leave. Further, an employer shall not be required to make additional contributions in respect of annual leave paid out at termination.

##### (3) Employer to Continue Participation—

The employer shall not cease to participate in the Fund in respect of any eligible employee whilst employing an eligible employee who remains in the Fund.

##### (4) Cessation of Contribution—

The obligation of the employer to contribute to the Fund in respect of an eligible employee shall cease on the last day of that eligible employee's employment with the employer.

##### (5) Employee's Additional Voluntary Contributions—

Where the rules of the Fund allow an eligible employee to make additional contributions an eligible employee may elect to make additional contributions to the Fund and the employer shall, where an election is made, upon the direction of the employee deduct contributions from the employee's wages and pay them to the Fund in accordance with the direction of the employee and the rules of the Fund.

##### (6) Employee Entry Into Fund—

- (a) The employer shall, no later than the end of the first pay period following the date of operation of this clause or the date of an employee commencing employment, notify each employee in writing of a right to superannuation benefit arising from the provisions of this clause.
- (b) The employer shall make contributions to the Fund in accordance with paragraph (2)(a) hereof in respect of each eligible employee unless and until the employee returns in writing a rejection of fund membership 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 (7) 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) hereof 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.

## (7) 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)”

DATED at Perth this 20th day of November 1985.

By the Commission in Court Session,

Senior Commissioner.

#### APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

- (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
- (b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
- (ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

#### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

**CHILD CARE WORKERS (EDUCATION  
DEPARTMENT) AWARD.  
No. A20 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 11th day of June, 1997.

J. CARRIGG,  
Registrar.

Child Care Workers (Education Department) Award,  
No. A20 of 1984

1.—TITLE

This award shall be known as the Child Care Workers (Education Department) Award and replaces the Teachers (Kindergartens) Award No. 22 of 1963 insofar as it relates to assistants.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
  - 1A Statement of Principles—August 1996
  2. Arrangement
  3. Area
  4. Scope
  5. Term
  6. Hours
  7. Holidays
  8. Annual Leave Loading
  9. Sick Leave
  10. Contract of Service
  11. Part-Time Employees
  12. Long Service Leave
  13. Conditions and Allowances
  14. Salaries
  15. Rest Pauses and Meal Break
  16. Definitions
- Schedule A—Parties to the Award  
Schedule B—Respondent

3.—AREA

This award shall have effect throughout the State of Western Australia.

4.—SCOPE

This award shall be binding on Child Care Workers employed by the Minister for Education.

5.—TERM

This award shall be for a period of one year from the date hereof.

6.—HOURS

The ordinary hours of work shall be thirty two and one half per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than thirty two and one half, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

7.—HOLIDAYS

(1) An employee shall not be required to present herself for duty on any day on which the school at which she is employed is not open.

(2) Subject to the provisions of subclause (4) of this clause each employee shall be paid her ordinary salary for any day on which she is relieved of the obligation to present herself for work.

(3) Any employee required to work on any day observed as a school holiday shall be paid for the time worked at the rate of double time and one half.

(4) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

8.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the last payment of ordinary salary made prior to Christmas Day or in the event of a termination prior to the end of the school year in the final payment made to the employee.

(2) Subject to subclause (3) of this clause, the annual leave loading shall be 17.5 percent of four weeks' salary at the rate of pay applicable at the time of payment.

(3) Where an employee is employed for less than the full school year, the annual leave loading shall be paid on a pro rata basis in the same proportion as the number of weeks which the employee was employed to actually work in the school bear to the number of weeks in the same school year.

9.—SICK LEAVE

(1) (a) An employee shall be entitled to payment for non-attendance on the ground of personal ill health or injury at the rate of one day's pay for each four weeks which the employee was employed to actually work in the school.

(b) 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 any succeeding year.

(c) 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 incapacity in that year to a greater allowance than that made at the time the incapacity occurred.

(2) This clause shall not apply where the employee is entitled to compensation under the Workers' Compensation and Assistance Act, 1981.

(3) No employee shall be entitled to the benefits of this clause unless she produces proof to the satisfaction of the employer or the employer's representative of such incapacity provided that the employer shall not be entitled to a medical certificate for absence of less than three consecutive working days unless the total of such absences exceed five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's misconduct.

10.—CONTRACT OF SERVICE

(1) The contract of employment of every employee shall be a four weekly contract terminable by four week's notice on either side. In the event of the employer or an employee not giving required notice four weeks salary shall be either paid or forfeited.

(2) The provisions of subclause (1) of this clause shall not affect the right of the employer to dismiss an employee without notice for misconduct in which case salary shall be paid up to the time of dismissal.

(3) 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.

11.—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.

(2) A part-time employee employed under the provisions of this clause shall receive payment for sick leave and long service leave on a pro rata basis in the proportion which their hours of work bear to the hours fixed by Clause 6.—Hours of this Award.

## 12.—LONG SERVICE LEAVE

The conditions governing the granting of long service leave to Government Wages Employees generally shall apply to employees covered by this Award. Provided that any day referred to in Clause 7.—Holidays of this award, on which the employee is relieved of the obligation to present herself for work shall be deemed to be 'service' for the purpose of those conditions.

## 13.—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.

## 14.—SALARIES

(1) (a) The total minimum award wage payable includes the base rate and arbitrated safety net adjustments payable from the beginning of the first pay period on or after 16 June 1996.

	Base Rate	1, 2 & 3 Arbitrated Safety Net Adjustments	Minimum Award Wage
	\$	\$	\$
1st year of employment	19,045.00	1,251.00	20,296.00
2nd year of employment	21,002.00	1,251.00	22,253.00
3rd year of employment	22,084.00	1,251.00	23,335.00
4th year of employment	23,163.00	1,251.00	24,414.00
5th year of employment	24,233.00	1,251.00	25,484.00

(b) Consistent with the requirements of the December 1993 State Wage Decision, the Arbitrated Safety Net Adjustment is absorbable to the extent of any equivalent amount in rates of pay (whether award, or overaward or enterprise agreement) in excess of the relevant minimum rates (classification rate and supplementary payment) established through the Minimum Rates Adjustment process.

(c) "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 "Minimum 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) For the purpose of adjustment and payment the weekly salary shall be calculated as 1/52nd and 1/6th of the annual salary, the fortnightly salary as 1/26th and 1/12th of the annual salary and the monthly salary as 1/12th of the annual salary.

(3) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a Child Care Worker in her 5th year of employment for the whole period she is in charge.

(4) An employee who has had previous experience relevant to employment covered by this award may have that experience taken into account in determining the 'year of employment' at which an employee is appointed and paid.

(5) An employee may be employed as a casual if that employment is for a period of less than four weeks, in which case the employee shall be paid a loading of 27 percent in addition to her base rate in lieu of the provisions of Clauses 7.—Holidays, 8.—Annual Leave Loading, 9.—Sick Leave and 12.—Long Service Leave of this award.

(6) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

## 15.—REST PAUSES AND MEAL BREAK

(1) All employees shall be allowed a tea break of ten minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: Provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than thirty minutes nor more than one hour between the hours of twelve noon and 2.00 p.m. Such time shall not count as time worked.

## 16.—DEFINITIONS

In this award the following words and phrases shall mean—

"School"—any pre-school, or Government pre-primary centre, primary school, secondary school, technical college or technical school.

"School Year"—that part of a calendar year from and including the first day in that year on which that school opens for attendance of teachers to and including the last day in that year that such school is open for that purpose.

"Child Care Worker"—means a person who—

(a) holds the Child Care Certificate, National Nursery Examination Board Certificate or other qualifications in early child care or education which is approved by the Minister after consultation with the Union as being of equivalent standard; and

(i) was employed and paid as such at 1st July, 1984;

(ii) is employed in a pre-primary or pre-school centre, which meets the guidelines established between the Union and the Minister for Child Care Worker employment, to assist the teacher by carrying out such functions consistent with her qualification as the teacher may direct;

(b) but does not include a person who has expressly contracted to work as a teachers' aide after 1st July, 1984.

(c) Any dispute arising under paragraph (a) (ii) of this definition may be referred to the Western Australian Industrial Commission for determination.

DATED at Perth this 5th day of November, 1984.

## 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

The Minister for Education,  
Education Department,  
151 Royal Street,  
EAST PERTH WA 6000.

**CLERKS' (CREDIT AND FINANCE  
ESTABLISHMENTS) AWARD.  
No. 16 of 1952.**

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 11th day of June, 1997.

J. CARRIGG,  
Registrar.

Clerks' (Credit and Finance Establishments) Award

## 1.—TITLE

This award shall be known as the Clerks' (Credit and Finance Establishments) Award as amended and consolidated.

## 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

## 2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
- 2A. No Extra Claims
3. Area
4. Scope
5. Definitions
6. Hours of Duty
- 6A. Additional Rates for Ordinary Hours
7. Overtime
8. Meal Allowance
9. Holidays
10. Rates of Pay
11. Annual Leave
12. Sick Leave
13. Contract of Service
14. Reference
15. Record
16. Casual Employees
- 16A. Part-Time Employees
17. Travelling Time
18. Higher Duties
19. Aged and Infirm Employees
20. Certificate of Age
21. General
22. Right of Entry
23. Term
24. Deleted
25. Liberty to Apply
26. Long Service Leave
27. Deleted
28. Payment of Wages
29. Compassionate Leave
30. Maternity Leave
31. Location Allowances
32. Traineeships
33. Superannuation
34. Award Modernisation (Enterprise Agreements)
- Appendix—Resolution of Disputes Requirement
- Schedule of Respondents
- Schedule—Named Union Party
- Appendix—S.49B—Inspection Of Records Requirements

## 2A.—NO EXTRA CLAIMS

It is a term of this award (arising from the decision of the Commission in Court Session in Application No. 704 of 1991) that the Union will not pursue prior to 15th November 1991 any extra claim, award or overaward, except where consistent with the State Wage Principles.

## 3.—AREA

This award shall have effect over the whole of the State of Western Australia excepting that portion within the 20th and 26th parallel of latitude and the 125th and 129th meridian of longitude.

## 4.—SCOPE

This award shall apply to workers employed as clerks in any credit and finance establishment as defined in clause 5.—Definitions of this award: Provided that it shall not apply to workers who are at present provided for in any other award of the Court of Arbitration.

## 5.—DEFINITIONS

For the purpose of this award—

- (1) “Adult” shall mean a worker twenty-one years of age and over, or a worker who is in receipt of the prescribed adult rate of pay.

- (2) “Double time” for the purpose of this award means twice the prescribed rate of wage.

- (3) “Credit and Finance Establishment” shall mean an establishment where finance is arranged and/or extended to individual persons and/or bodies corporate for the purchase of goods.

## 6.—HOURS OF DUTY

(1) (a) Subject to any other provisions of this Award, the ordinary hours of duty shall not exceed thirty-eight hours in any one week or eight hours in any day and, at the discretion of the employer, may be worked in a five or five and a half day week Monday to Saturday inclusive.

(b) Where an ordinary hours work period commences prior to midnight on any day, that work period shall be deemed to have been worked on the day upon which the ordinary hours work period commenced. Provided, however, that the employee shall be paid the appropriate additional rates provided by Clause 6A.—Additional Rates for Ordinary Hours or Clause 9.—Holidays, according to the actual hours worked in that work period.

(c) In establishments where, subject to subclause (3) of this clause, the ordinary hours of work—

- (i) are worked over 19 days in each four week cycle, forty hours may be worked in any three weeks of such cycle; or
- (ii) are worked over 9½ days in each two week cycle, forty hours may be worked in any one week of such cycle.

(2) (a) A meal break shall be taken at a time mutually arranged between the employer and the employee after no more than five hours of work. Such meal break shall be one hour, except in cases where the employer and the employee agree that the meal break shall be for a lesser period not shorter than thirty minutes.

(b) A minimum of one refreshment break shall be allowed during working hours.

(3) In those establishments where immediately prior to the first day of January, 1986 the ordinary hours of duty exceeded thirty-eight in any one week the thirty-eight hour week shall be implemented—

- (a) Where specific agreement is reached between the employer and employees affected, by one of the following methods—
  - (i) by employees being required to work not more than 19 days in each 4 week cycle; or
  - (ii) by employees being required to work not more than 4 hours on one day of each 2 week cycle; or
  - (iii) by employees being required to work not more than 6 hours on one day of each week; or
  - (iv) by employees being required to work less than 8 ordinary hours on each day.
- (b) In the event of agreement not being reached under paragraph (a) of this subclause, by the following methods—
  - (i) In establishments employing 15 or more employees per week in accordance with this Award, the paragraph (a)(i) method only shall be applied.
  - (ii) In establishments employing more than 5 but less than 15 employees per week in accordance with this Award, any of the methods of paragraphs (a)(i), (a)(ii) or (a)(iii) only shall be applied.
  - (iii) In establishments employing 5 or less employees per week in accordance with this Award any of the paragraph (a) methods shall be applied.

- (c) In any case where agreement is reached between an employer and an employee pursuant to paragraph (a) of this subclause, the Union shall be notified in writing no later than 7 days prior to the implementation of such agreement.

- (d) Any dispute concerning the method of implementation shall be referred to the Commission for determination.
- (e) An employee shall not be required to work on a day or partial day when such a day is the rostered day or partial day off (pursuant to the provisions of paragraphs (a) and (b) of this subclause) for that employee, unless such employee elects to work on such day. Where an employee so elects, all time worked shall be paid for at double time, with a minimum payment of four hours at double time.
- (f) By agreement, employees may request an alternate day to the rostered day off within the current cycle for personal reasons.
- (g) Schedules of rostered days off will be published and displayed in a place accessible to staff one month in advance.
- (h) If a public holiday falls on a rostered day off due to an employee under placitum (i) or (ii), of paragraph (a), of this subclause, such employee shall be compensated in one of the following methods by agreement between the employer and the employee—
  - (i) payment of an additional day's wages; or
  - (ii) another day shall be allowed with pay within twenty-eight days; or
  - (iii) an additional day shall be added to the annual leave entitlement.

(4) Notwithstanding the other provisions of this clause an employer and the Union may agree that ordinary hours shall be worked on such other basis as may be agreed. Such agreement shall be in writing.

#### 6A.—ADDITIONAL RATES FOR ORDINARY HOURS

(1) An employee who is required to work any ordinary hours prior to 7.00am or after 7.00pm on any day Monday to Friday both inclusive shall be paid, for each hour so worked, the ordinary rate plus twenty percent.

(2) (a) Ordinary hours of work performed by an employee on a Saturday prior to 12 noon, shall be paid at the rate of time and a quarter.

(b) Ordinary hours of work performed by an employee on a Saturday after 12 noon, shall be paid at the rate of time and a half.

(3) In the event that an employee, who on 30 January 1991, is in receipt of a greater additional loading for the ordinary hours of work provided by this clause, that employee shall continue to receive such additional loadings whilst remaining in employment with his/her employer.

#### 7.—OVERTIME

(1) All time worked in excess of eight hours in any one day shall be paid for at the rate of time and one half for the first two hours and at the rate of double time thereafter.

(2) Where an employee is required by the employer to work through the meal break as provided elsewhere in this Award overtime rates shall be paid until the meal period is allowed.

(3) (a) Except as provided elsewhere in this Award work performed on a Sunday or after 12 noon on a Saturday shall be paid for at the rate of double time.

(b) All time worked on any of the holidays prescribed by this Award shall be paid for at the rate of double time and a half.

(4) In the computation of overtime each day shall stand by itself.

(5) Any clerk in receipt of a salary at the rate of twenty percentum per week or more in excess of the rate herein prescribed for a senior clerk shall not be entitled to payment of overtime rates for any overtime worked.

(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 subclauses (1), (3), or, where otherwise appropriate, subclause (5) 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 one month of it being accrued at a time agreed between the employer and the employee.

(c) Where such time off in lieu is not taken in accordance with paragraph (b) hereof, 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 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) (a) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) An employee 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 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 10 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 an 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.

(d) Where an employee is called into work on a Sunday or public holiday preceding an ordinary working day, he/she shall, wherever reasonably practicable, be given 10 consecutive hours off duty before his/her 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*.

(8) (a) An employer may require any employee to work reasonable overtime at overtime rates, and such employee shall work overtime in accordance with such requirement.

(b) No 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 subclause.

#### 8.—MEAL ALLOWANCE

In addition to the overtime prescribed in Clause 7.—Overtime, a meal allowance of \$6.10 shall be paid to each employee in the following circumstances—

- (1) To an employee who, at the requirement of the employer, works two hours or more overtime after the completion of the ordinary hours on any day.
- (2) If the employee is required to work after 1.00 p.m. on a Sunday or any holiday, prescribed under this Award.
- (3) Provided that in lieu of the payment prescribed by this clause an employer may supply the employee with a suitable meal.

#### 9.—HOLIDAYS

(1) The following days or the days observed in lieu shall, subject to Clause 7.—Overtime, and subject as hereinafter provided, be allowed as holidays without deduction of pay, namely—New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in the subclause.

(2) When 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 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) 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.

(4) Where—

- (a) a day is proclaimed as a whole public holiday or a half public 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 public holiday or, as the case may be, a half public holiday for the purposes of this Award within the district or locality specified in the proclamation.

(5) When any of the days mentioned in subclause (1) hereof falls on an employee's rostered day off the employer and the employee may agree that the employee receive—

- (a) an additional day's wages; or
- (b) another day off may be allowed within twenty-eight days of the award holiday; or
- (c) an additional day off may be taken in conjunction with a period of annual leave.

(6) All ordinary hours of work performed on a holiday provided by this clause, shall be paid at the rate of double time and a half.

(7) Except for the provisions of subclause (6) hereof, the provisions of this clause shall not apply to casual employees.

10.—RATES OF PAY

(1) The following shall be the minimum rates of wages per week payable to employees covered by this Award.

(2) Adult Employees (rate per week)—

(a)

	Base Rate Per Week \$	Arbitrated Safety Net Adjustment Per Week \$	Total Rate Per Week \$
At 21 years of age	361.10	24.00	385.10
At 22 years of age	365.30	24.00	389.30
At 23 years of age	369.10	24.00	393.10
At 24 years of age	373.00	24.00	397.00
At 25 years of age and over	377.40	24.00	401.40

(b) Adult stenographers, comptometer or calculating or ledger machine operators shall receive \$4.10 per week in addition to the rates set out in paragraph (a) of this subclause.

(c)

	Base Rate Per Week \$	Arbitrated Safety Net Adjustment Per Week \$	Total Rate Per Week \$
Senior Clerks (Classified as such or in default of agreement by the Board of Reference)	383.20	24.00	407.20

(d) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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) Junior Employees—

(a) Percentage of the rate for an adult employee at 21 years of age per week—

	%
At 15 years of age	40
At 16 years of age	50
At 17 years of age	60
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

(b) Junior stenographers, comptometer or calculating or ledger machine operators shall, in addition to the rates set out in paragraph (a) of this subclause, receive—

	\$
At 17 years of age	0.70
At 18 years of age	1.00
At 19 years of age	2.60
At 20 years of age	3.40

11.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment at his ordinary rate of wage shall be allowed annually to a worker by his employer after a period of 12 months continuous service with such employer.

(2) (a) During a period of annual leave a worker shall be paid a loading of 17½ per cent calculated on his ordinary rate of wage.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(c) A worker in receipt of a weekly wage prescribed by this award for the classification of "Senior Clerk" with the addition of 20 per centum may be employed on the basis that the annual leave loading prescribed in paragraph (a) hereof may be calculated on a rate other than his ordinary rate provided that such rate is not less than the Senior Clerk's rate.

This paragraph only applies to a worker who has signed a statement in his own handwriting to this effect at the time of his engagement or to a worker employed on this basis prior to 30th April 1981.

(3) If any award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

(4) (a) If after one month's continuous service in any qualifying twelve monthly period a worker lawfully leaves his employment, or his employment is terminated by the employer through no fault of the worker, that worker shall be paid one thirteenth of a week's pay at his ordinary rate of wage in respect of each completed week 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 12 months qualifying period and who has not been allowed the leave 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—

- (i) He has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(5) Any time in respect of which a worker is absent from work, except time for which he is entitled to claim sick pay, or time spent on holidays or annual leave as prescribed by this award, shall not count for the purpose of determining his right to annual leave.

(6) 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.

(7) Every worker shall be given and shall take annual leave within nine months after the date it falls due.

(8) No worker shall be required to proceed on annual leave unless at least two weeks prior notice is given. The employer shall, as far as practicable, arrange to grant annual leave to

suit the convenience of the worker. In the event of disagreement on any proposed alteration to annual leave arrangements once they are made by an employer and worker the matter shall be determined by a Board of Reference.

(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 by subclause (1) of this clause.

(b) If the service of an employee terminates and the employee has taken a period of leave in accordance with this subclause and if the period of leave so taken exceeds that which would become due pursuant to subclause (4) of this clause, the employee shall be liable to pay the amount representing the difference between the amount received by him for the period of leave taken in accordance with this subclause and the amount which would have accrued in accordance with subclause (4) of this clause. The employer may deduct this amount from monies due to the employee by reason of the other provisions of this Award at the time of termination.

(c) The annual leave loading provided by subclause (2)(a) 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) 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 annual leave in not more than two periods but neither of such periods shall be less than one week.

(11) 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 leave on full pay as is proportionate to his length of service during that period with such employer and, if such leave is not equal to the leave given to the other employees, he shall not be entitled to work or pay whilst the other employees are on leave on full pay.

(12) The provisions of this clause shall not apply to casual employees.

#### 12.—SICK LEAVE

(1) (a) A worker who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the worker's services terminate, if before the end of that year of service, to the extent that the worker has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the worker if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that a worker shall not be entitled to claim payment for any period exceeding 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 a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such

other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 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 11.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the worker's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmitter shall stand to the credit of the worker at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) The provisions of this clause do not apply to casual workers.

#### 13.—CONTRACT OF SERVICE

(1) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

(2) The employment of any employee other than a casual shall be terminable by one week's notice on either side. If such notice is not given one week's wages shall be paid or forfeited as the case may be. Provided that an employee may be summarily dismissed for gross misconduct, in which case he shall be paid up to the time of dismissal only.

#### 14.—REFERENCE

On leaving the employ of an employer the worker shall be given a reference setting out length of service and duties performed.

#### 15.—RECORD

(1) Each employer bound by this Award shall maintain a record containing the following information relating to each employee—

- (a) The name and address given by the employee.
- (b) The age of the employee if under 25 years of age.

- (c) The classification of the employee and whether the employee is full-time, part-time or casual.
- (d) The commencing and finishing times of each period of work each day.
- (e) The number of ordinary hours and the number of overtime hours worked each day and the totals for each pay period.
- (f) The wages and any allowances paid to the 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 (e) and (f) of subclause (1) of this clause, with respect to the pay period for which payment is being made.

(b) If a pay slip is not given to the employee as prescribed in paragraph (a) hereof the employer shall permit the employee to inspect the record either at the time of payment or at such other time as may be convenient to the employer. 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 whether manual or mechanical 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 subclauses (2) and (4) of this clause, to be conducted at the establishment.

(b) The record shall be kept in date order so that the inspections referred to in subclauses (2) and (4) of this clause may be made with respect to a period of 6 years preceding the date of inspection.

(c) 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 with respect to provisions contained elsewhere in this clause with the exception of those contained in paragraph (b) of this subclause.

(d) Subject to this clause the record shall be available for inspection by a duly authorised official of the Union during the normal hours of business of the employer, but excepting any time when the employer or his employees who are required to maintain the record may be absent.

(e) The Union official shall be permitted reasonable time to inspect the record and, if he 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 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 requires to inspect the record in accordance with the provisions of this Award and shall specify the period contained in the record which he requires to inspect.

(c) (i) Employers who normally keep the record at a place more than 35 kilometres from the GPO Perth shall send a copy of that part of the record specified to the office of the Union within ten days of the receipt of such advice; and

(ii) employers who normally keep the record at a place less than 35 kilometres from the GPO Perth shall make the record available to the Union official at the time specified by the Union official. If the record is not then made available to the Union official the employer shall within 3 days send a copy of that part of the record specified to the office of the Union.

(d) In the event of a dispute between the Union and the employer as to the availability and/or supply of the record, the parties may apply to the Western Australian Industrial Relations Commission for direction. An application for direction shall, subject to that direction, stay the requirements contained elsewhere in this clause.

#### 16.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged and paid as such, and whose employment may be terminated by the giving of one hour's notice on either side, or the payment or forfeiture, as the case may be, of one hour's pay.

(2) (a) A casual employee may be employed for periods not exceeding four weeks and, whilst so employed, shall receive 25 percent in addition to the appropriate ordinary hourly wage rate prescribed by this Award with a minimum payment as for four hours for each work period.

(b) The duration of the casual engagement may be extended to thirteen weeks in the event that the employee is engaged to cover for another employee who is absent on account of long service leave, annual leave, sick leave, injury compensable under the Workers Compensation and Assistance Act, or an authorised period of unpaid leave.

(3) Subject to any agreement between the employer and the employee to the contrary, subclause (3) of Clause 6.—Hours of Duty, shall not apply to casual employees.

(4) Notwithstanding the provisions of this clause the basis and terms of employment of casual clerks may be varied in any particular case by agreement in writing between the employer and the Union.

#### 16A.—PART-TIME EMPLOYEES

(1) A part-time employee shall mean an employee who, subject to the provisions of Clause 6.—Hours of Duty, regularly works no more than 32 ordinary hours per week.

(2) (a) At the time of engagement the employer and the employee shall agree to the number of ordinary hours to be worked by the employee in each week.

(b) Such number of ordinary hours, once agreed, may be varied by either side giving the amount of notice required by Clause 13.—Contract of Service.

(3) A part-time employee shall receive payment for wages, annual leave, holidays and sick leave on a pro rata basis in the same proportion as the number of hours regularly worked each week bears to 38 hours.

(4) Subject to any agreement between the employer and the employee to the contrary, subclause (3) of Clause 6.—Hours of Duty, shall not apply to part-time employees.

#### 17.—TRAVELLING TIME

(1) When a worker is required to work temporarily at a location other than his usual place of duty, any excess fare over that which he normally incurs shall be paid by the employer.

(2) When a worker is engaged at such a distance that he cannot return at night, suitable board and lodging shall be found at the employer's expense.

(3) All travelling time outside ordinary working hours shall be paid for at ordinary rates up to a maximum of 12 hours in any 24 hour period from the time of starting on the journey: Provided that when the travelling is by coastal boat not more than eight hours shall be paid for in any such period.

#### 18.—HIGHER DUTIES

A worker relieving another worker who is engaged on a higher class of work carrying a higher minimum rate of pay for a period of not less than one (1) week continuously shall be paid the higher minimum rate appropriate to the position whilst so employed.

#### 19.—AGED AND INFIRM 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 a Board of Reference.

(3) After application has been made to a Board of Reference and pending the decision of that Board, the employee shall be entitled to work for and be employed at the proposed lesser rate.

#### 20.—CERTIFICATE OF AGE

(1) Upon engagement an employee twenty-five years of age and under shall, if requested, furnish the employer with a certificate showing the following particulars—

- (a) name in full;
- (b) date of birth;
- (c) name of each previous employer; and
- (d) class of work performed for each previous employer.

(2) No employee shall have any claim upon an employer for additional wages in the event of any of the above particulars being wrongly stated on the certificate. If any employee shall wilfully mis-state his/her age in the certificate then he/she alone shall be guilty of a breach of this Award.

#### 21.—GENERAL

(1) In the event of the death of a worker the cash equivalent of all annual leave due at the time of death shall be paid to the worker's dependants or personal representative.

(2) No worker shall, as a result of the operation of this award, suffer any loss of salary which he or she may have enjoyed to the date of this award.

#### 22.—RIGHT OF ENTRY

A duly accredited representative of the union shall be permitted to interview any worker on legitimate union business on the business premises of his employer during the recognised meal hour of the worker with the permission of his employer (which permission shall not be unreasonably withheld) but this permission shall not be exercised more than once in any one week without the consent of the employer.

#### 23.—TERM

This Award shall operate for a period of three years commencing as from the beginning of the first pay period after the date hereof.

(This Award was issued on the 30th day of November, 1953).

#### 24.—DELETED

#### 25.—LIBERTY TO APPLY

Liberty is reserved to any party to apply to correct any errors or to overcome any anomalies created by any hours amendments to the Shop Assistants' Awards or Agreements.

#### 26.—LONG SERVICE LEAVE

##### 1. Right to Leave.

A worker shall, as herein provided, be entitled to leave with pay in respect of long service.

##### 2. Long Service.

(1) The long service which shall entitle a worker to such leave shall, subject as herein provided, be continuous service with one and the same employer.

(2) Such service shall include service prior to the first of April, 1958, if it continued until such time, but only to the extent of the last 20 completed years of continuous service.

(3) (a) Where a business has, whether before or after the coming into operation hereof, been transmitted from an employer (herein called "the transmitter") to another employer (herein called "the transferee") and a worker who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transferee, the period of the continuous service which the worker has had with the transmitter (including any such service with any prior transmitter), shall be deemed to be service of the worker with the transferee.

(b) In this subclause "transmission" includes transfer, conveyance, assignment or succession, whether voluntary or by agreement or by operation of law and "transmitted" has a corresponding meaning.

(4) Where, over a continuous period, a worker has been employed by two or more companies each of which is a related company within the meaning of section 6 of the Companies Act, 1961, the period of the continuous service which the worker has had with each of those companies shall be deemed to be service of the worker with the company by whom he is last employed.

(Section 6 reads—

(1) For the purposes of this Act, a corporation shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another corporation if,

(a) that other corporation—

(i) controls the composition of the Board of Directors of the first mentioned corporation;

(ii) controls more than half of the voting power in the first mentioned corporation; or

(iii) holds more than half of the issued share capital of the first mentioned corporation (excluding any part thereof which carries no right to participate beyond a specified amount in a direction of either profits or capital); or

(b) the first mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(2) For the purpose of subsection (1) of this section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors; and for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if—

(a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or

(b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.

(3) In determining whether one corporation is a subsidiary of another corporation—

(a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable—

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other corporation;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is so exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last mentioned company or corporation is a subsidiary.

(5) Where a corporation—

(a) is the holding company of another corporation;

(b) is a subsidiary of another corporation;

(c) is a subsidiary of the holding company of another corporation;

that first mentioned corporation and that other corporation shall for the purposes of this Act, be deemed to be related to each other.

(5) Such service shall include—

- (a) any period of absence from duty on any annual leave or long service leave;
- (b) any period of absence from duty necessitated by sickness of or injury to the worker but only to the extent of 15 working days in any year of his employment;
- (c) any period following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding obligations hereunder in respect of long service leave or obligations under any award in respect of annual leave;
- (d) any period during which the service of the worker was or is interrupted by service—
  - (i) as a member of the Naval, Military or Air Forces of the Commonwealth of Australia other than as a member of the British Commonwealth Occupation Forces in Japan and other than as a member of the Permanent Forces of the Commonwealth of Australia except in the circumstances referred to in section 31(2) of the Defence Act, 1903-1956, and except in Korea or Malaya after 26th June, 1950;
  - (ii) as a member of the Civil Construction Corps established under the National Security Act, 1939-1946;
  - (iii) in any of the Armed Forces under the National Service Act, 1951 (as amended).

Provided that the worker as soon as reasonably practicable on the completion of any such service resumed or resumes employment with the employer by whom he was employed immediately before the commencement of such service.

(6) Service shall be deemed to be continuous notwithstanding—

- (a) the transmission of a business as referred to in paragraph (3) of this subclause;
- (b) the employment with related companies as referred to in paragraph (4) of this subclause;
- (c) any interruption of a class referred to in paragraph (5) of this subclause;
- (d) any absence from duty authorised by the employer;
- (e) any standing down of a worker in accordance with the provisions of an award, industrial agreement, order or determination under either Commonwealth or State law;
- (f) any absence from duty arising directly or indirectly from an industrial dispute if the worker returns to work in accordance with the terms of settlement of the dispute;
- (g) any termination of the employment by the employer on any ground other than slackness of trade if the worker be re-employed by the same employer within a period not exceeding two months from the date of such termination;
- (h) any termination of the employment by the employer on the ground of slackness of trade if the worker is re-employed by the same employer within a period not exceeding six months from the date of such termination;
- (i) any reasonable absence of the worker on legitimate union business in respect of which he has requested and been refused leave;
- (j) any absence from duty after the coming into operation of this clause by reason of any cause not specified in this clause unless the employer, during the absence or within 14 days of the termination of the absence notifies the worker in writing that such absence will be regarded as having broken the continuity of service, which notice may be given by delivery to the worker personally or by posting it by registered mail to his last recorded address, in which case it shall be deemed to have reached him in due course of post.

Provided that the period of absence from duty or the period of any interruption referred to in placita (d) to (j) inclusive of this paragraph, shall not (except as set in paragraph (5) of this subclause), count as service.

3. Period of Leave.

(1) The leave to which a worker shall be entitled or deemed to be entitled shall be as provided in this subclause.

(2) Subject to the provisions of paragraphs (5) and (6) of this subclause—

Where a worker has completed at least 15 years' service the amount of leave shall be—

- (a) in respect of 15 years' service so completed—13 weeks' leave;
- (b) in respect of each 10 years' service completed after such 15 years—eight and two-thirds weeks' leave;
- (c) on the termination of the worker's employment—
  - (i) by his death;
  - (ii) in any circumstances otherwise than by his employer for serious misconduct;

in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of 13 weeks for 15 years' service.

(3) Subject to the provisions of paragraph (6) of this subclause, where a worker has completed at least 10 years' service, but less than 15 years' service since its commencement and his employment is terminated—

- (a) by his death; or
- (b) in any circumstances, otherwise than by his employer for serious misconduct;

the amount of the leave shall be such proportion of 13 weeks' leave as the number of completed years of such service bears to 15 years.

(4) In the cases to which paragraphs (2)(c) and (3) of this subclause apply the worker shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(5) A worker whose service with an employer commenced before 1st October, 1964, and whose service would entitle him to long service leave under this clause shall be entitled to leave calculated on the following basis—

- (a) for each completed year of service commencing before the 1st October, 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and
- (b) for each completed year of service commencing on or after the 1st October, 1964, an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service.

Provided that such worker shall not be entitled to long service leave until his completed years of service entitle him to the amount of long service leave prescribed in either paragraph (2)(a) or paragraph (2)(b) of this subclause as the case may be.

(6) A worker to whom paragraphs (2)(c) and (3) of this subclause apply whose service with an employer commenced before 1st October, 1964, shall be entitled to an amount of long service leave calculated on the following basis—

- (a) for each completed year of service commencing before the 1st October, 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and
- (b) for each completed year of service commencing on or after 1st October, 1964, an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service.

#### 4. Payment for Period of Leave.

(1) A worker shall, subject to paragraph (3) of this subclause, be entitled to be paid for each week of leave to which he has become entitled or is deemed to have become entitled, the rate of pay applicable to him at the date he commences such leave.

(2) Such rate of pay shall be the rate applicable to him for the standard weekly hours which are prescribed by this award (or agreement), but in the case of casuals and part time workers, shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard.

(3) Where by agreement between the employer and the worker the commencement of the leave to which the worker is entitled or any portion thereof is postponed to meet the convenience of the worker, the rate of payment for such leave shall be at the rate of pay applicable to him at the date of accrual, or, if so agreed, at the rate of pay applicable at the date he commences such leave.

(4) The rate of pay—

- (a) shall include any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;
- (b) shall not include shift premiums, overtime, penalty rates, special rates, disability allowances, fares and travelling allowances or the like.

(5) In the case of workers employed on piece or bonus work or any other system of payment by results the rate of pay shall be calculated by averaging the worker's rate of pay for each week over the previous three monthly period.

#### 5. Taking Leave.

(1) In a case to which placita (a) and (b) of paragraph (2) of subclause (3) apply—

- (a) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the worker or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the needs of the employer's establishment and the worker's circumstances.
- (b) Except where the time for taking leave is agreed to by the employer and the worker or determined by the Special Board of Reference the employer shall give to a worker at least one month's notice of the date from which his leave is to be taken.
- (c) Leave may be granted and taken in one continuous period or if the employer and the worker so agree in not more than three separate periods in respect of the first 13 weeks' entitlement and in not more than two separate periods in respect of any subsequent period of entitlement.
- (d) Any leave shall be inclusive of any public holidays specified in this award (or agreement) occurring during the period when the leave is taken but shall not be inclusive of any annual leave.
- (e) Payment shall be made in one of the following ways—
  - (i) In full before the worker goes on leave;
  - (ii) at the same time as his wages would have been paid to him if the worker had remained at work, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
  - (iii) in any other way agreed between the employer and the worker.
- (f) No worker shall, during any period when he is on leave, engage in any employment for hire or reward in substitution for the employment from which he is on leave, and if a worker breaches this provision he shall thereupon forfeit his right to leave hereunder in respect of the unexpired period of leave upon which he has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.

(2) In the case to which paragraph (2)(c) or paragraph (3) of subclause (3) applies and in any case in which the employment of the worker who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of his employment otherwise than by death, pay to the worker, and upon termination of employment by death pay to the personal representative of the worker upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which he is entitled or deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

6. Granting Leave in Advance and Benefits to be Brought into Account.

(1) Any employer may by agreement with a worker allow leave to such a worker before the right thereto has accrued due, but where leave is taken in such case the worker shall not become entitled to any further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.

(2) Where leave has been granted to a worker pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the worker has been granted long service leave to which he was not at the date of termination of his employment or prior thereto entitled.

(3) Any leave in the nature of long service leave or payment in lieu thereof under a State Law or a long service leave scheme not under the provisions hereof granted to a worker by his employer in respect of any period of service with the employer shall be taken into account whether the same is granted before or after the coming into operation hereof and shall be deemed to have been leave taken and granted hereunder in the case of leave with pay to the extent of the period of such leave and in the case of payment in lieu thereof to the extent of a period of leave with pay equivalent thereof of the entitlement of the worker hereunder.

#### 7. Records to be Kept.

(1) Each employer shall, during the employment and for a period of 12 months thereafter, or in the case of termination by death of the worker for a period of three years thereafter, keep a record from which can be readily ascertained the name of each worker, and his occupation, the date of the commencement of his employment and his entitlement to long service leave and any leave which may have been granted to him or in respect of which payment may have been made hereunder.

(2) Such record shall be open for inspection in the manner and circumstances prescribed by this award (or agreement) with respect to the time and wages record.

#### 8. Special Board of Reference.

(1) There shall be constituted a Special Board of Reference for the purpose hereof to which all disputes and matters arising hereunder shall be referred and the Board shall determine all such disputes and matters.

- (2) There shall be assigned to such Board, the functions of—
- (a) the settlement of disputes of any matters arising hereunder;
  - (b) the determination of such matters as are specifically assigned to it hereunder.

(3) The Board of Reference shall consist of one representative or substitute therefore nominated from time to time by the Confederation of Western Australian Industry (Incorporated) and one representative or substitute nominated from time to time by the Trades and Labor Council of Western Australia together with a Chairman to be mutually agreed upon by the organisations named in this paragraph.

#### 9. State Law.

(1) The provisions of any State Law to the extent to which they have before the coming into operation hereof conferred an accrued right on a worker to be granted a period of long service leave in respect of a completed period of 15 or more years' service or employment or an accrued right on a worker

or his personal representative to payment in respect of long service leave shall not be affected hereby and shall not be deemed to be inconsistent with the provisions hereof.

(2) The entitlement of any such worker to leave in respect of a period of service with the employer completed after the period in respect of which the long service leave referred to in paragraph (1) of this subclause accrued due shall be in accordance herewith.

(3) Subject to paragraphs (1) and (2) of this subclause, the entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the worker may be entitled in respect of employment of the worker by the employer.

(4) An employer who under any State Law with regard to long service leave is exempted from the provisions of that law as at the first day of April, 1958, shall in respect of the workers covered by such exemptions be exempt from the provisions hereof.

#### 10. Exemptions.

The Special Board of Reference may, subject to such conditions as it thinks fit, exempt any employer from the provisions hereof in respect of its employees where there is an existing or prospective long service scheme which, in its opinion, is, viewed as a whole, more favourable for the whole of the employees of that employer than the provision hereof.

#### 27.—PREFERENCE TO UNIONISTS

Deleted by section 88 (3) of the Acts Amendment and Repeal (Industrial Relations) Act (No.2) 1984.

#### 28.—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 the method of payment to employees without first giving them at least four weeks' notice of such change.

(d) No employee shall be required to accept a change in the method of payment if such change causes hardship. Any dispute concerning hardship in a particular case shall be referred to a Board of Reference for determination.

(2) (a) The employer may elect to pay employees weekly or fortnightly in accordance with subclause (1), of this clause.

(b) No employer shall change the frequency of payment to employees without first giving them and the Union at least four week's notice of such change.

(c) 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 Union and the employer.

(3) For the purposes of affecting the rostering off of employees as provided by this Award, ordinary wages may be paid either for the actual hours worked each pay period or an amount being calculated on the basis of the average of 38 hours per week.

#### 29.—COMPASSIONATE LEAVE

(1) An employee shall, on the death of the spouse, defacto spouse, father, mother, brother, sister, child, step-child, or guardian of dependent children of the employee be entitled to leave up to and including the day of the funeral of such relation; such leave, for a period not exceeding two days in respect of any such death, shall be without loss of any ordinary pay which the employee 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 employee shall give the employer notice of his/her intention to take such leave as soon as

reasonably practicable after the death of such relation, and in respect of a death overseas of a prescribed relative, the employee shall provide to the employer such evidence that he/she is attending the funeral.

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

(c) The employee 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 Award or otherwise.

#### 30.—MATERNITY LEAVE

##### (1) Eligibility for Maternity Leave

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

For the purposes of this clause—

(a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.

(b) Maternity leave shall mean unpaid maternity leave.

##### (2) Period of Leave and Commencement of Leave

(a) Subject to subclause (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks compulsory leave to be taken immediately following confinement.

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

(c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.

(d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

##### (3) Transfer to a Safe-Job

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

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

##### (4) Variation of Period of Maternity Leave

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

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

##### (5) Cancellation of Maternity Leave

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

- (b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be the right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.
- (6) Special Maternity Leave and Sick Leave
- (a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
- 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
  - 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 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.
- 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 worker on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- 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 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.

- 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 replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.
- 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.
- 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.
- Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.
- 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.

31.—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	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00

Town	Per Week \$
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(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  $66\frac{2}{3}$  per cent 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  $33\frac{1}{3}\%$ ; 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, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

- (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.

## 32.—TRAINEESHIPS

(1) Scope—

This clause shall apply to a trainee employed under the Australian Traineeship System by an employer approved by the State Management Committee.

(2) Definitions—

For the purposes of this clause—

The "Australian Traineeship System" means a structured system of on the job training with an employer and off the job training in a Technical and Further Education College or other training provider approved by the State Management Committee.

"Trainee" means an employee engaged under the terms of this award and in accordance with the provisions of an Australian Traineeship established pursuant to Section 37D of the Industrial and Commercial Training Act 1975 and approved by the State Management Committee.

"Traineeship Scheme" is a formal agreement of training approved by the State Management Committee and registered pursuant to Section 37D of the Industrial and Commercial Training Act, 1975.

"State Management Committee" means a Committee comprising representatives from the Confederation of Western Australian Industry, the Trades and Labor Council of Western Australia, Technical and Further Education (TAFE) and the relevant Federal and State Government Departments which approve traineeship arrangements by agreement of each of the parties. The State Management Committee may be established pursuant to the provisions of the Industrial and Commercial Training Act, 1975 or any amendment to or substitution of that Act, provided that any Committee or body established in lieu of the State Management Committee has the same representatives structure and decision making processes as that Committee.

## (3) Objective—

- (a) The object of this clause is to provide the form and substance of the conditions of employment, including the rates of pay, applicable to persons engaged under the Australian Traineeship System (ATS) and who, being a trainee under that system, is covered by this Award.
- (b) An objective of the Australian Traineeship System is to provide employment and training opportunities for young people so as to enhance their skill levels and future employment prospects.

## (4) Form of Traineeship Agreement—

- (a) A traineeship shall be entered into by means of written agreement in a form approved by the State Management Committee and registered in accordance with the provision of the Industrial and Commercial Training Act, 1975.
- (b) A trainee shall not be engaged on a part time or casual basis.
- (c) The Traineeship Scheme shall be for a minimum period of 12 months but this period may be varied with the agreement of the Union and the employer and with the approval of the State Management Committee.

## (5) Duties and Responsibilities—

- (a) A trainee shall participate in the approved on-the-job training scheme and attend the approved off-the-job training as prescribed in the training system.
- (b) An employer shall release a trainee from work to attend the prescribed off-the-job training course and shall provide the on-the-job training approved by the State Management Committee.
- (c) The employer shall provide the level of supervision in accordance with the approved training scheme during the traineeship period.
- (d)
  - (i) The overall Traineeship Scheme will be monitored by officers of the Department of Employment and Training.
  - (ii) An accredited representative of the Union shall have access during ordinary working hours to inspect the relevant training records and work books and subject to the approval of the employer, which shall not be unreasonably withheld, may interview a trainee with respect to his/her progress in the Scheme.
- (e) An employer shall not, as a consequence of engaging a trainee pursuant to the provisions of this clause, terminate or otherwise prejudice the employment of any full-time employee of that employer.
- (f) An employer shall not engage a trainee to occupy and perform the duties of any vacant full-time clerical position that, if it were not for the vacancy, would normally be occupied by an adult employee.

## (6) Overtime and Shift Work—

Overtime and Shift Work shall not be worked by trainees except to enable the requirements of the training scheme to be effected. When overtime and shift work are worked the relevant penalties and allowances of the award based on the trainee wage will apply. No trainee shall work overtime or shift work alone.

## (7) Wage Rates—

The weekly wages payable to a trainee shall be determined by multiplying the appropriate rate of pay prescribed in this award by 39 which represents actual weeks spent on the job and dividing that sum by 52 to provide a weekly wage.

## 33.—SUPERANNUATION

## (1) Definitions—

In this clause—

- (a) “Approved Occupational Superannuation Fund” means a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.

## (b) “Fund” means—

- (i) the Clerical, Administrative and Retail Employees’ Superannuation Plan; or
- (ii) Westscheme; or
- (iii) any other approved occupational superannuation fund; or
- (iv) any other approved occupational superannuation fund to which an employer or employee who is a member of the religious fellowship known as the Brethren elects to contribute.

(c) “Ordinary Time Earnings” means the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties and any overaward payments, together with any other all purpose allowance or penalty payment for work in ordinary time and shall include in respect to casual employees the appropriate casual loadings prescribed by this award, but shall exclude any payment for overtime worked, vehicle allowances, fares or travelling time allowances (including payments made for travelling relating to distant work), commission or bonus.

(d) “Eligible Employee” means an employee whose employment is regulated by this Award, who has completed one month’s continuous service with the employer, who becomes a member of the fund, and for whom 3% of ordinary time earnings equals \$2.00 per week or more. The sum of \$2.00 shall be increased to correspond to increases in administrative charges in Westscheme from time to time.

(e) “Trustee” means the trustee of the relevant fund.

## (2) Choice of Fund—

- (a) Existing employers as at the date of this order must notify the Union of the fund in subclause (1)(b)(iii) to which they intend to contribute and the date of commencement of contributions.
- (b) The Union must be notified in writing of the choice of fund and the date of commencement of contributions referred to in paragraph (a) within 30 days of the date of this order.
- (c) Future employers must notify in writing the Union of the fund in subclause (1)(b)(iii) into which they intend to contribute and the intended date of the commencement of contributions at least 30 days prior to the payment of the first contributions to the fund.
- (d) Within 30 days of the notice referred to in paragraphs (b) and (c) the Union may challenge the suitability of the proposed fund by notifying both the Commission and the employer of a dispute.

## (3) Contributions—

- (a) An employer shall, subject to subclauses (11) and (12), contribute to a fund referred to in subclause (1)(b) in respect of all eligible employees an amount equal to 3% of each employee’s ordinary time earnings each week with effect from the first pay period on or after 1 July, 1989, or the employee’s commencement date, whichever is the later.
- (b) Employer contributions together with any employee deductions shall be paid monthly for pay periods completed in each month. Provided that payments may be made at such other times and in such other manner as may be agreed in writing between the Trustee of the Fund and the employer from time to time.
- (c) No contributions shall be made for—
  - (i) periods of unpaid leave or unauthorised absences; or
  - (ii) annual leave or any other payments paid out on termination.

## (4) Alternative Calculation of Payments—

Notwithstanding the provisions of this clause the payment required to be made to a fund may be calculated on a basis agreed in writing between the Union and the employer.

## (5) Employer to Continue Participation—

An employer who participates in the fund shall not cease participation in the fund whilst employing any eligible employee.

## (6) Cessation of Contributions—

The obligation of the employer to contribute to the fund in respect of an eligible employee shall cease on the last day of an eligible employee's employment with the employer.

## (7) Employer Failure to Participate in Fund—

(a) Where an employer has failed to make application to participate in a fund or has failed to make payments to a fund, the employer shall be required to make application to participate in a fund or to make payments to a fund within seven days of the failure being brought to the employer's attention by any person.

(b) Where there has been a failure to make application to participate in a fund, upon acceptance by the trustee the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contributions which would otherwise have been payable in accordance with this clause.

(c) Where there has been a failure to make payments to a fund the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contributions which the employer has failed to pay.

## (8) Employees' Additional Voluntary Contributions—

(a) Where the rules of the fund allow an eligible employee to make additional contributions an eligible employee may elect to make additional contributions to the fund and the employer shall, where an election is made upon the direction of the employee deduct contributions from the employee's wages and pay them to the fund in accordance with the direction of the employee and the rules of the fund.

(b) If 3% of an employee's ordinary time earnings are less than \$2.00 and the employee elects—

(i) to make voluntary contributions to the fund; or

(ii) to have death and/or disability cover,  
then the employer contribution shall be payable to the fund.

## (9) Existing Superannuation Arrangements—

No employer shall be excluded from this clause on the basis of existing voluntary superannuation arrangements.

## (10) Supersession by Other Award or Agreement—

Nothing contained in this clause shall prevent any or all of the parties to this award from entering into other awards or agreements which have the effect of superseding the superannuation provisions contained in this clause.

## (11) Suspension—

(a) Where, pursuant to subclause (2)(d) the Union challenges an employer's choice of fund, the employer shall not make contributions to that fund until the dispute has been resolved by the Commission.

(b) The contributions not made pursuant to paragraph (a) shall be made to the appropriate fund in accordance with subclause (3)(a) following the resolution of the dispute by the Commission.

## (12) Employee Entry into Fund—

(a) The employer must provide an employee with an application to join a fund within 14 days of the operative date of this clause or within 14 days of an employee commencing employment, whichever is the later.

(b) The employer is not obliged to make contributions to a fund—

(i) where an employee has completed a letter of denial; or

(ii) where an employee has not completed and returned the application referred to in paragraph (a) within 28 days of the operative date of this

clause or within 28 days of an employee commencing employment, whichever is the later.

provided that an employer shall make contributions to a fund from the date on which the employee subsequently completes an application form.

(c) If the employer fails to provide the employee with the application form referred to in paragraph (a) within the time prescribed in that paragraph the employer shall be obliged to make contributions as if the application had been provided within the prescribed time, provided that the employee returns the application within 14 days of being provided with the application by the employer.

(d) 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 an 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)"

(e) A copy of the letter of denial shall be forwarded to the Union.

## (13) Preservation—

The provisions of this clause shall not apply to any employer who has entered into an arrangement to pay superannuation contributions into any other approved occupational superannuation fund and such arrangement has been ratified by either the Western Australian Industrial Relations Commission or the Australian Industrial Relations Commission.

## 34.—AWARD MODERNISATION (ENTERPRISE AGREEMENTS)

(1) The parties are committed to modernising the terms of this award.

(2) Employers and employees covered by this award may reach agreement at the level of individual enterprises to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such Enterprise Agreements may involve a variation in the application of award provisions in order to meet the requirements of individual enterprises and their employees. Agreements may be negotiated and consequential award variations processed in accordance with subclause (3) of this clause.

(3) The Union will discuss all matters relating to increased flexibility that are raised by the employer. Any such discussion with the Union shall be on the premise that—

(a) The majority of employees at the enterprise must genuinely agree.

(b) No employee will lose income as a result of the change.

(c) The Union must be party to the agreement, in particular, where enterprise level discussions are considering matters requiring any award variation, the Union shall be invited to participate.

(d) The Union shall not unreasonably oppose any agreement.

(e) Agreements are to be submitted for ratification by the Commission.

#### APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

- (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
- (b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
- (ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

#### SCHEDULE OF RESPONDENTS

Traders Mutual Cash Order Co.  
229 Murray Street, Perth 6000

Industrial Acceptance Corporation Ltd.  
344 Murray Street, Perth 6000

DATED at Perth this 30th day of November 1953.

#### SCHEDULE—NAMED UNION PARTY

The Federated Clerks' Union of Australia, Industrial Union of Workers, W.A. Branch is a named party to this Award.

#### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award / industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

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#### CLERKS' (HOTELS, MOTELS AND CLUBS) AWARD 1979. No. R 7 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 16th day of June 1997.

J. CARRIGG,  
Registrar.

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#### Clerks' (Hotels, Motels and Clubs) Award 1979

##### 1.—TITLE

This award shall be known as the "Clerks' (Hotels, Motels and Clubs) Award 1979" and replaces Award No. 14A of 1968.

##### 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

## 2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
- 2A. No Extra Claims
3. Scope
4. Area
5. Term
6. Definitions
7. Wages
8. Mixed Functions
9. Board and Lodging
10. Additional Rates for Ordinary Hours
11. Hours
- 11A. Casual Employees
- 11B. Part-Time Employees
12. Roster
13. Overtime
14. Meal Allowance
- 14A. Meal Breaks
15. Contract of Service
16. Certificate of Service
17. Holidays
18. Annual Leave
19. Sick Leave
20. Long Service Leave
21. Travelling Time
22. Location Allowances
23. Uniforms
24. Record
- 24A. Payment of Wages
25. Right of Entry
26. Union Notices
27. Superannuation
28. Certificate of Age
29. Aged and Infirm Employees
30. Compassionate Leave
31. Maternity Leave
32. Traineeships
33. Award Modernisation (Enterprise Agreements)
34. Breakdowns
- Appendix—Resolution of Disputes Requirement
- Schedule of Respondents
- Schedule—Named Union Party
- Appendix—S.49B—Inspection Of Records Requirements

## 2A.—NO EXTRA CLAIMS

It is a term of this award (arising from the decision of the Commission in Court Session in Application No. 704 of 1991) that the Union will not pursue prior to 30th November 1991 any extra claim, award or overaward, except where consistent with the State Wage Principles.

## 3.—SCOPE

This award shall apply to all workers employed as clerks in the industry of Hotel, Motel, Club and Service Flats but it shall not apply to any worker who substantially performs duties of a non clerical nature which are covered by an award to which the Federated Liquor and Allied Industries Employees Union of Australia Western Australian Branch, Union of Workers is a party. This award shall not apply to workers in the industrial catering industry.

## 4.—AREA

The award shall operate within the State of Western Australia excepting that portion of the State within the 20th and 26th parallels of latitude and the 125th and 129th meridian of longitude.

## 5.—TERM

The term of this award shall be for a period of two years from the beginning of the first pay period commencing after the date hereof.

## 6.—DEFINITIONS

“Accrued Day Off” shall mean the day, or part of a day, which accrues only to those employees who work their ordinary hours of work pursuant to the provisions of subclause (1)(d)(i) of Clause 11.—Hours of this award.

“Adult” means an employee twenty-one years of age and over, or an employee who is in receipt of the prescribed adult rate of pay.

“Clerk” means any person engaged for or substantially employed on clerical work and without limiting the generality of the term it includes typists, stenographers and telephonists; receptionists and messengers where such employees do clerical work, and employees employed to operate calculating, billing or other machines designed to perform or assist in performing any clerical work whatsoever.

“Club” for the purposes of this award means employers undertakings described as clubs that provide a service to members in the form of accommodation, or dining and/or liquor facilities.

“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.

“Ordinary Hours Work Period” shall mean the total number of ordinary hours worked, or deemed to have been worked, on any day.

“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 twenty-four hours commencing from the completion of an ordinary hours work period.

## 7.—WAGES

(1) The minimum fortnightly rates of pay for employees covered by this Award shall be as set out in this clause.

(2) Adult Employees (rate per fortnight)—

	Base Rate per Fortnight \$	Arbitrated Safety Net Adjustment per Fortnight \$	Total Rate per Fortnight \$
(a) At 21 years of age	724.10	48.00	772.10
At 22 years of age	732.40	48.00	780.40
At 23 years of age	739.80	48.00	787.80
At 24 years of age	747.70	48.00	795.70
At 25 years of age and over	756.70	48.00	804.70

(b) Adult stenographers, comptometer or calculating or ledger machine operators shall receive in addition to the rates set out in paragraph (a) of this subclause, the following amount per fortnight.

Provided that the allowance shall not be paid to an employee for using a calculator for the purpose of simple arithmetic calculation.	8.30
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(c) Senior Clerks

(classified as such or in default of agreement, by a Board of Reference)	768.60	48.00	816.60
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(d) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated net adjustment. Increases made under previous State Wage Case Principles or under the current safety net adjustments.

## (3) Junior Employees—

- (a) Percentage of the rate for an adult employee at 21 years of age per fortnight—

	%
At 15 years of age	40
At 16 years of age	50
At 17 years of age	60
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

- (b) Junior stenographers, comptometer or calculating or ledger machine operators shall receive in addition to the rates set out in paragraph (a) of this subclause, the following amounts per fortnight—

	\$
At 17 years of age	1.50
At 18 years of age	2.30
At 19 years of age	5.00
At 20 years of age	6.80

Provided that the allowance shall not be paid to an employee for using a calculator for the purpose of simple arithmetic calculation.

## 8.—MIXED FUNCTIONS

An employee relieving another employee who is engaged on a higher class of work carrying a higher minimum rate of pay for a period of not less than five working days continuously shall be paid the higher minimum rate appropriate to the position whilst so employed.

## 9.—BOARD AND LODGING

(1) No worker shall be compelled to board and/or lodge on the employer's premises and it shall not be a condition of employment that any worker shall board and/or lodge on the employer's premises, but where by mutual consent board and/or lodging is provided, the employer shall be entitled to deduct in respect of such worker the following maximum amounts per week—

- (a) Full board and lodging—25 per cent of the lowest adult rate.
- (b) Full board of 21 meals per week—20 per cent of the lowest adult rate.
- (c) Full lodging—5 per cent of the lowest adult rate.
- (d) The foregoing amounts shall be reduced pro rata for any period less than one week.
- (e) Notwithstanding the foregoing, any worker who is in receipt of less than the lowest adult rate, shall not have deducted an amount in excess of 60 per cent of the aforesaid rates.

(2) Mutual consent for the purpose of this clause means a document which the worker has signed agreeing to the board and/or lodging offered by the employer. Such agreement may be cancelled by either party giving seven days' notice in writing to the other party.

(3) Workers sleeping in shall be provided with a common sitting room apart from their bedrooms and shall have access to a properly equipped bathroom and also have access to a laundry at such times as are mutually agreed upon between the worker and the employer.

(4) Any dispute in respect to the application of this clause shall be referred to a Board of Reference.

## 10.—ADDITIONAL RATES FOR ORDINARY HOURS

(1) An employee who is required to work any ordinary hours prior to 7.00 a.m. or after 7.00 p.m. on any day Monday to Friday both inclusive shall be paid, for each hour or part thereof so worked, an additional hourly rate in accordance with the following schedule—

Column A	Column B
	From the beginning of the first pay period to commence on or after—
10-1-91	31-3-91
\$	\$
1.03	1.08

(2) All ordinary hours worked on a Saturday or a Sunday shall be paid for at the ordinary rate plus 50 per cent.

(3) The provisions of this clause shall not apply in cases where the provisions of subclause (1)(c) of Clause 17.—Holidays are applicable.

## 11.—HOURS

(1) (a) Subject to this clause and except as provided elsewhere in this award, the ordinary hours of work shall be seventy-six per fortnight.

(b) (i) The rostered 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 ten days in each fortnight.

(ii) Where the employer proposes to roster the ordinary hours of work over more than seven consecutive work periods, the employee's agreement shall be obtained.

(c) (i) Each ordinary hours work period shall not be less than four nor more than ten ordinary hours, and shall be worked within a spread of shift not exceeding twelve hours.

(ii) Where the employer proposes to implement rosters containing work periods of more than eight ordinary hours, the employee's agreement shall be obtained.

(d) (i) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this subclause, in establishments where, on 10th January 1991, the ordinary hours of work are worked according to a roster in which—

(aa) 152 ordinary hours are worked over 19 days in a four week cycle; or

(bb) 76 ordinary hours are worked over 9½ days in a two week cycle;

an employee shall, whilst his/her employment continues with the employer under the existing contract of employment, work the ordinary hours of work in accordance with that roster and such roster shall be deemed to comply with the provisions of this clause.

(ii) Nothing in this paragraph prevents an employer and an employee from agreeing to work the ordinary hours of work in any other system which is consistent with the provisions of this clause.

(2) Where an ordinary hours work period commences prior to midnight on any day, that work period shall be deemed to have been worked on the day upon which the ordinary hours work period commenced. Provided, however, that the employee shall be paid the appropriate additional rates provided by Clause 10.—Additional Rates for Ordinary Hours or Clause 17.—Holidays according to the actual hours worked in that work period.

(3) Rostered Days Off shall be so arranged that in each fortnight two of such days shall be consecutive.

## 11A.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged and paid as such, and whose employment may be terminated by the giving of one hour's notice on either side, or the payment or forfeiture, as the case may be, of one hour's pay.

(2) (a) A casual employee may be employed for periods not exceeding four weeks and, whilst so employed, shall receive 20 per cent in addition to the appropriate ordinary hourly wage rate prescribed by this award with a minimum payment as for four hours for each work period.

(b) The duration of the casual engagement may be extended to thirteen weeks in the event that the employee is engaged to cover for another employee who is absent on account of long service leave, annual leave, sick leave, injury, or an authorised period of unpaid leave.

(3) Notwithstanding the provisions of this clause the basis and terms of employment of casual clerks may be varied in any particular case by agreement in writing between the employer and the union.

## 11B.—PART-TIME EMPLOYEES

(1) A part-time employee shall mean an employee who, subject to the provisions of Clause 11.—Hours, regularly works twenty or more, but less than seventy-six, ordinary hours per fortnight.

(2) (a) At the time of engagement the employer and the employee shall agree to the number of ordinary hours to be worked by the employee in each fortnight.

(b) Such number of ordinary hours, once agreed, may be varied by either side giving the amount of notice required by Clause 15.—Contract of Service or, upon the employee's request and with the consent of the employer, such notice period may be waived.

(3) A part-time employee shall receive payment for wages, annual leave, holidays and sick leave on a pro rata basis in the same proportion as the number of hours regularly worked each fortnight bears to 76 hours.

#### 12.—ROSTER

(1) A roster of the ordinary work hours shall be exhibited in each establishment in such place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day.

(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 in accordance with the provisions of Clause 24.—Record of this award.

(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 week 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 one week's notice of such alteration to the employee.

#### 13.—OVERTIME

(1) Overtime shall mean all work performed outside of the rostered ordinary hours of work or outside the daily spread of shift.

(2) (a) 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. All overtime worked on a holiday prescribed by this award shall be paid for at the rate of double time and one half.

(b) 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.

(3) Overtime may be worked on an "Accrued Day Off" (as defined) subject to an agreement between the employer and the employee. Such overtime shall be paid for at the rate of double time, with a minimum payment of four hours.

(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 at 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 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 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 any employee works overtime continuous with an ordinary hours work period to which the provisions of subclause (2) of Clause 11.—Hours applies,

such overtime work shall be paid for at the rates 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) or, where otherwise appropriate, subclause (8) 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 one month of it being accrued at a time agreed between the employer and the employee.

(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 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.

(8) Any employee in receipt of a rate of wage twenty per centum per fortnight or more in excess of the rate herein prescribed for a senior clerk shall be paid at the ordinary rate of pay prescribed by this award for the classification applicable to that employee in lieu of the overtime rates prescribed by this clause.

#### 14.—MEAL ALLOWANCE

(1) An employee who is required to continue working for two hours or more after his/her rostered time for ceasing work on any day shall be supplied with a suitable meal.

(2) If that meal is not provided the employee shall be paid a meal allowance of \$6.10 in addition to the overtime prescribed by Clause 13.—Overtime, of this award.

#### 14A.—MEAL BREAKS

(1) Every employee shall be entitled to a meal break of not less than one half hour nor more than one hour—

- (a) after not more than five hours of work in cases where the work period does not exceed eight ordinary hours; or
- (b) after not more than six hours of work in cases where the work period exceeds eight ordinary hours.

(2) 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 per cent of the prescribed ordinary hourly rate applying to such employee, until such time as the employee is released for a meal.

(3) In addition to breaks for a meal, there may be one other break of at least two hours during each shift. Such break may include a meal break.

#### 15.—CONTRACT OF SERVICE

(1) 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 employee's skill, competence and training.

(2) The employment of any employee other than a casual shall be terminable by one week's notice on either side. If such notice is not given one week's wages shall be paid or forfeited as the case may be. Provided that an employee may be summarily dismissed for gross misconduct, in which case he shall be paid up to the time of dismissal only.

## 16.—CERTIFICATE OF SERVICE

On the termination of service a worker shall, on request, be given a Certificate setting out the length of service and the duties performed.

## 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 holidays 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 paragraph.

(b) When any of the days mentioned in paragraph (a) hereof falls on an employee's rostered day off the employer and the employee may agree that the employee receive—

- (i) an additional day's wages, or
- (ii) another day off may be allowed within twenty-eight days of the award holiday, or
- (iii) an additional day off may be taken in conjunction with a period of annual leave.

(c) In addition to the ordinary rate of pay an employee shall be paid at time and a half for all work done during ordinary hours on a holiday.

(2) The provisions of paragraphs (a) and (b) of subclause (1) of this clause shall not apply to casual workers.

## 18.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment at his ordinary rate of wage shall be allowed annually to a worker by his employer after a period of 12 months' continuous service with such employer.

(2) (a) During a period of annual leave a worker shall be paid a loading of 17.5% calculated on his ordinary rate of wage.

Provided that where the worker would have received loadings prescribed by Clause 10.—Additional Rates for Ordinary Hours 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 17.5% then the loadings shall be added to his ordinary rate of wage in lieu of the 17.5% loading.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(c) A worker in receipt of a wage prescribed by this award for the classification of "Senior Clerk" with the addition of twenty per centum may be employed on the basis that the annual leave loading prescribed in paragraph (a) hereof may be calculated on a rate other than his ordinary rate provided that such rate is not less than the Senior Clerk's rate.

This paragraph only applies to a worker who has signed a statement in his own handwriting to this effect at the time of his engagement or to a worker employed on this basis prior to 30th April 1981.

(3) If any Award holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

(4) (a) 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' pay at his ordinary rate of wage in respect of each completed week 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 12 monthly qualifying period and who has not been allowed the leave under this award in respect of that qualifying period shall be given payment in lieu of so much of that leave as he has not been allowed, unless—

- (i) he has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(5) Any time in respect of which a worker is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award, shall not count for the purpose of determining his right to annual leave.

(6) With the consent of the employer and the worker, annual leave may be taken in more than one period provided that one of these periods shall not be less than two weeks.

(7) (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 by subclause (1) of this clause.

(b) If the service of an employee terminates and the employee has taken a period of leave in accordance with this subclause and if the period of leave so taken exceeds that which would become due pursuant to subclause (4) of this clause the employee shall be liable to pay the amount representing the difference between the amount received by him/her for the period of leave taken in accordance with this subclause and the amount which would have accrued in accordance with subclause (4) of this clause. The employer may deduct this amount from monies due to the employee by reason of the other provisions of this award at the time of termination.

(c) The annual leave loading provided by subclause (2)(a) 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.

(8) Every employee shall be given and shall take annual leave within nine months after the date it falls due.

(9) No employee shall be required to go on holidays unless at least two weeks' prior notice is given. The employer shall, as far as practicable, arrange to grant annual leave to suit the convenience of the employee. In the event of disagreement on any proposed alteration to annual leave arrangements once they are made by an employer and employee the matter shall be determined by a Board of Reference.

(10) The provisions of this clause shall not apply to casual employees.

## 19.—SICK LEAVE

(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 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 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 a worker who fails to produce a certificate from a medical practitioner

dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 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 worker's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmitter shall stand to the credit of the worker at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) The provisions of this clause do not apply to casual workers.

#### 20.—LONG SERVICE LEAVE

The Long Service Leave provisions in volume 58 of the Western Australian Industrial Gazette at pages 1 to 6 both inclusive are hereby incorporated in and shall be deemed to be part of this award except that the date of 1st April, 1958 in paragraph (2) of subclause (2) is to be amended to read 24th December, 1958.

#### 21.—TRAVELLING TIME

(1) When a worker is required to work temporarily at a location other than his usual place of duty, any excess fare over that which he normally incurs shall be paid by the employer.

(2) When a worker is engaged at such a distance that he cannot return to his home at night, suitable board and lodging shall be found at the employer's expense.

(3) All travelling time outside ordinary working hours shall be paid for at ordinary rates up to a maximum of 12 hours in any 24 hour period from the time of starting on the journey.

#### 22.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

Town	Per Week \$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(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  $66\frac{2}{3}$  per cent 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  $33\frac{1}{3}$ %; 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, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.
- (b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

### 23.—UNIFORMS

Where uniforms are required to be worn they shall be supplied by the employer.

### 24.—RECORD

(1) Each employer bound by this award shall maintain a record at each establishment containing the following information relating to each worker—

- (a) The name and address given by the worker;
- (b) The age of the worker if paid as a junior worker;
- (c) The classification of the worker and whether the worker is full-time, part-time or casual;
- (d) The commencing and finishing times of each period of work each day;
- (e) The number of ordinary hours and the number of overtime hours worked each day and the totals for each pay period; and
- (f) The wages and any allowances paid to the worker each pay period and any deductions made therefrom.

(2) (a) At the time of payment of wages the worker may be given a pay slip showing that part of the record specified in paragraphs (e) and (f) of subclause (1) with respect to the pay period for which payment is being made.

(b) If a pay slip is not given to the worker as prescribed in paragraph (a) hereof the worker 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 worker.

(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 subclauses (2) and (4) 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 employer's premises from Monday to Friday, both inclusive, between the hours of 9.00 a.m. to 5.00 p.m. (excepting the period between 1.00 p.m. and 2.00 p.m.). In the case of any establishment which is only open for business after 5.00 p.m. or 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 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 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 requires to inspect the record in accordance with the provisions of this award and shall specify the period contained in the record which he requires to inspect.

(c) (i) Employers who normally keep the record at a place more than 40 kilometres from the G.P.O. Perth, shall send a copy of that part of the record specified to the office of the union within 10 days, and

(ii) Employers who normally keep the record at a place less than 40 kilometres from the G.P.O. Perth, shall make the record available to the union official at the time specified by the union 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 Industrial Relations Commission of Western Australia for direction. An application to the Industrial Relations Commission of Western Australia by an employer for direction will, subject to that direction, stay the requirements contained elsewhere in this subclause.

#### 24A.—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 may elect to pay employees weekly or fortnightly in accordance with subclause (1) of this clause.

(b) The employer shall not change the frequency of payment to employees without first giving those employees at least four weeks' notice of such change.

(c) 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 worker.

(d) Any dispute concerning hardship to an employee as a consequence of a change to the frequency of payment to that employee may be referred to the Western Australian Industrial Relations Commission.

(3) An employee who lawfully terminates his employment, or is dismissed for reasons other than misconduct, shall be paid all wages due to him by the employer on the day of termination of his employment.

(4) For the purposes of effecting the rostering off of workers as provided by this award, ordinary wages may be paid either for the actual hours worked each pay period or an amount being calculated on the basis of the average of 38 hours per week.

#### 25.—RIGHT OF ENTRY

A duly accredited representative of the union shall be permitted to interview any worker on legitimate union business on the business premises of his employer during the recognised meal hour of the worker with the permission of his employer (which permission shall not be unreasonably withheld) but this permission shall not be exercised more than once in any one week without the consent of the employer.

#### 26.—UNION NOTICES

The employer shall, if requested, provide a Notice Board where the union may place a copy of this award. Notices may be displayed by the union only with the employer's approval.

#### 27.—SUPERANNUATION

##### (1) Definitions—

In this clause—

- (a) "Approved Occupational Superannuation Fund" means a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.
- (b) "Fund" means—
  - (i) the Clerical, Administrative and Retail Employees' Superannuation Plan; or
  - (ii) Westscheme; or
  - (iii) The Hospitality Industry Portable Liquor Union Superannuation Trust (HOST-PLUS); or
  - (iv) any other approved occupational superannuation fund.

(c) "Ordinary Time earnings" means the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties and any over-award payments, together with any other all purpose allowance or penalty payment for work in ordinary time and shall include in respect to casual employees the appropriate casual loadings prescribed by this Award, but shall exclude any payment for overtime worked, vehicle allowances, fares or travelling time allowances (including payments made for travelling relating to distant work), commission or bonus.

(d) "Eligible Employee" means an employee whose employment is regulated by this Award, and who has completed one month's continuous service with the employer and who is, or becomes a member of the fund.

(e) "Trustee" means the trustee of the relevant fund.

##### (2) Choice of Fund—

(a) Existing employers as at the date of this Order must notify the Union of the fund in subclause (1)(b)(iv) to which they intend to contribute and the date of commencement of contributions.

(b) The Union must be notified in writing of the choice of fund and the date of commencement of contributions referred to in paragraph (a) within 30 days of the date of operation of this clause.

(c) Future employers must notify the Union in writing of the fund in subclause (1)(b)(iv) into which they intend to contribute and the intended date of the commencement of contributions at least 30 days prior to the payment of the first contributions to the fund.

(d) Within 30 days of the notice referred to in paragraphs (b) and (c) the Union may challenge the suitability of the proposed fund by notifying both the Commission and the employer of a dispute.

##### (3) Contributions—

(a) An employer shall, subject to subclauses (11) and (12), contribute to a fund referred to in subclause (1)(b) in respect of all eligible employees an amount equal to 3% of each employee's ordinary time earnings each week with effect from the beginning of the first pay period commencing on or after the date of operation of this clause, or the employee's commencement date, whichever is the later.

(b) Employer contributions together with any employee deductions shall be paid monthly for pay periods completed in each month. Provided that payments may be made at such other time and in such other manner as may be agreed in writing between the Trustee of the Fund and the employer from time to time.

(c) No contributions shall be made for—

- (i) periods of unpaid leave or unauthorised absences; or
- (ii) annual leave or any other payments paid out on termination.

##### (4) Alternative Calculation of Payments—

Notwithstanding the provisions of this clause the payment required to be made to a fund may be calculated on a basis agreed in writing between the Union and the employer.

##### (5) Employer to Continue Participation—

An employer who participates in the fund shall not cease participation in the fund whilst employing any eligible employee.

##### (6) Cessation of Contributions—

The obligation of the employer to contribute to the fund in respect of an eligible employee shall cease on the last day of an eligible employee's employment with the employer.

##### (7) Employer Failure to Participate in Fund—

(a) Where an employer has failed to make application to participate in a fund or has failed to make payments to a fund, the employer shall be required to make application to participate in a fund or to make

payments to a fund within seven days of the failure being brought to the employer's attention by any person.

- (b) Where there has been a failure to make application to participate in a fund, upon acceptance by the trustee the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contributions which would otherwise have been payable in accordance with this clause.
- (c) Where there has been a failure to make payments to a fund the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contributions which the employer has failed to pay.
- (8) Employees' Additional Voluntary Contributions—  
Where the rules of the fund allow an eligible employee to make additional contributions an eligible employee may elect to make additional contributions to the fund and the employer shall, where an election is made upon the direction of the employee deduct contributions from the employee's wages and pay them to the fund in accordance with the direction of the employee and the rules of the fund.
- (9) Existing Superannuation Arrangements—  
No employer shall be excluded from this clause on the basis of existing voluntary superannuation arrangements.
- (10) Supersession by Other Award or Agreement—  
Nothing contained in this clause shall prevent any or all of the parties to this Award from entering into other Awards or agreements which have the effect of superseding the superannuation provisions contained in this clause.
- (11) Suspension—
- (a) Where, pursuant to paragraph (d) of subclause (2) of this clause the Union challenges an employer's choice of fund, the employer shall not make contributions to that fund until the dispute has been resolved by the Commission.
- (b) The Commission may determine that contributions be paid by an employer to a retrospective date no earlier than that which would have been required by paragraph (a) of subclause (3) of this clause.
- (12) Employee Entry into Fund—
- (a) The employer must provide an employee with an application to join a fund within 14 days of the operative date of this clause or within 14 days of an employee commencing employment, whichever is the later.
- (b) The employer is not obliged to make contributions to a fund where an employee has not completed and returned the application referred to in paragraph (a) within 28 days of the operative date of this clause or within 28 days of an employee commencing employment, whichever is the later.
- Provided that an employer shall make contributions to a fund from the date on which the employee subsequently completes an application form.
- (c) If the employer fails to provide the employee with the application form referred to in paragraph (a) within the time prescribed in that paragraph the employer shall be obliged to make contributions as if the application had been provided within the prescribed time, provided that the employee returns the application within 14 days of being provided with the application by the employer.
- (d) In the event that an employee member of a fund terminates employment with one employer and commences employment with another employer, the latter employer being a participant in the same fund as the former employer, then the provisions of this subclause do not apply to the latter employer.
- (13) Preservation—

The provisions of this clause shall not apply to any employer who has entered into an arrangement to pay superannuation contributions into any other approved

occupational superannuation fund and such arrangement has been ratified by either the Western Australian Industrial Relations Commission or the Australian Industrial Relations Commission.

- (14) This clause shall operate from 1 February, 1990.

#### 28.—CERTIFICATE OF AGE

(1) Workers 25 years of age and under, upon being engaged shall if requested furnish the employer with a certificate showing the following particulars—

- (a) name in full;
- (b) date of birth;
- (c) name of each previous employer; and
- (d) class of work performed for each previous employer.

(2) No worker shall have any claim upon an employer for additional wages in the event of any of the above particulars being wrongly stated on the certificate. If any worker shall wilfully mis-state his age in the certificate then he alone shall be guilty of a breach of this award.

#### 29.—AGED AND INFIRM 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 a Board of Reference for determination.

(3) After application has been made to a Board of Reference, and pending the decision of that Board, the worker shall be entitled to work for and be employed at the proposed lesser rate.

#### 30.—COMPASSIONATE LEAVE

(1) An employee shall, on the death of the spouse, de facto spouse, father, mother, brother, sister, child, stepchild or guardian of dependent children of the employee be entitled to leave up to and including the day of the funeral of such relation; such leave, for a period not exceeding two days in respect of any such death, shall be without loss of any ordinary pay which the employee would have received if he had not been on such leave.

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

- (a) The worker shall give the employer notice of his intention to take such leave as soon as reasonably practicable after the death of such relation, and in respect of a death overseas of a prescribed relative, the worker shall provide to his employer such evidence that he is attending the funeral.
- (b) Satisfactory evidence of such death shall be furnished by the worker to his employer.
- (c) The worker 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 award or otherwise.

#### 31.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

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

For the purposes of this clause—

- (a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.
  - (b) Maternity leave shall mean unpaid maternity leave.
- (2) Period of Leave and Commencement of Leave

- (a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.

- (b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
- (d) A worker shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

#### (3) Transfer to a Safe-Job

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

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

#### (4) Variation of Period of Maternity Leave

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

#### (5) Cancellation of Maternity Leave

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.
- (b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be the right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

#### (6) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
  - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
- (b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.

- (d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such 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.

## 32.—TRAINEESHIPS

## (1) Scope—

This clause shall apply to a trainee employed under the Australian Traineeship System by an employer approved by the State Management Committee.

## (2) Definitions—

For the purposes of this clause—

The “Australian Traineeship System” means a structured system of on the job training with an employer and off the job training in a Technical and Further Education College or other training provider approved by the State Management Committee.

“Trainee” means an employee engaged under the terms of this award and in accordance with the provisions of an Australian Traineeship established pursuant to Section 37D of the Industrial and Commercial Training Act 1975 and approved by the State Management Committee.

“Traineeship Scheme” is a formal agreement of training approved by the State Management Committee and registered pursuant to Section 37D of the Industrial and Commercial Training Act, 1975.

“State Management Committee” means a Committee comprising representatives from the Confederation of Western Australian Industry, the Trades and Labor Council of Western Australia, Technical and Further Education (TAFE) and the relevant Federal and State Government Departments which approve traineeship arrangements by agreement of each of the parties. The State Management Committee may be established pursuant to the provisions of the Industrial and Commercial Training Act, 1975 or any amendment to or substitution of that Act, provided that any Committee or body established in lieu of the State Management Committee has the same representatives structure and decision making processes as that Committee.

## (3) Objective—

- (a) The object of this clause is to provide the form and substance of the conditions of employment, including the rates of pay, applicable to persons engaged under the Australian Traineeship System (ATS) and who, being a trainee under that system, is covered by this Award.
- (b) An objective of the Australian Traineeship System is to provide employment and training opportunities for young people so as to enhance their skill levels and future employment prospects.

## (4) Form of Traineeship Agreement—

- (a) A traineeship shall be entered into by means of written agreement in a form approved by the State Management Committee and registered in accordance with the provision of the Industrial and Commercial Training Act, 1975.
- (b) A trainee shall not be engaged on a part time or casual basis.
- (c) The Traineeship Scheme shall be for a minimum period of 12 months but this period may be varied with the agreement of the Union and the employer and with the approval of the State Management Committee.

## (5) Duties and Responsibilities—

- (a) A trainee shall participate in the approved on-the-job training scheme and attend the approved off-the-job training as prescribed in the training system.
- (b) An employer shall release a trainee from work to attend the prescribed off-the-job training course and shall provide the on-the-job training approved by the State Management Committee.
- (c) The employer shall provide the level of supervision in accordance with the approved training scheme during the traineeship period.

- (d)
  - (i) The overall Traineeship Scheme will be monitored by officers of the Department of Employment and Training.
  - (ii) An accredited representative of the Union shall have access during ordinary working hours to inspect the relevant training records and work books and subject to the approval of the employer, which shall not be unreasonably withheld, may interview a trainee with respect to his/her progress in the Scheme.
- (e) An employer shall not, as a consequence of engaging a trainee pursuant to the provisions of this clause, terminate or otherwise prejudice the employment of any full-time employee of that employer.
- (f) An employer shall not engage a trainee to occupy and perform the duties of any vacant full-time clerical position that, if it were not for the vacancy, would normally be occupied by an adult employee.

## (6) Overtime and Shift Work—

Overtime and Shift Work shall not be worked by trainees except to enable the requirements of the training scheme to be effected. When overtime and shift work are worked the relevant penalties and allowances of the award based on the trainee wage will apply. No trainee shall work overtime or shift work alone.

## (7) Wage Rates—

The weekly wages payable to a trainee shall be determined by multiplying the appropriate rate of pay prescribed in this award by 39 which represents actual weeks spent on the job and dividing that sum by 52 to provide a weekly wage.

## 33.—AWARD MODERNISATION (ENTERPRISE AGREEMENTS)

(1) It is open to employers and employees covered by this award to reach agreement at the level of individual enterprises to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such Enterprise Agreements may involve a variation in the application of award provisions in order to meet the requirements of individual enterprises and their employees. Agreements may be negotiated and consequential award variations processed in accordance with the provisions of subclause (2).

(2) The union is prepared to discuss all matters raised by employers and employees within an enterprise. Enterprise Agreements may be concluded, subject to the following conditions—

- (a) the employees must genuinely agree;
- (b) no employee will lose income as a result of the change i.e. no negative offsets;
- (c) any agreement must be approved by the union. Where enterprise level discussions are considering matters requiring any award variation, the union must be invited to participate;
- (d) the union shall not withhold such approval unreasonably;
- (e) such agreements shall come into effect after submission to the Commission for variation of the award where necessary and inserted as a schedule to this award.

## 34.—BREAKDOWNS

(1) The employer may stand down without pay an employee who 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 or failure of the employer's machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.

(2) Where an employee is stood down pursuant to subclause (1) of this clause for any cause, other than any cause directly attributable to the union party to the award, no deduction of pay shall be made for the first two hours of such stand down.

DATED at Perth this 23rd day of April, 1979.

#### APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

#### SCHEDULE OF RESPONDENTS

Commercial Hotel, Northam  
 Red Castle Motel, Rivervale  
 Terminal Motor Lodge, East Perth  
 Highway Motel (Kalgoorlie) Pty Ltd, Kalgoorlie  
 Fremantle Workers' Social & Leisure Club, Fremantle  
 Katanning Club, Katanning  
 Karrakatta Club (Inc.), Perth  
 Perth Club (Inc.), Perth  
 West Australian Club (Inc.), Perth  
 The Weld Club, Perth  
 The Celtic Club Inc., West Perth  
 Commercial Club (Inc.), Fremantle  
 The Italian Club Fremantle Inc., Fremantle  
 Boyup Brook Club Inc., Boyup Brook  
 Highway Motels Ltd, West Perth  
 Bonnebeth Auto Lodge, Manjimup  
 Ace Motel Pty Ltd, Manjimup  
 The Lodge, Rottnest Island  
 Captain Fremantle Motor Lodge, East Fremantle  
 Canning Bridge Auto Lodge, Applecross  
 Walkabout (Holdings) Limited, South Perth  
 Town Lodge, South Perth  
 Toorak Lodge, Belmont  
 Flag Lodge, Belmont  
 Lincoln Auto Lodge Pty Ltd, Perth  
 Terminal Motor Lodge, East Perth  
 Motel Travelodge Pty Ltd, Perth  
 The Coolabah Tavern, Morley  
 Hotel Leopold, Bicton  
 Park Towers Pty Ltd, Perth  
 Sheraton-Perth Hotel, Perth  
 Railton Temperance Hotel, Perth  
 Hotel Parmelia, Perth  
 New Esplanade Hotel, Perth  
 Commercial Travellers' Association of WA (Inc), Perth  
 Hotel Kununurra, Kununurra  
 Transit Inn Pty Ltd, Perth  
 Brighton Hotel, Mandurah  
 Hotel Charles, North Perth  
 Chateau Commodore, Perth  
 Criterion Hotel, Perth  
 Dianella Hotel, Dianella  
 El Caballo Blanco Hotel, Wooroloo  
 Floreat Park Hotel, Floreat  
 Forrest House Hotel, Perth  
 Gateway Inn, Perth

Geographe Bay Motor Inn, Busselton  
 Highway Hotel, Claremont  
 Imperial Hotel, Perth  
 Kewdale Hotel, Kewdale  
 Lighthouse Inn, Bunbury  
 Maylands Hotel, Maylands  
 Palace Tavern, Perth  
 Riverside Lodge Hotel, Perth  
 Rockingham Hotel, Rockingham  
 Scarborough Hotel, Scarborough  
 Travelodge Hotel, Perth  
 Westos Motor Hotel, South Perth  
 White Sands Motor Hotel, Scarborough  
 Osborne Park Motor Hotel, Osborne Park  
 John Barleycorn Motor Hotel, Nollamara  
 Eden Hill Hotel, Eden Hill  
 Belmont Hotel, Belmont  
 Carlisle Hotel, Carlisle  
 Thornlie Hotel, Thornlie  
 Lynwood Arms Motor Hotel, Lynwood  
 Manning Motor Hotel, Manning  
 Booragoon Motor Hotel, Booragoon  
 Hamilton Hill Motor Hotel, Hamilton Hill  
 Phoenix Motor Hotel, Spearwood  
 Kwinana Hotel, Kwinana  
 Coolbellup Motor Hotel, Coolbellup  
 Malthouse Tavern, Balga  
 Highway Motor Hotel, Bunbury  
 Manjimup Hotel, Manjimup  
 Esplanade Motor Hotel, Albany  
 Pier Hotel, Esperance  
 Tower Motor Hotel, Kalgoorlie  
 Merredin Oasis Hotel, Merredin  
 Wintersun Hotel, Geraldton  
 Hedland Motor Hotel, Port Hedland  
 Continental Motor Hotel, Broome  
 Spinifex Hotel, Derby  
 Wyndham Town Hotel, Wyndham  
 Tom Price Motor Hotel, Tom Price  
 Mermaid Motor Hotel, Dampier  
 Paraburdoo Hotel, Paraburdoo  
 Greenwood Forest Hotel, Greenwood  
 Premier Hotel, Pinjarra  
 Victoria Hotel, Subiaco  
 High Wycombe Hotel, High Wycombe  
 The Western Australian Turf Club, Perth  
 East Perth Football Club (Inc), Perth  
 Royal Freshwater Bay Yacht Club (Inc), Peppermint Grove  
 Claremont Yacht Club (Inc), Claremont  
 Western Australian Hotels and Hospitality Association  
 Incorporated (Union of Employers) 438 Vincent Street  
 Leederville WA 6007

#### SCHEDULE—NAMED UNION PARTY

The Federated Clerks' Union of Australia, Industrial Union of Workers, W.A. Branch is a named party to this Award.

#### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

—————

**CLERKS' (R.A.C. CONTROL ROOM OFFICERS)  
AWARD OF 1988.  
No. A 42 of 1987.**

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 23rd day of June, 1997.

J. CARRIGG,  
Registrar.

—————

Clerks' (R.A.C. Control Room Officers) Award of 1988

1.—TITLE

This Award shall be known as the Clerks' (R.A.C. Control Room Officers) Award of 1988.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. Area
4. Scope
5. Operative Date
6. Definitions
7. Hours
8. Shift Work
9. Casual Employment
10. Part Time Employment
11. Overtime
12. Meal Allowance
13. Holidays
14. Annual Leave
15. Sick Leave
16. Contract of Service
17. Certificate of Service
18. Record
19. Aged and Infirm Workers
20. General
21. Long Service Leave
22. Right of Entry
23. Union Notices
24. Uniforms and Protective Clothing
25. Reservations
26. Compassionate Leave
27. Education Leave
28. Higher Duties—Mixed Function
29. Notification of Change and/or Redundancy
30. Maternity Leave
31. Rates of Pay
32. Superannuation
33. Avoidance of Industrial Disputes
34. Award Modernisation

Appendix—Resolution of Disputes Requirements

Appendix A: Translation Table

Schedule—Named Union Party

Appendix—S.49B—Inspection Of Records Requirements

3.—AREA

This Award shall operate within the State of Western Australia excepting that portion of the State within the 20th and 26th parallel of latitude and the 125th and 129th meridian of longitude.

4.—SCOPE

This Award shall apply to all clerical employees employed within the control room of the Royal Automobile Club of W.A. Incorporated.

5.—OPERATIVE DATE

This Award shall operate from 13 September 1988 for a period of two years.

6.—DEFINITIONS

“Adult” means any employee twenty one years of age and over, or an employee who is in receipt of the prescribed adult rate of pay.

“Union” means the Federated Clerks' Union of Australia, Industrial Union of Workers, W.A. Branch.

“R.D.O.” means rostered day off.

“Composite Rate” includes the base rate, shift penalties, Saturday, Sunday and Public Holidays and loadings. It is an average rate calculated over the duration of the roster.

“R.A.C.” means the Royal Automobile Club of W.A. Incorporated.

“Employee” is a person employed in any clerical capacity by the employer within the scope of this Award.

#### 7.—HOURS

##### (1) Day Employees—

- (a) Subject to the terms of subclause (3) hereof the ordinary hours of duty shall not exceed 8 hours in any one day or 38 in any one week exclusive of meal breaks and shall be worked between the hours of 6.00 a.m. and 6.00 p.m. Monday to Friday inclusive.
- (b) Provided further that in establishments where 19 days or less are worked in each 4 week cycle, up to 40 hours may be worked in any three weeks of such cycle.
- (c) The lunch hour shall be taken at a time mutually arranged between the employer and the employee between the hours of 11.00 a.m. and 2.00 p.m. provided that the maximum period to be worked without a lunch break is 5 hours. One full hour shall be allowed for lunch. Provided that by agreement between the union and the employer a lesser period not shorter than 30 minutes may be taken.
- (d) A minimum of one tea break not exceeding 10 minutes shall be allowed during working hours.
- (e) No employee shall be required or permitted to work more than 5 hours without a break.
- (f) If a public holiday falls on a rostered day off due to an employee under paragraph (a) of this subclause, such employee shall be compensated in one of the following methods by agreement between the employer and the employee—
  - (i) payment of an additional day’s wages, or
  - (ii) another day shall be allowed with pay within twenty-eight days, or
  - (iii) an additional day shall be added to the annual leave entitlement.

##### (2) Shift Employees

- (a) The ordinary hours of work shall not exceed an average 38 in each week and shall be worked in no more than five shifts unless by agreement with the Union. Provided that ordinary hours of work on each shift shall not exceed nine hours or be less than six hours.
- (b) The method of working shifts may be varied by agreement between the Union, employees and the employer.
- (c) Workers shall be allowed a 30 minute paid meal break during each day worked.
- (d) An employee shall not be compelled to work more than 5 hour hours without a break unless he/she is rostered on a shift of 6 hours and provided further that an employee on day work who has completed an ordinary shift and is required to work overtime shall be entitled to a second break 1 1/2 hours after the commencement of duty on that day.
- (e) A minimum of one tea break not exceeding 10 minutes shall be allowed during each shift.

##### (3) Day Employees and Shift Employees

- (a) The 38 hour week should be effected by each employee being required to work not more than 19 days in each 4 week cycle.
- (b) An employee shall not be required to work on a day when such a day is the rostered day off for that employee unless such employee elects to work on such day. Where an employee so elects, all time worked shall be paid for at double time, with a minimum payment of four hours at double time.
- (c) An employee may request an alternate day to the rostered day off within the current cycle for personal reasons which can only be allowed by mutual agreement between the employee and the employer.

- (d) Schedules of rostered days off will be published and displayed in a place accessible to staff one month in advance except in the case of relief staff where one week will suffice.
- (e) Public holidays and sick days count for the purposes of determining the 19 days’ work in any four week cycle.
- (f) If an employee falls ill on an R.D.O. due under this subclause and furnishes a medical certificate to the employer, such employee shall be compensated by agreement between the employer and employee by one of the following methods—
  - (i) payment of an additional day’s wages, or
  - (ii) another day shall be allowed with pay within twenty eight days, or
  - (iii) an additional day shall be added to the annual leave entitlements.
- (g)
  - (i) If an employee accumulates part of an R.D.O. and is terminated or terminates his/her own employment before taking the relevant R.D.O. then the employee is entitled to that proportion of a day’s pay on termination.
  - (ii) If an employee has a rostered day off before such time has been accumulated and his/her employment terminates, then the part or proportion of the day that the employee is not entitled to may be debited from the employee’s wages.
- (h) Ordinary wages may be paid either for the actual hours worked each pay period or an amount being calculated on the basis of the average of 38 hours per week.
- (i) Notwithstanding the other provisions of this clause the employer and the Union may agree that ordinary hours may be worked on such other basis as may be agreed. Such agreement shall be in writing.

#### 8.—SHIFT WORK

(1) (a) An employee may be engaged on shift work in accordance with the provisions of this clause.

(b) An employer shall give not less than seven days’ written notice to the Union that they propose to introduce a different system of shift work or make major changes to the current system. For the notice to be valid it shall fully detail the system to be worked and shall include the names and addresses of the persons to be employed and the starting and finishing times of each shift to be worked.

(c) In the case where shift work is worked without such notice having first been given the worker shall be paid as if he were a day worker under the other provisions of this award, provided that this shall not apply with respect to shifts introduced by an employer prior to the 13th day of September, 1988.

(d) The provisions of this clause are to be read in conjunction with the other provisions of this Award provided that in the event of conflict between provisions the requirements of this clause shall prevail.

##### (2) Shift Loadings—

- (a) Subject to paragraph (b) hereof a loading of fifteen per cent on the ordinary rate shall be paid for time worked on afternoon or night shift as defined hereunder—
  - (i) Afternoon shift—commencing between 12 noon and 6.00 p.m.
  - (ii) Night shift—commencing between 6.00 p.m. and 4.00 a.m.
- (b) Liberty is reserved to the Union to apply to the Commission for a higher shift loading for employees unable to rotate afternoon and/or night shift with day shift.
- (c) This subclause shall not apply to any work performed on Saturdays, Sundays or holidays as prescribed by this Award.

- (3) Saturday, Sunday and Holiday Shift Loadings—
- (a) All ordinary hours worked on a Saturday shall be paid for at the rate of time and one half, ordinary hours worked on a Sunday shall be paid for at the rate of double time.
  - (b) Such public holidays shall be dealt with by including an amount in the composite rate equivalent to one and a half times the daily base rate of pay for ten public holidays on an annual basis.

(4) Roster—

Employees shall work their ordinary hours according to a roster which shall be updated by the employer so that an employee always has at least one month's notice of times to be worked. The roster shall not be altered with less than one month's notice to the employee concerned. Hours worked outside the roster hours shall be deemed overtime and paid at overtime rates, provided that overtime rates shall not be payable as a result of any excess hours being worked by an employee that are occasioned by arrangements between the employees themselves.

(5) Should the employer require an employee to change from a day worker to a shift worker, one month's notice is required and such change can only take place by mutual agreement between the employee and the employer.

#### 9.—CASUAL EMPLOYMENT

(1) (a) Casual Clerks may be employed at an hourly rate, and except as provided for in paragraph (b) hereof, for a lesser period than four weeks, and shall be paid while so employed twenty five per cent in addition to the rates prescribed above, with a minimum engagement of four hours: Provided that, notwithstanding anything contained in this subclause, the basis and terms of employment of casual clerks may be varied in any particular case by agreement in writing between the employer and the Union.

(b) Casual Clerks engaged on telephonist duties may be employed for up to 3 months to relieve other employees on sick leave, annual leave, other paid absences or long service leave.

(2) Subject to any agreement between the employer and the employee to the contrary subclause (3) of Clause 7.—Hours shall not apply to casual employees.

#### 10.—PART-TIME EMPLOYMENT

(1) Part-time employees may be employed at an hourly rate for a lesser period per week than the hours usually worked in each establishment.

(2) In the event of any dispute concerning the employment of any part-time employee the matter may be referred to the Commission.

(3) Payment for annual leave and sick pay to part-time employees shall be calculated proportionately to the conditions prescribed in each establishment for full-time employees in accordance with the hours worked by the employee.

#### 11.—OVERTIME

(1) (a) Day Employees—

Overtime shall be defined as all work done outside ordinary hours or the spread of hours prescribed in Clause 7.

(b) Shift Employees—

Overtime shall be defined as all time worked in excess or outside the ordinary working hours prescribed by Clause 28.—Shift Work or on a shift other than a rostered shift.

(2) All overtime whether it be in relation to day, afternoon or night shift, Saturday, Sunday or public holidays shall be paid for at the rate of double time.

(3) Where an employee is required by the employer to work through the meal break as provided elsewhere in this Award overtime rates shall be paid until the meal break is allowed.

(4) In the computation of overtime each day shall stand by itself.

(5) The employer may require any employee to work reasonable overtime at overtime rates, and such employee shall work overtime in accordance with such requirement.

(6) When overtime is necessary it shall wherever reasonably practicable be so arranged that the employee has at least ten consecutive hours off duty between the work of successive days provided that overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this clause.

(7) If an employee is recalled to work on any day of the week they shall be paid for a minimum of four hours at overtime rates.

#### 12.—MEAL ALLOWANCE

In addition to the overtime prescribed in Clause 8.—Overtime a meal allowance of \$5.00 shall be paid on the following basis—

- (1) To employees who work overtime for two hours or more after completion of their ordinary hours of work on any day.
- (2) No allowance is payable when notice of overtime is given to the employee on the previous day during working hours.

#### 13.—HOLIDAYS

(1) The following days or the days observed in lieu shall subject to Clause 8 and 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.

(2) When 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 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 be a holiday.

(3) 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/herself for duty, and payment may be deducted, but if work be done ordinary rates of pay shall apply.

(4) Where—

- (a) a day is proclaimed as a whole public holiday or a half public 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 public holiday or, as the case may be, a half public holiday for the purposes of this award within the district or locality specified in the proclamation.

(5) The provisions of this clause shall not apply to casual employees.

#### 14.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided a period of four consecutive weeks (twenty working days) leave of absence on full pay shall be allowed annually to an employee after twelve months' continuous service which shall be granted and taken at a time agreed between the employer and the employee.

(b) A shift employee who is rostered to work regularly on Sundays and holidays shall be allowed one week's leave in addition to the annual leave to which they otherwise would be entitled under the relevant award, provided however, that where an employee who is proceeding on annual leave or whose services are terminated had been engaged for part of the twelve preceding months' period on a roster as aforesaid, such employee shall be entitled to one-twelfth of a week for each completed month they were continuously so engaged added to their normal entitlements.

(2) (a) During a period of annual leave an employee shall be paid a loading of 17 1/2% calculated on his/her base rate of wage.

The loading prescribed by this subclause shall not apply to proportionate leave on termination but shall apply to full periods of leave accrued on termination.

(b) Provided that where a shift employee would have received shift loadings and weekend penalties prescribed by Clause 8.—Shift Work had the worker not been on leave

during the relevant period and such loadings would have entitled the employee to a greater amount than the loading of 17 1/2% then the shift loadings shall be added to the base wage as prescribed in lieu of the 17 1/2% loading.

Provided further that if those shift and weekend penalties would have entitled the employee to a lesser amount than the loading of 17 1/2% then such loading of 17 1/2% shall be added to the base rate of wage as prescribed in lieu of the shift and weekend penalties.

(3) (a) If after one month's continuous service in any qualifying twelve monthly period an employee lawfully leaves his/her employment, or the employee's employment is terminated by the employer, that employee shall be paid one-thirteenth of a week's pay at their base rate of wage in respect of each completed week of continuous service.

(b) In addition to any payment to which an employee may be entitled under paragraph (a) hereof, an employee whose employment terminates after the completion of a twelve months' qualifying period and who has not been allowed the leave 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—

- (i) the employee has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.

(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 that employee's right to annual leave.

(5) The provision to take annual leave in consecutive weeks may be varied by genuine mutual agreement between the employer and employee.

(6) Every employee shall be given and shall take annual leave within six months after the date it falls due.

(7) No employee shall be required to proceed on annual leave unless at least two months' prior notice is given. The employer shall, as far as practicable, arrange to grant annual leave to suit the convenience of the employee. In the event of disagreement on any proposed alteration to annual leave arrangements once they are made by an employer and employee, the matter shall be determined by reference to the Industrial Relations Commission.

(8) The provisions of this clause shall not apply to casual employees.

(9) In relation to all employees the composite rate shall apply for the period of leave unless the shift loadings—weekend penalties are less than the 17 1/2% loading. In that case the rate should be the base rate plus 17 1/2%.

#### 15.—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 such employee's entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of their 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.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year, if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when the employee is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee is 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 who produces a certificate from a registered medical practitioner that such employee was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if 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 provisions of Clause 14.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 14.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business or part of 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 64 of the Western Australian Industrial Gazette at pages 1-4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act 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.

#### 16.—CONTRACT OF SERVICE

(1) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

(2) The contract of service shall be weekly and shall be terminable by not less than two weeks notice on either side. Where such notice is given before the ordinary starting time

for the employee such notice shall be deemed to include that day. Otherwise such notice shall be deemed to commence at the end of such day or shift whichever the case may be. Provided that if the required notice is not given two weeks' wages shall be paid by the employer or forfeited by the employee.

(3) An employee guilty of serious misconduct may be dismissed without notice and without payment in lieu of notice in which case wages shall be paid only up to the time of dismissal.

#### 17.—CERTIFICATE OF SERVICE

On the termination of service an employee shall on request be given a Certificate setting out the length of service and the duties performed.

#### 18.—RECORD

A record shall be kept in each establishment by the employer wherein shall be entered—

- (1) (a) the name and address of each employee;
- (b) the age of the employee;
- (c) the date of commencement of the employee with the employer;
- (d) the classification and the date of employment of the employee in that classification and whether the employee is employed full-time or part-time;
- (e) the commencing and finishing time of work each day, together with any periods the employee was not required to work;
- (f) the total number of ordinary hours and the total number of overtime hours worked each day;
- (g) the leave taken for any reason, and any deductions made from the employee's salary agreed to by the employee and any deductions made for taxation purposes;
- (h) such record shall be open to the inspection of a duly accredited representative of the Union during usual business hours.

(2) A duly authorised representative of the Union shall be permitted reasonable time to inspect the record and to take a copy of any of the information contained therein.

(3) The employer shall permit each employee to inspect the record as it relates to that employee at the time of payment of his/her salary or at a mutually convenient time. The employer shall not unreasonably withhold the record from inspection by the employee.

(3) In any week where an employee requests he/she shall be supplied with the details of the amount of the ordinary wages due, the overtime and of all deductions made from the gross earnings.

#### 19.—AGED AND INFIRM WORKERS

(1) Any employee who, by reason of old age or infirmity is unable to earn the minimum rates prescribed in this Award 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 of Reference and pending the decision of the Board, the employee shall be entitled to work for and be employed at the proposed lesser rate.

#### 20.—GENERAL

(1) In the event of the death of an employee the cash equivalent of all annual leave due at the time of death shall be paid to the employee's dependents or personal representative as nominated by the employee.

(2) No employee shall as a result of the operation of his Award suffer any loss of salary which he/she may have enjoyed to the date of this Award.

#### 21.—LONG SERVICE LEAVE

The Long Service Leave provisions published in volume 64 of the Western Australian Industrial Gazette at pages 1-4 both inclusive are hereby incorporated in and shall be deemed to be part of this Award.

#### 22.—RIGHT OF ENTRY

A duly accredited representative of the Union shall, on notifying the employer or his/her representative—

- (1) Have the right to visit and inspect any workplace at any time when work is being carried on, during the ordinary working hours at the establishment, and in connection with that inspection to interview any employee covered by this award provided that he/she does not unduly interfere with the work in progress.
- (2) Be permitted to interview an employee during the recognised meal interval on the business premises of the employer.
- (3) Have the right with the consent of any such employee to interview any non-members of the Union during ordinary working hours at a time mutually agreed upon between the Union, employee and the employer at a six monthly interval. Provided that the Union shall have the right to interview a new employee by consent of that employee at a time mutually agreed by the Union and the employer as soon as practicable after the date of commencement of employment.

#### 23.—UNION NOTICES

The employer shall provide a notice board of reasonable dimensions in a mutually agreed position in each department upon which accredited Union representatives shall be permitted to post formal Union Notices signed or countersigned by the representative posting it. Any notice posted on such board not so signed or countersigned may be removed by an accredited Union Representative or the employer.

The employer shall allow a copy of this Award to be posted on the notice board.

#### 24.—UNIFORMS AND PROTECTIVE CLOTHING

(1) Where the employer insists upon or requires employees to wear a uniform or a particular type of clothing, the employer shall provide such uniforms at their expense.

(2) Where an employee is engaged upon work of an unusually dirty nature the employer shall provide, maintain and launder suitable protective clothing at their expense.

#### 25.—RESERVATIONS

Leave is reserved to any party to this Award in the following matters—

- (1) Proportion of juniors
- (2) Amenities
- (3) Leave for trade union training
- (4) Hours
- (5) Location
- (6) Overtime
- (7) Shift loadings
- (8) Part-time employees
- (9) Sick Leave

#### 26.—COMPASSIONATE LEAVE

(1) An employee shall, on the death of the parent-in-law, spouse, defacto spouse, father, mother, brother, sister, child, step-child, or guardian of dependent children of the employee be entitled to leave up to and including the day of the funeral of such relation; such leave, for a period not exceeding two days in respect of any such death, shall be without loss of any ordinary pay which the employee 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 worker shall give the employer notice of his intention to take such leave as soon as reasonably practicable after the death of such relation, and in respect of a death overseas of a prescribed relative, the employee shall provide to his/her employer such evidence that he/she is attending the funeral.

- (b) Satisfactory evidence of such death shall be furnished by the employee to his/her employer.
- (c) The employee 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 Award or otherwise.

#### 27.—EDUCATION LEAVE

An employee may have time away from work without loss of pay to attend conferences, seminars or short term courses deemed by the employer to be appropriate to his/her employment.

#### 28.—HIGHER DUTIES—MIXED FUNCTION

An employee relieving another employee who is engaged on a higher class of work carrying a higher minimum rate of pay for a period of not less than one day continuously shall be paid the higher minimum rate appropriate to the position whilst so employed.

#### 29.—NOTIFICATION OF CHANGE AND/OR REDUNDANCY

##### (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 the 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 requires; 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 the 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 the 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 the employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

##### (3) Discussions Before Terminations—

- (a) Where an employer had 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 discussion shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations and measures to minimise any adverse effect of any terminations on the employees concerned.

- (c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that the employer shall not be required to disclose confidential information the disclosure of which would be minimal to the employer's interests.

##### (4) Dispute Settlement Procedure—Unfair Dismissals—

Subject to the provision of the Industrial Relations Act, 1979 any dispute or claim arising under this clause shall be dealt with as follows—

- (a) As soon as is practicable after the dispute or claim has arisen, the clerical employee concerned will taken the matter up with his or her immediate supervisor offering him or her the opportunity to remedy the cause of the dispute or claim.
- (b) Where any such attempt at settlement has failed, or where the dispute or claim is of such a nature that a direct discussion between the clerical employee and his or her immediate supervisor would be inappropriate, the clerical employee concerned will as soon as practicable take the matter up with his or her department head and/or Personnel Manager affording the department head or Personnel Manager the opportunity to remedy the cause of the dispute or claim.
- (c) Where any such attempt at settlement has failed, or where the dispute or claim is of such a nature that a direct discussion between the clerical employee and his or her department head and Personnel Manager would be inappropriate, the clerical employee may notify a duly authorised representative of his or her Union who, if he or she considers that there is some substance in the dispute or claim, shall forthwith take the matter up with the employer or its representative.
- (d) If the matter is not settled it shall be submitted to the Western Australian Industrial Relations Commission whose decision, subject to the rights of appeal, shall be abided by, by the parties.
- (e) Without prejudice to either party, work shall continue in accordance with this award while the matters in dispute are being dealt with in accordance with this paragraph.

#### 30.—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 purpose of this clause—

- (a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
  - (b) Maternity leave shall mean unpaid maternity leave.
- ##### (2) Period of Leave and Commencement of Leave
- (a) Subject to subclauses (b) and (c) 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 following confinement.
  - (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.
  - (c) 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 purpose 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.

- (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 or agreement.

(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 grounds 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 the 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.

31.—RATES OF PAY

The following shall be the base rates of wages per week payable to employees covered by this award.

	Base Rate \$	Supplementary Payment \$	Total Rate \$
(1) Grade 1: Service Operator			
Level 1	387.00	21.20	408.20
Level 2	387.00	24.00	411.00
(2) Grade 2: Service Operator			
Level 1	393.50	25.20	418.70
Level 2	398.90	24.00	422.90
(3) Grade 3: Service Operator			
Level 1	398.90	29.80	428.70
Level 2	398.90	42.30	441.20
(4) Grade 4: Service Co-ordinator			
Level 1	425.70	25.30	451.00
Level 2	425.70	40.50	466.20

## (5) Definitions—

## (a) Grade 1: Service Operator—Main Job Function—

To receive and make telephone calls from club members (and potential members) requesting assistance and providing service as required.

## Indicative Key Tasks—

- Access database and enter bookings in relation to emergency breakdown service.
- Receive, make and transfer telephone calls from Automatic Call Distribution system and freeway phone.
- Retrieve and enter information into database.
- Arrange vehicle inspection bookings.
- Provide information to members and other callers by telephone on RAC products, services and procedures.

Employees at Grade 1 are expected to work within established routines, methods and procedures and after 4 weeks of training, shall work without direct supervision. They perform and are accountable for clerical and service tasks as directed within the general tasks outlined above.

## (b) Grade 2: Service Operator—Main Job Function—

In addition to the general duties of a Grade 1 Service Operator, a Grade 2 employee is required to perform tasks as generally indicated below.

## Indicative Key Tasks—

- Use VDU terminal for data communication with mobiles and access data base.
- Use voice radio for direct communication with mobiles.
- Use telephone for direct communication with staff, members and contractors.
- Operate manual job card system.
- Access database and make bookings in relation to services over and above those in Grade 1.

Employees at Grade 2 perform tasks using a more extensive range of skills and knowledge than Grade 1 Service Operators. They are required to exercise frequent low level decision making skills within established procedures and may apply limited discretion within their range of skill, knowledge, experience subject to routine supervision.

A working knowledge and understanding of the overall RAC phone room operation is required.

## (c) Grade 3: Service Operator

In addition to the general duties of Grade 2 Service Operator, a Grade 3 employee is required to perform tasks as generally indicated below.

## Indicative Key Tasks—

- Prioritise and dispatch jobs to individual mobiles, using data or radio transmission.
- Evaluate metropolitan fringe jobs for possible allocation to contractors.
- Operate manual job system.
- Ensure that Patrols are given breaks at the correct times.

- Use VDU terminal to dispatch to mobiles.
- Use voice radio to dispatch and receive jobs from mobiles.
- Discuss with members and arrange towing/battery service as required.
- Assist Shift Supervisor with issue of Patrol stores.
- Manning of VK1 phone.
- Assist with tasks undertaken by all staff up to and including Grade 3.

Employees at this grade as part of their required duties perform clerical and service tasks at a higher level than Grade 2. They have greater responsibility and accountability for their work which requires them to act upon most internal and external enquiries.

## (d) Grade 4: Service Co-ordinator—Main Job Function—

Employees at this grade are primarily engaged to assist the Shift Supervisor and in doing so are required to provide general supervision and support to Grade 1, 2 and 3 Service Operators; and perform tasks as generally indicated below.

## Indicative Key Tasks—

- Dispatch work to Field Operators and Contractors.
- Supervise and verify daily attendance and productivity records.
- Relieve and assist control room staff as required.
- Maintain control room stationery levels.
- Receive and deal with telephone calls.
- Issue stock to Patrols.

Employees at this grade are expected to supervise control room staff under guidance from the Shift Supervisor and generally perform tasks at a higher level than Grade 3 employees. A major focus of the position is customer relations.

Decision making and discretion is required within established procedures and overall the employee is responsible for his/her own work and the monitoring of others, reporting to the Shift Supervisor.

## (6) Progression Within a Grade—

New employees shall be appointed at Level 1 of the relevant grade upon commencement.

Existing employees shall be graded according to the translation table at Appendix A of the Award and will be advised in writing of their classification. At twelve monthly intervals thereafter employees shall be subject to a performance appraisal and shall advance to the next level within their appointed grade upon completion of twelve months' satisfactory service.

Where an employee is denied an increment to the next level within a grade due to unsatisfactory performance, the Club shall further review the employee within three months from the expected date of progression. During the three months review period the employee shall be given adequate assistance by the employer and a reasonable opportunity to meet the performance requirements of the position.

## (7) Progression From Grade to Grade—

An employee shall be graded according to the main job function for which they are employed. Movement to a higher grade shall be determined by the employer where the employee is required to and performs the duties of a higher classification and which is the employee's Main Job Function.

## (8) Disputed Grading—

Within 21 days of being graded, an employee dissatisfied with the grading determined by the employer may—

- in the first instance request in writing a review by the Human Resources Department stating the reasons for review and the Human Resources Department shall respond within 21 days.
- if the employee remains dissatisfied after considering the written reasons provided by the employer, the employee shall within 14 days request that a Board of Reference be called to determine the appropriate grading.

Any amendment to the employee's grading shall apply from the date of the employee requesting in writing a review in accordance with paragraph (a) hereof.

(9) Arbitrated Safety Net Adjustment—

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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.

(10) Wages—

Wages shall be paid fortnightly calculated on an average basis including an average of 38 hours per week. The method of payment will be by electronic funds transfer. The pay period commences on Sunday and ends on the Saturday.

### 32.—SUPERANNUATION

(1) Payment—

- (a) In addition to the ordinary rate of wage paid to an employee and in addition to any contributions being made by an employer as at 1 September 1987 on behalf of an employee to any superannuation fund, the employer shall contribute an amount calculated on the basis of 3% from 1 December 1988 of the ordinary time earnings of each eligible full-time, part-time and casual employee to the account of such employee in an approved Occupational Superannuation Fund in accordance with the rules of such fund and the provisions of this clause.
- (b) Casual employees employed for a period in excess of two weeks in accordance with the provisions of the award shall upon completing 13 weeks in which they have and a start become eligible for the payment of superannuation. Such payment shall be back-dated to the date of their engagement but not earlier than the operative date of this clause.

(2) Definitions—

For the purposes of this clause—

- (a) "Approved" means approved by the Occupational Superannuation Commission.
- (b) "Approved Occupational Superannuation Fund" shall mean the RAC Superannuation Fund or such other Approved Occupational Superannuation Fund as may be agreed in writing between the Union and the employer.
- (c) "Ordinary time earnings" means the ordinary periodic wages and/or other remuneration paid by the employer to the employee each week including but not limited to any supplementary payments, over-award payments and allowances regularly paid for working ordinary hours and/or for the class of work regularly undertaken by the employee and in respect of casual employees shall include any casual loading prescribed by the award but not including any bonuses, commission, payments for overtime or any other extraordinary payments, remuneration or allowances including meal allowances.
- (d) "Union" shall mean the Federated Clerks Union of Australia Industrial Union of Workers, W.A.Branch.

(3) Members' Additional Voluntary Contributions—

Where the rules of the fund allow an employee to make additional contributions such employee may elect to make additional contributions to such fund and the employer shall, where such election is made upon the direction of the employee deduct such contributions from the employee's wages and pay them to the said fund in accordance with the direction of the employee and the rules of the said fund.

(4) Alternative Calculation of Payments—

Notwithstanding the provisions of this clause the payment required to be made to a Fund may be calculated on a basis agreed in writing between the Union and the employer.

### 33.—AVOIDANCE OF INDUSTRIAL DISPUTES

(1) Objectives—

Subject to the provisions of the Industrial Relations Act as amended from time to time, the procedure for the resolution of any grievance or industrial dispute shall be in accordance with subclause (2) hereof. The objective of the procedure shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion; to reduce the level of industrial confrontation and to avoid interruption to the performance of work and the consequential loss of service to members and/or the wages of employees.

(2) Procedures—

- (a) When a dispute arises the initial stage of discussion shall involve an employee/employees and the Road Service Manager.
- (b) If the matter is not resolved the dispute shall be referred for discussion involving nominees of the Union and the Employer which may include their respective industrial relations representatives.
- (c) 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 to the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.
- (d) There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice from one party to the other of any issue or problem which may give rise to a grievance or dispute.
- (e) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.
- (f) Sensible time limits shall be allowed for the completion of the various stages of the discussions.
- (g) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lock-outs or any other bans or limitation on the performance of work while the procedures of negotiation and conciliation are being followed.
- (h) The employer and employees shall ensure that all practices applied during the operation of the procedures are in accordance with safe working practices and consistent with established custom and practices at the workplace.

(3) The proper exercise or rights and entitlements under this award may not of itself give rise to a dispute or require the application or procedures under this clause.

### 34.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of this Award.

(2) Employers and employees covered by this Award may reach agreement at the level of individual enterprises to provide for more flexible working arrangements, improved quality of working life, enhanced skills and job satisfaction. Such enterprise agreements may involve a variation in the application of award provisions in order to meet the requirements of individual enterprises and their employees. Agreements may be negotiated and consequential award variations processed in accordance with subclause (3) of this clause.

(3) The Union will discuss all matters relating to increased flexibility that are raised by the employer. Any such discussion with the Union shall be on the premise that—

- (a) The majority of employees at the enterprise must genuinely agree.
- (b) No employee will lose income as a result of the change.
- (c) The Union must be party to the agreement, in particular, where enterprise level discussions are considering matters requiring any award variation, the Union shall be invited to participate.

- (d) The Union shall not unreasonably oppose any agreement.
- (e) Agreements are to be submitted for ratification by the Commission.

#### APPENDIX—RESOLUTION OF DISPUTES REQUIREMENTS

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.

(3) This Appendix shall come into effect on and from 16 August 1996.

#### APPENDIX A: TRANSLATION TABLE

EXISTING	PROPOSED
	Grade 1: Service Operator
	Level 1 \$392.20
(1) Level 1—Telephonist \$395.00	Level 2 \$395.00
	Grade 2: Service Operator
(2) Level 2—Radio Operator \$401.50	Level 1 \$402.70
	Level 2 \$406.90
	Grade 3: Service Operator
(3) Level 3—Plotters \$406.90	Level 1 \$412.70
	Level 2 \$425.20
	Grade 4: Service Co-ordinator
(4) Level 4—Control Clerks \$433.70	Level 1 \$435.00
	Level 2 \$450.20

#### SCHEDULE—NAMED UNION PARTY

The Federated Clerks' Union of Australia, Industrial Union of Workers, W.A. Branch is a named party to this Award.

#### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award / industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- is not a member of the organisation; and
- has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

#### CLUB WORKERS AWARD 1976. No. 12 of 1976.

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 25th day of June, 1997.

J. CARRIGG,

Registrar.

#### Club Workers Award 1976

##### 1.—TITLE

This award shall be known as the "Club Workers' Award, 1976" and replaces awards numbered 45 of 1968, as amended, and, 45A of 1968, as amended.

##### 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

##### 2.—ARRANGEMENT

- Title
- 1A. Statement of Principles—August 1996
2. Arrangement
- 2A. State Wage Principles—September 1989
3. Area
4. Scope
5. Term
6. Definitions

7. Contract of Service
  8. Hours
  9. Additional Rates for Ordinary Hours
  10. Overtime
  11. Casual Employees
  12. Part-Time Employees
  13. Meal Breaks
  14. Meal Money
  15. Sick Leave
  16. Bereavement Leave
  17. Holidays
  18. Annual Leave
  19. Long Service Leave
  20. Payment of Wages
  21. Wages
  - 21A. Minimum Wage—Adult Males and Females
  22. Junior Employees
  23. Apprentices
  24. Bar Work
  25. Higher Duties
  26. Uniforms and Laundering
  27. Protective Clothing
  28. Employee Equipment
  29. Deleted
  30. Board and/or Lodging
  31. Travelling Facilities
  32. Record
  33. Roster
  34. Change and Rest Rooms
  35. First Aid Kit
  36. Posting of Award and Union Notices
  37. Superannuation
  38. Deleted
  39. Under-Rate Employees
  40. Breakdowns
  41. Prohibition of Contracting Out of Award
  42. District Allowance
  43. Maternity Leave
  44. Trainees
  45. Enterprise Flexibility
- Appendix—Resolution of Disputes Requirement  
 Schedule A—Named Union Party  
 Schedule B—Respondents  
 Appendix—S.49B—Inspection Of Records Requirements

## 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 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 described in Clause 21.—Wages of this award, in any club licensed to sell liquor, pursuant to the Liquor Licensing Act, 1988.

### 5.—TERM

The term of this award shall be for a period of one year as from the beginning of the first pay period commencing on or after the 7th of May 1976.

### 6.—DEFINITIONS

(1) “Bar Attendant” shall mean a worker over the age of 18 years who serves liquor for sale from behind a bar counter.

(2) “Cellerman” shall mean a worker employed in charge of, or is responsible for the contents of a cellar or liquor store.

(3) “Chef” shall mean a worker who is a “Qualified Cook” (as defined in subclause (4) hereof) and who is appointed as such by his employer.

(4) “Qualified Cook” shall mean a worker who has completed and can produce appropriate documentary evidence to his or her employer to the effect that he or she has successfully completed an apprenticeship in cooking at an approved or

recognised school or college, or who can provide documentary evidence of having served at least six years in Her Majesty’s Armed Forces in the classification of Cook.

(5) “Breakfast Cook” shall mean a worker (other than a Chef, Qualified Cook or Cook Employed Alone), who is responsible for the preparation of breakfasts.

(6) “Other Cook” shall mean a worker who assists in the cooking and preparing of meals.

(7) “Cook Employed Alone” shall mean a worker who is employed when no other cook is employed during his or her shift.

(8) “Housekeeper” shall mean a worker who is required by the employer to be in charge of housemaids and/or other workers.

(9) “Cashier” shall mean a worker who is principally engaged upon receiving monies in a dining room or restaurant area.

(10) “Snack Bar Attendant” shall mean a worker serving and/or receiving money from the public for snacks or meals in or adjacent to a bar.

(11) “Head Waiter, Head Waitress, Head Steward or Head Stewardess” shall mean a worker who is required by the employer to be in charge of other Waiters, Waitresses, Stewards or Stewardesses.

(12) “Waiter or Waitress” shall mean a worker who attends to the needs of guests at a table and/or performs room service duties.

(13) “Cleaner—Female” shall mean a worker who does general cleaning duties in bars and/or public areas.

(14) “Spread of Shift” shall mean the time which elapses from the worker’s actual starting time to the worker’s actual finishing time on each work period.

(15) “Supervisor” shall mean a worker who is responsible for the general control of the operations of a bar and who performs such other duties as mutually agreed to with the employer.

(16) “Non-working Day” shall mean any day upon which a part-time worker, 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.

(17) “Rostered Day Off” shall mean any day (other than a “Non-working Day” as defined) upon which a worker is not rostered to work any ordinary hours of work: provided that a worker’s rostered day off shall be a period of twenty-four hours commencing from the completion of an ordinary-hours work period.

### 7.—CONTRACT OF SERVICE

(1) Except for a casual employee, the contract of service shall be terminable in accordance with the following provisions—

- (a) In the first year of continuous service—by the giving of one day’s notice on either side or the payment or forfeiture, as the case may be, of one day’s pay.
- (b) In the second year 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 week’s pay.
- (c) In the third and succeeding years of continuous service—by the giving of two week’s notice on either side or the payment or forfeiture, as the case may be, of two weeks’ pay.
- (d) Notwithstanding any other provision of this subclause, the employer and the employee may mutually agree to accept shorter notice periods, or payment or forfeiture, as the case may be, in lieu thereof.

(2) For the purposes of this clause the term “one day’s notice” shall mean notice to terminate employment at the end of the worker’s shift on the following working day. In the case of paragraphs (b) and (c) of subclause (1) 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. The term “one day’s pay” shall mean seven hours and thirty-six minutes (7.6 hours) wages paid at the ordinary hourly rate, provided

that in the case of a part-time worker, the ordinary hourly rate shall be calculated on the number of hours that the worker would have normally worked.

(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) 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 employee's skill, competence and training.

#### 8.—HOURS

(1) (a) Subject to this clause and except as provided elsewhere in this award, the ordinary hours of work shall be seventy-six per fortnight.

(b) The ordinary hours of work shall be exclusive of meal breaks and be so rostered that a worker shall not be required to commence work on more than ten days in each fortnight.

(c) Each ordinary hours work period shall not be less than four nor more than ten ordinary hours, and shall be worked within a spread of shift not exceeding twelve hours. Provided that no worker shall be rostered to work less than three hours consecutively exclusive of meal breaks.

(d) Where an ordinary hours work period commences prior to midnight on any day, that work period shall be deemed to have been worked on the day upon which the ordinary hours work period commenced. Provided, however, that the worker shall be paid the appropriate additional rates provided by Clause 9.—Additional Rates for Ordinary Hours or Clause 17.—Holidays, according to the actual hours worked in that work period.

(2) (a) The employer shall have the right to roster the ordinary hours of work for each worker according to the needs of the business, but the employer shall, in the following circumstances, seek the agreement of each worker—

- (i) where the work is to be rostered over more than seven consecutive work periods; 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 a worker's work roster includes work periods where more than eight ordinary hours are regularly worked, two of such days shall be consecutive.

(3) This clause shall have effect from the beginning of the first pay period commencing on or after the 12th day of March, 1990.

#### 9.—ADDITIONAL RATES FOR ORDINARY HOURS

(1) An employee who is required to work any ordinary hours prior to 7.00 am or after 7.00 pm on any day Monday to Friday, both inclusive, shall be paid at the rate of an extra \$1.12 per hour for each such hour, or part thereof worked. Provided that any worker who works the majority of his/her ordinary hours between midnight and 7.00 am shall be paid \$1.17 per hour extra for each such hour, or part thereof worked.

(2) All time employee during the ordinary hours of work on Saturdays and Sundays shall be paid for at the rate of time and a half.

(3) A worker who is required to work any of his/her ordinary hours on any day in more than one period of employment, other than for meal breaks as prescribed in accordance with the provisions of Clause 13.—Meal Breaks of this Award, shall be paid an allowance of \$1.85 per day, for such broken work period worked.

(4) The provisions of subclauses (1) and (2) hereof shall not apply to any work performed on a holiday and to which the provisions of subclause (2) of Clause 17.—Holidays are applicable.

(5) The provisions of this clause shall not apply to casual workers.

#### 10.—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.

(4) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that a worker has at least eight consecutive hours off duty between successive work periods. A worker (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 has not had at least eight consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he 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 worker resumes or continues work without having had such eight 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 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 a worker 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 a worker works overtime continues with an ordinary hours work period to which the provisions of subclause (1)(d) of Clause 8.—Hours 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) 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 worker to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirements.
- (b) No organisation, 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 clause.

#### 11.—CASUAL EMPLOYEES

(1) A casual employee shall mean an employee engaged and paid as such, and whose employment may be terminated by the giving of one hour's notice on either side, or the payment or forfeiture, as the case may be, of one hour's pay.

(2) Casual employees shall not be engaged for less than two consecutive hours per time.

(3) A casual employee shall be paid only the following hourly wage rates for any work performed—

CLASSIFICATIONS (total wage per hour)—	Days Other than Holidays	Holidays
	\$	\$
(1) Chef	13.78	22.55
(2) Qualified Cook	12.81	20.93
(3) Cook Employed Alone	12.24	19.98
(4) Breakfast and/or Other Cooks	12.11	19.77
(5) Bar Attendant	12.22	19.95
(6) Cellarman	12.52	20.45
(7) Head Waiter/Waitress	12.81	20.93
(8) Head Steward/Stewardess	12.81	20.93
(9) Hostess	12.81	20.93
(10) Waiter/Waitress	11.95	19.49
(11) Steward/Stewardess	11.95	19.49
(12) Housekeeper/Supervisor	13.10	21.41
(13) Night Porter	11.83	19.30
(14) Hall Porter	11.83	19.30
(15) Lift Attendant	11.83	19.30
(16) Cashier	12.22	19.95
(17) Snack Bar Attendant	11.95	19.49
(18) Butcher	12.81	20.93
(19) Kitchenhand	11.83	19.30
(20) Commissionaire and/or Car Parking Attendant	11.83	19.30
(21) Security Officer	12.81	20.93
(22) Timekeeper	12.22	19.95
(23) Storeman	12.11	19.77
(24) Housemaid	11.83	19.30
(25) Laundress	11.83	19.30
(26) Cleaner	11.83	19.30
(27) Maintenance Man	12.81	20.93
(28) Gardener	11.83	19.30
(29) Yardman	11.83	19.30
(30) General Hand	11.83	19.30

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week (63 cents per hour) available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and March 1996 State Wage Decision. The first, second and third \$8.00 per week (21 cents per hour) arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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.—PART-TIME EMPLOYEES

(1) A part-time employee shall mean an employee who, subject to the provisions of Clause 8.—Hours, regularly works no less than twenty ordinary hours per fortnight nor less than three hours per work period.

(2) A part-time employee shall receive payment for wages, annual leave, holidays, bereavement leave, and sick leave on a pro-rata basis in the same proportion as the number of hours worked each fortnight bears to seventy-six hours.

(3) Notwithstanding any other provision of this award, the employer and the employee may, by agreement, increase the ordinary hours to be worked in any particular pay period to a maximum of seventy-six ordinary hours. Such extra hours shall be paid for at ordinary rates of pay.

#### 13.—MEAL BREAKS

(1) Every employee shall be entitled to a meal break of not less than one half hour nor 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 per cent of the prescribed ordinary hourly rate applying to such employee, until such time as the employee is released for a meal.

(2) In addition to a break for a meal, there may be one other break of at least one hour during each shift. Such break may be taken in conjunction with the meal break.

#### 14.—MEAL MONEY

Any employee who is required to work overtime for two hours or more on any day, without being notified on the previous day or earlier, that he or she will be so required to work such overtime, will either be supplied with a substantial meal by the employer or be paid \$6.90 meal money.

#### 15.—SICK LEAVE

(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 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 a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to be 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 absence. Provided that a worker shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within two hours of the commencement of the absence.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 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 worker's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmitter shall stand to the credit of the worker at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) The provisions of this clause shall not apply to a casual worker.

#### 16.—BEREAVEMENT 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 or grandparent, 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 ordinary hours that would have been worked by the worker in the two work periods rostered to be worked on the day of and the day preceding the funeral. Proof of such death shall be furnished by the worker to the satisfaction of his employer if he so requests.

(2) The provisions of this clause shall have no effect while the period of entitlement to leave coincides with any other period of leave that may be due to the worker concerned.

(3) The provisions of this clause shall not apply to a casual worker.

#### 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 holidays 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) hereof falls on a worker's rostered day off the holiday shall be observed on the next rostered working day. In this 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) (a) All work done on any such holiday shall be paid for 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' work 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) such rostered time off

shall be taken within eight weeks of the date of accrual at a time agreed between the employer and the employee.

(d) Where such time off in lieu is not taken in accordance with paragraph (c) 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 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.

(e) 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.

(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 shall not apply to a casual worker.

#### 18.—ANNUAL LEAVE

(1) (a) Except as hereinafter provided, a period of four consecutive week's leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his employer and shall be taken annually by the worker after a period of twelve months' continuous service with that employer.

(b) Where pursuant to paragraph (3) of subclause 2 of the Long Service Leave provisions published in Volume 59, Western Australian Industrial Gazette at pages 1—6, the period of continuous service which a worker has had with the transmitter (including any such service with any prior transmitter) is deemed to be service of the worker with the transferee then that period of continuous service shall be deemed to be service with the transferee for the purposes of this subclause.

(2) During a period of annual leave a worker shall receive a loading of 17.5 per cent calculated on his ordinary rate of wage. Provided that where the worker would have received any additional rates for work performed in ordinary hours, as prescribed by this Award, had he not been on leave during the relevant period and such additional rates would have entitled him to a greater amount than the loading of 17.5 per cent, then such additional rates shall be added to his ordinary rate of wage in lieu of the 17.5 per cent loading. Provided further, that if the additional rates would have entitled him to a lesser amount than the loading of 17.5 per cent, then such loading of 17.5 per cent shall be added to his ordinary rate of wage in lieu of the additional rates. The loading prescribed by this subclause shall not apply to proportionate leave on termination.

Provided in the case of a worker who has been employed for a period of not less than six months by his employer and whose services are being terminated due to the sale of that employers business, that worker shall be entitled to payment of the loading prescribed by this subclause upon termination.

(3) If any prescribed holiday 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.

(4) Any time in respect of which a worker is absent from work, shall not count for the purpose of determining his right to annual leave, unless it is an absence during which he is entitled to claim sick pay or time spent on holidays, annual leave and long service leave as prescribed by this award, or it is an absence approved by the employer.

(5) (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 (4) of this clause;

- (iii) any absence from work on account of personal sickness or accident proof whereof shall be upon the worker or on account of leave granted by the employer;
- (iv) any absence with reasonable cause proof whereof shall be upon the worker but in such a case the worker 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 fourteen days of the termination of the absence notifies the worker in writing that such absence will be regarded as having broken the continuity of service.

Such notice may be given to a worker by delivering it to him personally or by posting it to his last known address in which case it shall be deemed to have reached the worker in due course of post or, where a number of workers are absent from work, by posting up of a notification in the employers establishment.

(c) An absence from duty referred to in this subclause shall not, except as provided in subclause (4) of this clause, be taken into account in calculating the period of twelve month's continuous service.

(6) (a) 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 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) he has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(b) If, after one month's continuous service in any qualifying twelve monthly period, a worker leaves his employment, or his employment is terminated by the employer through no fault of the worker, the worker shall be paid 12 2/3 hours' pay at his ordinary rate of wage in respect of each completed month of continuous service.

(7) With the consent of the employer and the worker, 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 worker annual leave may be allowed to accumulate from year to year but where the leave to which a worker is entitled or any portion thereof is allowed to accumulate to meet the convenience of the worker the ordinary wage for that leave shall be the ordinary wage applicable to the worker at the date at which he 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 employer, 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 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 (6) of this clause the employee shall be liable to pay the amount representing the difference between the amount received by him/her for the period of leave taken in accordance with this subclause and the amount would have accrued in accordance with subclause (6) of this clause. The employer may deduct this amount from monies due to the employee by reason of the other provisions of this award at the time of termination.

(c) The annual leave loading provided by subclause (2) of this clause, shall not be payable when annual leave is taken in advance pursuant to the provisions of this subclause. The loading not paid, for the period of leave taken in advance, shall be payable to the employee at the end of the first pay period following the employee completing the qualifying period of continuous service provided in subclause (1) of this clause.

(10) The provisions of this clause shall not apply to casual employees.

#### 19.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Vol. 59 of the Western Australian Industrial Gazette, at pages 1 to 6 inclusive are hereby incorporated in and shall be deemed to be part of this award.

#### 20.—PAYMENT OF WAGES

(1) (a) The employer may elect to pay workers 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 worker. The day that the credit transfer is credited to the worker'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 worker's ordinary working hours.

(c) No employer shall change its method of payment to workers without first giving them at least four weeks' notice of such change.

(2) (a) The employer shall pay workers weekly or fortnightly in accordance with subclause (1) of this clause.

(b) The employer shall not change the frequency of payment to workers without first giving those employees at least four weeks' notice of such change.

(c) 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 worker.

(3) Workers, who are paid by cash or cheque, whose day off falls on a pay day shall be paid their wages upon request from the worker to the employer, prior to the worker taking the day off.

(4) For the purposes of effecting the rostering off of workers as provided by this award, ordinary wages may be paid either for the actual hours worked each pay period or an amount being calculated on the basis of the average of 38 hours per week.

(5) A worker who lawfully terminated his employment, or is dismissed for reasons other than misconduct, shall be paid all wages due to him by the employer on the day of termination of his employment or as soon as practicable after the date of termination of his employment.

#### 21.—WAGES

The following shall be the minimum fortnightly rates of wages payable to workers covered by this award—

(1) (a) Classifications	Base Rate (per fortnight)	Supplementary payment (per fortnight)	Arbitrated Safety Net Adjustments (per fortnight)	Total Award Rate (per fortnight)
	\$	\$	\$	\$
(1) Chef	771.90	16.00	48.00	835.90
(2) Qualified Cook	719.20	16.00	48.00	783.20
(3) Cook Employed Alone	678.20	16.00	48.00	742.20
(4) Breakfast and/or Other Cooks	671.50	16.00	48.00	735.50
(5) Bar Attendant	677.20	16.00	48.00	741.20
(6) Cellarman	693.60	16.00	48.00	757.60
(7) Head Waiter/Waitress	719.20	16.00	48.00	783.20
(8) Head Steward/Stewardess	719.20	16.00	48.00	783.20
(9) Hostess	719.20	16.00	48.00	783.20
(10) Waiter/Waitress	662.50	16.00	48.00	726.50
(11) Steward/Stewardess	662.50	16.00	48.00	726.50
(12) Housekeeper/Supervisor	734.80	16.00	48.00	798.80
(13) Night Porter	656.30	16.00	48.00	720.30
(14) Hall Porter	656.30	16.00	48.00	720.30
(15) Lift Attendant	656.30	16.00	48.00	720.30
(16) Cashier	677.20	16.00	48.00	741.20
(17) Snack Bar Attendant	662.50	16.00	48.00	726.50
(18) Butcher	719.20	16.00	48.00	783.20
(19) Kitchenhand	656.30	16.00	48.00	720.30
(20) Commissionaire and/or Car Parking Attendant	656.30	16.00	48.00	720.30

Classifications	Base Rate (per fortnight)	Supplementary payment (per fortnight)	Arbitrated Safety Net Adjustments (per fortnight)	Total Award Rate (per fortnight)
	\$	\$	\$	\$
(21) Security Officer	719.20	16.00	48.00	783.20
(22) Timekeeper	677.20	16.00	48.00	741.20
(23) Storeman	671.50	16.00	48.00	735.50
(24) Housemaid	656.30	16.00	48.00	720.30
(25) Laundress	656.30	16.00	48.00	720.30
(26) Cleaner	656.30	16.00	48.00	720.30
(27) Maintenance Man	719.20	16.00	48.00	783.20
(28) Gardener	656.30	16.00	48.00	720.30
(29) Yardman	656.30	16.00	48.00	720.30
(30) General Hand	656.30	16.00	48.00	720.30

#### (b) Supplementary Payments

Supplementary payments prescribed in this clause are in substitution of any overaward payment as defined hereunder which would otherwise have been paid as at the date of this variation to the award.

"Overaward payment" is defined as the amount (whether it be termed "Overaward payment", "attendance bonus", or any similar term) which an employee would receive in excess of the "award wage" for the classification in which such employee is engaged. Provided that such payment shall exclude overtime, shift allowance, penalty rates, disability allowances, fares and travelling time allowance and any other ancillary payments of a like nature prescribed by this award.

#### (c) Arbitrated Safety Net Adjustments

The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week (63 cents per hour) available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and March 1996 State Wage Decision. The first, second and third \$8.00 per week (21 cents per hour) arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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) In-Charge Rates

An employee (other than a Chef, Housekeeper/Supervisor, Head Waiter/Waitress or Head Steward/Stewardess) who is appointed and placed in charge of other employees by the employer shall be paid the following rates in addition to his or her normal wage—

	Per Fortnight
	\$
(a) if placed in charge of less than 6 workers	18.70
(b) if placed in charge of 6 to 10 workers	25.00
(c) if placed in charge of 11 to 20 workers	28.70
(d) if placed in charge of more than 20 workers	48.10

#### 21A.—MINIMUM WAGE—ADULT MALES AND FEMALES

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than the minimum rates prescribed by the Minimum Conditions of Employment Act, 1993, as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

#### 22.—JUNIOR EMPLOYEES

(1) Subject to the provisions of the Liquor Licensing Act, 1988, employees under the age of twenty-one years may be employed as junior employees in any of the occupations covered by this award, other than an apprenticeship trade.

(2) Junior females, under eighteen years of age, shall not be employed in the classification of housemaid.

(3) 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

(4) No junior employee, who is currently employed by an employer party to this award shall, whilst that employment continues, suffer any diminution in his/her current rate of pay as a result of the introduction of the provisions of subclause (3) of this clause.

#### 23.—APPRENTICES

(1) Apprentices to the trade of cooking may be employed and paid the wages contained in subclause (3) hereof.

(2) 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—

- the union so agrees; or
- the Commission determines otherwise.

(3) Wages (per fortnight) expressed as a percentage of the "Tradesman's Rate"—

	%
(a) Four Year Term—	
First year	42
Second year	55
Third year	75
Fourth year	88
(b) Three and a Half Year Term—	
First six months	42
Next year	55
Next following year	75
Final year	88
(c) Three Year Term—	
First year	55
Second year	75
Third year	88
(d) For the purposes of this subclause the term "Tradesman's Rate" means the total rate payable to a "Qualified Cook", as prescribed in Clause 21.—Wages, of this award.	

#### 24.—BAR WORK

(1) Any employee, other than a Bar Attendant who, in addition to his or her normal duties is required to dispense liquor from a bar, shall be paid a flat rate of 73 cents per day in addition to the rate prescribed for such normal duties.

(2) Any employee employed as a Bar Attendant who, in addition to the ordinary work of such classification, is required to be responsible for and/or the purchasing of stock, shall be paid an amount of \$12.00 per fortnight in addition to the rate prescribed for a Bar Attendant.

(3) Any employee employed as a Bar Attendant who, in addition to the ordinary work of such classification, is required to operate a computer terminal for the receipt and payments of bets, shall be paid an amount of \$12.00 per fortnight in addition to the rate prescribed for a Bar Attendant.

#### 25.—HIGHER DUTIES

(1) Any worker, other than a night porter, performing work for two or more hours in any one day on duties carrying a higher prescribed rate of wage than that in which he is engaged, shall be paid the higher wage for such day. If work is performed for less than two hours in any day, he shall be paid the higher wage for the time so worked.

(2) Any worker who is required to perform duties carrying a lower prescribed rate of wage, shall do so without any loss of pay.

#### 26.—UNIFORMS AND LAUNDERING

(1) The employer may require plain white headbands to be worn by female workers. Where the employer requires any special uniform to be worn such special uniform shall be provided by the employer and shall remain the property of the employer. A special uniform shall consist of such articles or clothing such as monogrammed or coloured jackets, dresses, blouses, overalls, aprons, caps, collars, cuffs or other special apparel which the employer may require a worker to wear whilst on duty; provided that the ordinary apparel usually worn by waiters and stewards shall not be deemed to be special uniforms within the meaning of this clause.

(2) Subject to subclause (3) hereof, an employer requiring any of the articles of clothing to be worn as described in subclause (1) of this clause, shall cause such clothing to be laundered at his/her own expense or otherwise shall pay to the worker concerned \$4.80 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than half the standard ordinary hours each fortnight.

(3) Where a cook wears the ordinary apparel usually worn by cooks such as black and white check or white trousers, white coats, white shirt, white apron and cap, such garments shall be laundered at the employer's expense or otherwise the worker shall be paid \$7.30 per fortnight worked as a laundry allowance. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

(4) Any dispute in respect to the application of this clause shall be referred to a Board of Reference.

#### 27.—PROTECTIVE CLOTHING

(1) Workers who are required to wash dishes, clean toilets or otherwise handle detergents, acids, soaps or any injurious substances, shall be supplied with rubber gloves free of charge by the employer, or be paid, in lieu, an allowance of \$2.40 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

(2) Where a worker is required to work in the rain, or where the conditions of work are such that workers are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(3) Where the conditions of work are such that workers are unable to avoid their feet becoming wet, they shall be supplied by the employer free of charge with suitable protective footwear.

(4) All articles supplied shall remain the property of the employer and shall be returned when required, in good order and condition, fair wear and tear expected.

(5) Any dispute in respect to the application of this clause shall be referred to a Board of Reference.

#### 28.—EMPLOYEE EQUIPMENT

All knives, choppers, tools, brushes, towels and other utensils, implements and material which may be required to be used by the employee for the purpose of carrying out his/her duties, shall be supplied by the employer free of charge. Provided that where an employee is required by the employer to use his/her own knives he shall be paid an allowance of \$9.70 per fortnight worked. The allowance provided herein shall be halved for employees who work less than thirty-eight ordinary hours each fortnight.

#### 29.—DELETED

#### 30.—BOARD AND/OR LODGING

(1) No worker shall be compelled to board and/or lodge on the employer's premises and it shall not be a condition of employment that any worker shall board and/or lodge on the employer's premises, but where by mutual consent board and/or lodging is provided, the employer shall be entitled to

deduct in respect of such worker the following maximum amounts per fortnight—

- (a) Full board and lodging of 42 meals per fortnight—
  - (i) single accommodation— \$121.10 per fortnight
  - (ii) shared accommodation— \$ 90.90 per fortnight
- (b) Individual meals— \$2.25 each.
- (c) Junior workers who are in receipt of less than the full adult rates, shall not have deducted an amount in excess of 70 per cent of the rates prescribed in paragraph (a) hereof.
- (d) The rates prescribed in paragraph (a) hereof shall be reduced pro rata for any period less than a fortnight.

(2) Mutual consent for the purpose of this clause means a document which the worker has signed agreeing to the amount of board and/or lodging offered by the employer. Such agreement may be cancelled by either party giving fourteen days' notice in writing to the other party.

(3) Workers sleeping in shall be provided with a common sitting room apart from their bedrooms and shall have access to a properly equipped bathroom and also have access to a laundry at such times as are mutually agreed upon between the worker and the employer. Provided where a worker is required to use a coin operated washing machine and/or dryer in a laundry, the board and/or lodging charges for that worker shall be reduced by an amount of \$2.60 per fortnight.

(4) Any dispute in respect to the application of this clause shall be referred to a Board of Reference.

#### 31.—TRAVELLING FACILITIES

(1) Where a worker is detained at work until it is too late to travel by the last ordinary bus, train or other regular conveyance to his usual place of residence the employer shall provide proper conveyance free of charge.

(2) If a worker is required to start work before the first ordinary means of conveyance (hereinbefore described) is available to convey him from his usual place of residence to the place of employment, the employer shall provide a conveyance free of charge.

(3) Where a worker is engaged by an employer to proceed to work at a place above the 26th parallel of South latitude, the fares of such worker shall be paid by the employer who may deduct the amount thereof from the worker's first and subsequent fortnightly wages. Provided that such amount deducted shall not exceed fifty per cent of the worker's fortnightly wage.

Provided further that the amount so deducted shall be refunded to the worker if he works for the employer for at least six months, or if the worker's services are terminated by the employer before that time, through no fault of the worker.

(4) If a worker referred to in subclause (3) hereof continues to work for the employer for six months or longer, he shall upon the termination of his services, other than for gross misconduct, be supplied with a return ticket to the place of engagement if he is so returning to that place, or alternatively be paid an amount equivalent to such return ticket.

(5) The provisions of subclauses (1) and (2) of this clause do not apply to a worker who usually has his or her own means of conveyance.

#### 32.—RECORD

(1) Each employer bound by this award shall maintain a record at each establishment containing the following information relating to each worker—

- (a) The name and address given by the worker;
- (b) The age of the worker if paid as a junior worker;
- (c) The classification of the worker and whether the worker is full-time, part-time or casual;
- (d) The commencing and finishing times of each period of work each day;
- (e) The number of ordinary hours and the number of overtime hours worked each day and the totals for each pay period; and
- (f) The wages and any allowances paid to the worker each pay period and any deductions made therefrom.

(2) (a) At the time of payment of wages the worker may be given a pay slip showing that part of the record specified in paragraphs (e) and (f) of subclause (1) with respect to the pay period for which payment is being made.

(b) If a pay slip is not given to the worker as prescribed in paragraph (a) hereof the worker 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 worker.

(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 subclauses (2) and (4) 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 employer's premises from Monday to Friday, both inclusive, between the hours of 9.00 a.m. to 5.00 p.m. (excepting the period between 1.00 p.m. and 2.00 p.m.). In the case of any establishment which is only open for business after 5.00 p.m. or 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 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 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 requires to inspect the record in accordance with the provisions of this award and shall specify the period contained in the record which he 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 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 40 kilometres from the G.P.O., Perth shall make the record available to the union official at the time specified by the union 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.

### 33.—ROSTER

(1) A roster of the ordinary working hours shall be exhibited in each establishment in such place as it may be conveniently and readily seen by each worker concerned.

(2) Such roster shall show—

(a) the name of each worker; and

(b) the hours to be worked by each worker each day.

(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 worker (other than a casual worker) for at least a week in advance of the date of the roster, and may only be altered on account of the sickness of any worker, or by mutual consent between the worker and the employer, or by the employer giving at least three days' notice of such alteration to the worker.

### 34.—CHANGE AND REST ROOMS

Each employer shall provide a Change and Rest Room in cases where workers do not reside on the premises, which shall be adequately lighted and ventilated and be sufficiently roomy to accommodate all workers likely to use it at the one time. Such Rest Rooms shall be provided with a lounge, couch or bed, steel or vermin-proof lockers, suitable floor coverings, and a table or tables with adequate seating accommodation where workers may partake of meals. These workers shall have access to a bathroom with hot and cold water facilities.

Where an employer is unable to provide for workers the facilities prescribed in this clause, he may refer any matter in dispute to the Board of Reference.

### 35.—FIRST AID KIT

In each establishment the employer shall provide and continuously maintain at a place easily accessible to all workers an efficient First Aid Kit.

### 36.—POSTING OF AWARD AND UNION NOTICES

(1) A copy of this Award, shall be made available by the employer on his business premises in such a place where it may be conveniently and readily seen by each worker employed.

(2) The Secretary of the union, or any other duly accredited representative of the union shall be permitted to post notices relating to union business in such a place where it may be conveniently and readily seen by each worker employed.

### 37.—SUPERANNUATION

(1) Definitions

In this clause—

(a) "Approved Occupational Superannuation Fund" means a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.

(b) "Fund" means—

(i) the Host West superannuation fund; or

(ii) Westscheme; or

(iii) any other approved occupational Superannuation fund into which the employer, is contributing as at 22 October 1991, is contributing for all eligible employees.

(c) "Ordinary Time Earnings" means the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties and any overaward payments, together with any other all purpose allowance or penalty payment for work in ordinary time and shall include in respect to casual employees the appropriate casual loadings prescribed by this award, but shall exclude any payment for overtime worked.

(d) "Eligible Employee" means an employee (other than a junior casual employee) whose employment is regulated by this award and who—

(i) in the case of a full-time or part-time employee, has completed at least one month's continuous service with the employer; or

(ii) in the case of a casual employee, has completed at least three months' continuous service with the employer.

(e) "Trustee" means the trustee of the relevant fund.

(2) Contributions—

(a) An employer shall, subject to the provisions of this clause, contribute to a fund referred to in subclause (1)(b) in respect of each eligible employee an amount equal to 3% of that employee's ordinary time earnings each pay period with effect from the beginning of the first pay period commencing on or after the date of operation of this clause or the date the employee becomes an eligible employee, whichever is the later.

(b) Employer contributions together with any employee deductions shall be paid monthly for pay periods completed in each month. Provided that payments may be made at such other time and in such other

manner as may be agreed in writing between the Trustee of the Fund and the employer from time to time.

- (c) No contributions shall be made for—
- (i) periods of unpaid leave or unauthorised absences; or
  - (ii) any payout of accrued entitlements upon termination of employment; or
  - (iii) any monthly, or other agreed, contribution period in which the employee has worked less than an average of forty-eight hours per month.

(3) Employer to Continue Participation—

An employer shall not cease to participate in a fund whilst employing any eligible employee.

(4) Cessation of Contributions—

The obligation of the employer to contribution to a fund in respect of an eligible employee shall cease on the last day of that eligible employee's employment with the employer.

(5) Employees' Additional Voluntary Contributions—

Where the rules of the fund allow an eligible employee to make additional contributions to the fund the employer shall, where an election is made, upon the direction of the employee deduct contributions from the employee's wages and pay them to the fund in accordance with the direction of the employee and the rules of the fund.

(6) Employee to be advised of entitlement—

- (a) The employer shall, no later than the end of the first pay period following the date of operation of this clause or the date the employee becomes an eligible employee, notify each employee of a right to a superannuation entitlement arising from the provisions of this clause and provide the employee with an application to join the fund together with any written material explaining the fund.
- (b) Notwithstanding any other provision of this clause, it shall be the employee's responsibility to make an election, within the rules of the fund, whether or not a portion of the contribution made on his/her behalf should be allocated against the cost of a death or disablement benefit as provided by the fund.

(7) Exemptions—

- (1) The provisions of this clause shall not apply to any employee who, at the effective date of this clause and by reason of any existing superannuation arrangement with the employer, is in receipt of an employer superannuation contribution to an Approved Occupational Superannuation Fund at least equal to that provided by this clause.
- (2) The provisions of this clause shall not apply to temporary foreign residents who, whilst in possession of a working visa, obtain employment within the hospitality industry covered by this award.

37.—DELETED

38.—AUSTRALIAN TRAINEESHIP SYSTEM

(1) Scope—

This clause shall apply to a trainee employed under the Australian Traineeship System by an employer approved by the State Management Committee

(2) Definitions—

For the purpose of this clause—

The "Australian Traineeship System" means a structured system of on-the-job training with an employer and off-the-job training in a Technical and Further Education College or other training provider approved by the State Management Committee.

"Trainee" means an employee engaged under the terms of this award and in accordance with the provisions of an Australian Traineeship established pursuant to Section 37D of the Industrial and Commercial Training Act 1975 and approved by the State Management Committee.

"Traineeship Scheme" is a formal agreement of training approved by the State Management Committee and registered pursuant to Section 37D of the Industrial and Commercial Training Act, 1975.

"State Management Committee" means a Committee comprising representatives from the Confederation of Western Australian Industry, the Trades and Labor Council of Western Australia, Technical and Further Education (TAFE) and the relevant Federal and State Government Departments which approve traineeship arrangements by agreement of each of the parties. The State Management Committee may be established pursuant to the provisions of the Industrial and Commercial Training Act, 1975, or any amendment to or substitution of that Act, provided that any Committee or body established in lieu of the State Management Committee has the same representatives structure and decision making processes as that Committee.

(3) Objective—

- (a) The object of this clause is to provide the form and substance of the conditions of employment, including the rates of pay, applicable to persons engaged under the Australian Traineeship System (ATS) and who, being a trainee under that system, is covered by this award.
- (b) An objective of the Australian Traineeship System is to provide employment and training opportunities for young people so as to enhance their skill levels and future employment prospects.

(4) Form of Traineeship Agreement—

- (a) A traineeship shall be entered into by means of written agreement in a form approved by the State Management Committee and registered in accordance with the provision of the Industrial and Commercial Training Act, 1975.
- (b) A trainee shall not be engaged on a part-time or casual basis.
- (c) The Traineeship Scheme shall be for a minimum period of 12 months but this period may be varied with the agreement of the union and the employer and with the approval of the State Management Committee.

(5) Duties and Responsibilities—

- (a) A trainee shall participate in the approved on-the-job training scheme and attend the approved off-the-job training as prescribed in the training system.
- (b) An employer shall release a trainee from work to attend the prescribed off-the-job training course and shall provide the on-the-job training approved by the State Management Committee.
- (c) The employer shall provide the level of supervision in accordance with the approved training scheme during the traineeship period.
- (d)
  - (i) The overall Traineeship Scheme will be monitored by officers of the Department of Employment and Training.
  - (ii) An accredited representative of the union shall have access during ordinary working hours to inspect the relevant training records and work books and subject to the approval of the employer, which shall not be unreasonably withheld, may interview a trainee with respect to his/her progress in the Scheme.
- (e) An employer shall not, as a consequence of engaging a trainee pursuant to the provisions of this clause, terminate or otherwise prejudice the employment of any full-time employee of that employer.

(6) Overtime and Shift Work—

Overtime and Shift Work shall not be worked by trainees except to enable the requirements of the training scheme to be effected. When overtime and shift work are worked the relevant penalties and allowances of the award based on the trainee wage will apply. No trainee shall work overtime or shift work alone.

(7) Wage Rates—

The wage rate payable to a trainee shall be determined by multiplying 50% of the appropriate fortnightly wage rate prescribed by this award by 39, which represents the actual number

of weeks spent on the job, and dividing that sum by 52 to provide a weekly wage. Such wage shall be payable to the trainee in accordance with the provisions of Clause 20.—Payment of Wages of this award.

#### 39.—UNDER-RATE WORKERS

(1) Any worker who may 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 in writing between the union and the employer.

(2) In the event of no agreement being arrived at, the matter may be referred to a 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.

#### 40.—BREAKDOWNS

The employer shall be entitled to deduct payment for any day or portion of a day upon which the worker cannot be usefully employed because of any strike by the union or unions affiliated with it, or by any other association or union, or through the breakdown of the employer's machinery or any stoppage of work by any cause which the employer cannot reasonably prevent.

#### 41.—PROHIBITION OF CONTRACTING OUT OF AWARD

All workers covered by the terms of this award shall be paid not less than the wages prescribed by this award and shall work in accordance with the provisions not less advantageous to him than the provisions of this award, notwithstanding anything that may be determined to the contrary by the employer, or by the employer in agreement with the worker.

#### 42.—DISTRICT ALLOWANCE

(1) Subject to the provisions of this clause, in addition to the wages prescribed in Clause 21.—Wages of this award, a married worker shall be paid the following allowances each fortnight when employed in the towns described hereunder.

Town	Per Fortnight \$
Agnew	50.40
Balladonia	48.00
Barradale	67.80
Boulder	20.00
Bremer Bay	27.00
Broad Arrow	20.00
Broome	79.20
Bulla Bulling	20.00
Bullfinch	24.00
Carnarvon	40.40
Carrabin	24.00
Cockatoo Island	87.20
Cocklebidy	50.80
Coolgardie	20.00
Cue	50.80
Dampier	68.40
Day Dawn	50.80
Denham	40.40
Derby	82.40
Esperance	15.60
Eucla	55.60
Exmouth	70.40
Fitzroy Crossing	99.20
Fimiston	20.00
Gascoyne Junction	40.40
Gibson	15.60
Goldsworthy	47.60
Grass Patch	15.60
Halls Creek	112.00
Hopetoun	27.00
Kalbarri	16.40
Kalgoorlie	20.00
Kambalda	20.00
Karratha	80.40
Kookynie	27.00
Koolan Island	87.20
Koolyanobbing	24.00
Kumarina	47.60

Town	Per Fortnight \$
Kununurra	128.00
Lake Argyle	126.40
Laverton	50.40
Learmonth	70.40
Leinster	50.40
Leonora	50.40
Madura	52.00
Marble Bar	120.80
Marvel Loch	24.00
Meekatharra	43.60
Menzies	50.40
Moorine Rock	24.00
Mount Magnet	53.60
Mundrabilla	54.00
Newman	48.00
Norseman	41.20
Nullagine	120.40
Onslow	83.20
Pannawonica	64.40
Paraburdoo	63.60
Paynes Find	53.60
Port Hedland	68.80
Ravensthorpe	26.80
Roebourne	92.40
Salmon Gums	15.60
Sandstone	50.40
Shark Bay	40.40
Shay Gap	47.20
Southern Cross	24.00
South Hedland	68.00
Telfer	113.20
Teutonic Bore	50.40
Tom Price	63.60
Wannoo	40.40
Westonia	24.00
Whim Creek	80.00
Wickham	78.40
Widgiemooltha	20.00
Wiluna	51.20
Windarra	50.40
Wittenoom	107.20
Wurarga	53.60
Wyndham	121.60
Yalgoo	53.60

(2) A single worker shall be paid 60 per cent of the fortnightly allowances prescribed in subclause (1) of this clause.

(3) A worker, whose spouse is employed by the same employer and who is entitled to an allowance of a similar kind to that prescribed by this clause shall be paid 50 per cent of the allowance prescribed in subclause (1) of this clause.

(4) Junior workers, casual workers, part-time workers, apprentices receiving less than the adult rate, and workers employed for less than a fortnight, shall receive that proportion of the District Allowance as equates with the proportion that their wage for ordinary hours for that fortnight is to the adult rate for the work performed.

(5) Where a worker is on annual leave or receives payment in lieu of annual leave he shall be paid for the period of such leave the District Allowance to which he would ordinarily be entitled.

(6) Where a worker is on long service leave, or other approved leave with pay (other than annual leave), he shall only be paid the District Allowance for the period of such leave he remains in the district in which he is employed.

(7) For the purpose of this clause a married worker includes a person who is a sole parent with dependent children.

(8) Nothing herein contained shall have the effect of reducing any "district allowance" currently payable to any worker subject to the provisions of this award whilst that worker remains employed by his present employer.

#### 43.—MATERNITY LEAVE

##### (1) Eligibility for Maternity Leave

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be

entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause—

- (a) A worker shall include a part-time worker but shall not include a worker engaged upon 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 twelve months qualifying period.

#### 44.—TRAINEES

(1) Trainees may be employed in any of the classifications of work covered by this award, other than an apprenticeship trade, for any specified period of time as may be agreed upon in writing between the Union and the employer concerned.

(2) The wage rate to be paid to a Trainee shall be not less than 70 per cent of the total wage rate prescribed for classification (5) in Clause 21—Wages, of this award. Provided that no trainee 21 years of age and over shall be paid less than the adult male minimum wage as prescribed from time to time by the Western Australian Industrial Commission.

#### 45.—ENTERPRISE FLEXIBILITY

(1) Employers and employees covered by this award may negotiate and reach agreement to apply to vary any provision of this award so as to make the enterprise or workplace operate more efficiently according to its particular needs.

(2) Employees may seek advice from, or be represented by, the union during the negotiations for an agreement.

(3) Where agreement is reached at an enterprise or workplace and where giving effect to such agreement requires this award, as it applies at the enterprise or workplace, to be varied, an application to vary the award shall be made to the Commission.

(4) A copy of the agreement shall be made available in writing to all employees at the enterprise or workplace and to the union party to this award.

(5) The union shall not unreasonably oppose the application to vary the award to give effect to the terms of the agreement.

(6) When this award is varied to give effect to an agreement made pursuant to this clause the variation shall become a schedule to this award and the variation shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.

(7) The agreement must meet the following requirements to enable the Commission to vary this award to give effect to it—

- (a) that the purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;
- (b) that the majority of employees covered by the agreement genuinely agree to it;
- (c) where the union has members at the enterprise or workplace, the union has been given reasonable advice of the intention to negotiate an agreement, provided that this paragraph shall not apply where the employer could not reasonably be expected to have known the union has members at the enterprise or workplace;
- (d) that the award variation necessitated by the agreement does not in relation to their terms and conditions of employment, disadvantage the employees who would be affected by the variation.

(8) For the purposes of subclause (7) hereof, an agreement is taken to disadvantage employees in relation to their terms and conditions of employment only if—

- (a) it would result in the reduction of any entitlements or protection of those employees under—
  - (i) the award; or
  - (ii) any other law of the Commonwealth or State that the Commission thinks relevant; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction is contrary to the public interest.

(9) Nothing in this clause shall be taken as limiting the right of any party to apply to give effect to an enterprise agreement under any other provisions of the Industrial Relations Act, 1979.

#### APPENDIX—RESOLUTION OF DISPUTES REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

- (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
- (b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
- (ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

#### SCHEDULE A—NAMED UNION PARTY

The Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers is a named party to this Award.

#### SCHEDULE B—RESPONDENTS

- Kalamunda Club (Inc), Kalamunda Road, Kalamunda, 6076
- Buffalo Club (Western) Inc, 6 Grosvenor Road, Mount Lawley, 6050
- Bellevue Returned Serviceman's Club (Inc), Purton Place, Bellevue, 6056
- Gosnells Bowling and Recreation Club (Inc), 2271 Albany Highway, Gosnells
- Air Force Association Country Club (Inc), Benningfield Road, Bateman, 6153
- Royal Perth Golf Club (Inc), Labouchere Road, South Perth, 6151
- Royal Perth Yacht Club of W.A. (Inc), Pelican Point, Crawley, 6009
- Fremantle Club (Inc), 15 Bannister Street, Fremantle, 6158
- East Fremantle Football Club (Inc), Moss Street, East Fremantle, 6158
- Commercial Club, Symmonds Street, Bunbury, 6230
- Collie Club (Inc), 51 Wittenoom Street, Collie, 6225
- Pemberton Country Club (Inc), Brockman Street, Pemberton, 6260

Emu Point Progress Association Sporting Club (Inc), Birss Street, Emu Point, Albany, 6330

Northam Workers Club, Fitzgerald Street, Northam, 6401

Moora Club (Inc), Gardiner, Street, Moora, 6510

Geraldton Yacht Club (Inc), Marine Terrace, Geraldton, 6530

Merredin Bowling and Tennis Club (Inc), Coronation Street, Merredin, 6415

Kalgoorlie Ex-Serviceman's Memorial Club (Inc), 53 Dugan Street, Kalgoorlie, 6430

Ord River Sports Club (Inc), Sports Ground Kununurra, 6743

#### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee

or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

DATED at Perth this 7th day of May, 1976.

#### CONTRACT CLEANERS' (MINISTRY OF EDUCATION) AWARD 1990. No. A 5 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 30th day of June, 1997.

J. CARRIGG,  
Registrar.

Contract Cleaners' (Ministry of Education) Award, 1990

#### 1.—TITLE

This award shall be known as the Contract Cleaners' (Ministry of Education) Award, 1990 and replaces the Contract Cleaners' Award, 1986 so far as it relates to contracts to clean government schools.

#### 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

#### 2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
- 2A. State Wage Principles—June 1991
3. Scope
4. Term
5. Definitions
6. Contract of Service
7. Hours
8. Overtime
9. Shift Work
10. Fares and Travelling Time
11. Special Rates and Provisions
12. Public Holidays
13. Annual Leave
14. Sick Leave
15. Long Service Leave
16. Compassionate Leave
17. Maternity Leave
18. Time and Wages Record
19. Part Time Employees
20. Wages
21. Location Allowance
22. Higher Duties
23. Continuity of Entitlements
24. Posting of Awards and Notices

25. No Reduction
  26. Deduction of Union Subscriptions
  27. Dispute Settlement Procedure
  28. Breakdowns
  29. Payment of Wages
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- Appendix—Resolution of Disputes Requirements  
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#### 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.—SCOPE

This Award shall apply to—

- (a) Cleaners who are employed by the named respondents in the industry of Contract Cleaning of Government Schools in the State of Western Australia; and
- (b) To all those employers employing those cleaners.

#### 4.—TERM

The term of this award shall be one year from the first pay period commencing on or after the date hereof.

#### 5.—DEFINITIONS

(1) “Cleaner” shall mean an employee substantially performing cleaning work (other than window cleaning) or employed bringing into or maintaining premises (including glass partitions) in a clean condition.

(2) “Window Cleaner” shall mean an employee employed exclusively on window cleaning.

(3) “Part-Time Employee” shall mean an employee engaged by the week and who regularly works a lesser number of hours than 38.

(4) “Casual Employee” shall mean an employee whose contract of employment is by the hour and who shall be allowed four weeks’ unpaid leave after every period of 12 months’ continuous service.

(5) “Accrued Day(s) Off” shall mean the paid day(s) off accruing to an employee resulting from an entitlement to the 38 hour week as prescribed in Clause 7.—Hours of this Award.

(6) “School” shall have the same meaning as it has in the Education Act.

#### 6.—CONTRACT OF SERVICE

(1) The contract of service shall (except in the case of casual employees) be by the week, terminable by one week’s notice on either side given at any time or the payment by the employer or forfeiture by the employee (as the case may be) of one week’s wages.

(2) An employee who, after giving the required notice, leaves the employment before the notice expires, shall forfeit his entitlement to wages for the period of notice which has not been worked. If dismissed, wages shall be paid up to the time of dismissal.

(3) The employment of a casual employee may be terminated by one hour’s notice on either side or the payment by the employer or forfeiture by the employee (as the case may be) of one hour’s pay.

(4) 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.—HOURS

(1) Subject to the provisions of this clause, the ordinary hours of duty shall be an average of 38 per week with the hours actually worked being 40 per week to be worked eight hours per day on any five days of the week.

(2) (a) The 38 hour week will be arranged by the accrual of 12 rostered days off per annum which will be taken during school vacation periods at times agreed between the employer and the Union.

(b) The 12 rostered days off will be taken in three instalments of four days each during the term vacations occurring at the end of term 1, term 2, and term 3. The maximum number of days worked during the aforementioned three term vacations will not exceed five days.

The four rostered days off may be taken during the first or second week of the term vacation, by agreement with the employer.

(3) Notwithstanding subclause (1) of this clause, where it is agreed between the employer, the majority of employees in the establishment and the Union that an alternative method shall operate, this shall be done by one of the following methods.

- (a) By employees working shorter hours each day.
- (b) By employees working shorter hours on one or more days each week.
- (c) By rostering employees off on various days of the week during a particular work cycle, so that each employee has one day off during that cycle in conjunction with other days off duty.
- (d) By part-time employees being paid an hourly rate of pay based on a 38 hour week.

(4) 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.

(5) In addition to the foregoing the following specific provisions shall apply—

- (a) except in the case of shift, casual and part-time employees the ordinary hours of duty shall be worked between the hours of 6.00 a.m. to 6.00 p.m. on any five days.
- (b) The minimum engagement for an employee shall be two hours in any one period of duty. Provided that a one hour minimum may apply to casual and part-time employees by agreement between the employer, the Union and the employee concerned.
- (c) The starting and finishing times prescribed in this clause may be altered by agreement in writing between the employer and the Union or, failing such agreement, by the Board of Reference.
- (d) No employee shall be required to work for more than five consecutive hours without a break for a meal which shall not exceed one hour.
- (e) Employees required to work ordinary hours on Saturdays shall be paid at the rate of time and one-half.
- (f) Employees required to work ordinary hours on Sundays shall be paid at the rate of double time.
- (g) An employee shall be paid a loading of 15 percent for all time worked after 6.00 p.m. and before 6.00 a.m.
- (h) The rates prescribed in paragraphs (e) and (f) hereof shall be in substitution for and not cumulative on the rates prescribed in paragraph (g) of this subclause.

(6) In the absence of agreement in respect to the implementation of shorter hours, the procedure to be followed to resolve the matters shall be as follows—

- (a) consultation shall take place within the particular establishment concerned.
- (b) If the problem is unable to be resolved at establishment level, it may be referred to the Secretary of the Union, or the nominated representative of the Secretary, at which level the issue shall be dealt with without delay.
- (c) If the problem remains unresolved, the matter may be referred by either party to the Industrial Relations Commission for resolution.

#### 8.—OVERTIME

(1) All time worked in excess of the daily hours prescribed pursuant to clause 7.—Hours shall be paid for at the rate of time and one-half for the first two hours and double time thereafter.

(2) Notwithstanding the foregoing, all overtime worked on Sundays shall be paid for at the rate of double time.

(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 \$6.60 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required the employee shall be supplied with such meal by the employer or paid \$4.50 for 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 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) When an employee is recalled to work after leaving the job he shall be paid for at least three hours at overtime rates.

(5) Double time shall be the maximum rate payable for overtime under any of the provisions of this award except for work performed on public holidays, when the maximum rate payable shall be double time and one-half.

(6) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(7) Overtime rates prescribed by this clause shall not apply until after eight hours have been worked on each day.

#### 9.—SHIFT WORK

A full-time employee may be employed on shift work and where the ordinary hours of duty extend, conclude or commence between the hours of 6.00 p.m. to 6.00 a.m. a loading of 15 per cent for each shift so worked shall be paid.

#### 10.—FARES AND TRAVELLING TIME

(1) Where an employee is required during his usual working hours, by his employer, to work outside his usual place of employment, the employer shall pay the employee any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) of this clause.

(2) (a) Where an employee is required and authorised to use his own motor vehicle in the course of his duties he shall be paid an allowance not less than that provided for in the schedules set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to car allowance not less favourable to the employee.

(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 first day of July and end on the thirtieth day of June next following.

#### Schedule 2—Motor Car

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	1600- 2600cc	1600cc & under
	Rate per kilometre		
Metropolitan Area	45.2	39.3	34.1
South West Land Division	45.5	40.0	34.7
North of 23.5 degrees South Latitude	50.9	44.7	38.9
Rest of the State	47.9	41.7	36.3

#### Schedule 3—Motor Cycles

Distance Travelled During a Year on Official Business	
Rate per kilometre	15.6

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

(3) The allowances prescribed in this clause shall be varied in accordance with any movement in the allowances in the Public Service Motor Vehicle Allowance Award 1976.

#### 11.—SPECIAL RATES AND PROVISIONS

(1) All employees called upon to clean closets connected with septic tanks and sewerage shall receive an allowance as follows —

	Rate per week \$
(a) Cleaners required to clean up to 10 closets per day	4.35
(b) Cleaners required to clean between 11 and 20 closets per day	8.70
(c) Cleaners required to clean 21 or more closets per day	13.05

For the purposes of this clause one metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

(2) Employees called upon outside the ordinary working hours to wash towels shall be paid \$3.00 per dozen for ordinary towels, and \$2.20 per dozen for dusters, hand towels and tea towels.

(3) (a) All materials and appliances required in connection with the performance of the employee's duties shall be supplied by the employer.

(b) Any employee who is required to work in the rain shall be provided with suitable protective clothing without charge by the employer.

(c) Any employee who, during the course of his duty may become unreasonably wet shall be provided with protective footwear without charge by the employer.

(d) Subject to the provisions of this clause, employees who perform work of an exceptionally dirty nature shall be supplied with suitable protective clothing.

(e) Rubber gloves shall be made available by employers on request from employees who are required to clean lavatories or use injurious acids and/or injurious substances.

(f) The protective clothing supplied pursuant to this clause shall remain the property of the employer. The loss of such protective clothing due to any cause arising out of the neglect or misuse by an employee shall be a charge against the wages of the employee provided that no charge shall be made in respect of reasonable wear and tear.

(g) In the event of a dispute concerning the issue of protective clothing as provided for in this clause, the matter shall be referred to a Board of Reference.

(4) (a) An employee shall not be required to work from the top of a ladder more than 3.5 metres long which rests on the ground or floor level unless provided with an assistant.

(b) (i) When window cleaning is done from a ladder and any portion of a window to be cleaned is more than seven metres from the nearest horizontal plane, the employee shall be paid an allowance of 5 cents per window.

(ii) The allowance prescribed herein shall not be paid where adequate safety appliances are supplied. Where such appliances are supplied they must be used by the employee.

(5) Employees who are required to work their ordinary hours each day in two shifts and where the break between the two shifts is not less than three hours, shall be paid an allowance of \$2.75 per day.

(6) An employee who is required to open and close classrooms, halls and other school facilities for any activities

authorised by the School Principal, shall be paid an allowance according to the following scale—

	<u>\$ Per Day</u>
(a) Evenings—Monday to Friday	
Up to 40 rooms per week	4.70
41 rooms to 100 per week	7.10
Over 100 rooms per week	9.35
(b) Saturdays and Sundays	9.35

(7) Uniforms or special staff dress required by the employer to be worn by employees shall be provided without charge by the employer.

(8) (a) Where practicable, suitable dressing accommodation shall be provided by the employer. Cleaning materials, tools and appliances shall not be kept in such rooms.

(b) All employees shall be provided with the facilities for boiling water.

(c) Employees shall be permitted to eat their meals in a convenient and clean place protected from the weather and employees shall remove all litter and foodstuffs after use.

(d) In the event of a dispute concerning the provisions of this subclause, the matter shall be referred to a Board of Reference.

## 12.—PUBLIC HOLIDAYS

(1) The following days or the days observed in lieu shall, subject to subclause (3) hereof, be allowed as holidays without deduction of pay, namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) When 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 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) All work done on any of the holidays specified in subclause (1) or subclause (5) hereof, shall be paid for at the rate of double time and one-half.

(4) Where—

(a) a day is proclaimed as a public holiday or as a public half-holiday under Section 7 of the Public and Bank Holidays Act, 1972, and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be a whole holiday or, as the case may be, a half-holiday for the purposes of this award within the district or locality specified in the proclamation.

(5) 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.

(6) 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 7—Hours of this award.

## 13.—ANNUAL LEAVE.

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his employer after a period of 12 months' continuous service with such employer.

(2) 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.

(3) In addition to payment for annual leave an employee shall be paid a loading of 17.5 per cent calculated on his ordinary rate of wage. Provided that where the employee would have received any additional rates for the work performed in

ordinary hours, as prescribed by this award, had he not been on leave during the relevant period and such additional rates would have entitled him to a greater amount than the loading of 17.5 per cent, then such additional rates shall be added to his ordinary rate of wage in lieu of the 17.5 per cent loading. Provided further, that if the additional rates would have entitled him to a lesser amount than the loading of 17.5 per cent, then such loading of 17.5 per cent shall be added to his ordinary rate of wage in lieu of the additional rates.

(4) The loading prescribed by subclause (3) shall not apply to proportionate leave on termination except where termination is a result of the termination of the employer's contract with the Ministry of Education. In such cases, proportionate payment shall be made.

(5) Subject as hereinafter provided—

(a) If after one month's continuous service in any qualifying 12 monthly period an employee lawfully terminates his service 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) 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 as prescribed in subclauses (2) and (3) of this clause 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.

(6) 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.

(7) Any time in respect of which an employee is absent from work, except time for which he is entitled to claim sick pay or time spent on holidays, annual leave or long service leave as prescribed by this award, shall not count for the purpose of determining his right to annual leave.

(8) The annual leave prescribed in this clause shall be taken in two portions, if so requested by the employee, provided that no portion shall be less than two consecutive weeks.

Provided further, that 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.

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

(10) Notwithstanding the provisions of this clause an employer who observes a Christmas closedown for the purpose of granting annual leave may require an employee to take his annual leave in not more than two periods but neither of such periods shall be less than one week.

(11) In the event of an employee being employed by an employer for portion only of a year, he shall 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 employees he shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(12) The provisions of this clause shall apply to part time employees on a pro-rata basis in the same proportion as the average number of hours worked each week in the qualifying period bear to 38.

(13) 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 Off as prescribed in subclauses (1) and (2) of Clause 7—Hours of this award. Accrual towards an Accrued Day Off shall continue during any other period of annual leave prescribed by this clause.

## 14.—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 the employee shall, where practicable, advise the employer at least three hours prior to the commencement of shift (and in any event within 24 hours) of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence.

(b) Notwithstanding the provisions of subclause (4) of this clause, an employee who fails to notify the employer of his/her intended absence three hours prior to the commencement of shift will not be paid for the first eight hours of sick leave unless he/she produces a certificate from a medical practitioner.

(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, subject to the provisions of subclause (3) of this clause, 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 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 13.—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 13.—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 68 of the Western Australian Industrial Gazette at pages 1-4, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transferee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Assistance Act 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) (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 7—Hours of this award.

(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.

(11) Any sick leave entitlement accumulated as at June 1, 1985 shall be adjusted in hours in the ratio of 38 to 40.

## 15.—LONG SERVICE LEAVE

(1) Right to Leave

An employee shall be entitled to leave with pay in respect of long service as provided in this clause.

(2) Long Service

(a) The long service which shall entitle an employee to such leave shall be continuous service with the employer in accordance with the definition of long service provided in paragraph 2 of the Long Service Leave Provisions published in Volume 68 of the Western Australian Industrial Gazette.

(b) Employees, who have been absent from their employment without reasonable excuse when they should otherwise have been at work will have their anniversary date for long service leave extended by the period of unauthorised absence.

(3) Period of Leave

(a) The leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this subclause.

(b) Subject to the provisions of paragraphs (e) and (f) of this subclause, where an employee has completed at least ten (10) years' service the amount of leave shall be—

- (i) In respect of 10 years' service so completed—13 weeks leave.
- (ii) In respect of each 10 years' service completed after such 10 years—13 weeks leave.
- (iii) On the termination of the employee's employment—
  - (aa) by death; or
  - (bb) in any circumstances, otherwise than by the employer for serious misconduct, in respect of the number of years' service with the employer completed since the employee last became entitled to an amount of long service leave, a proportionate amount on the basis of 13 weeks for ten years' service.

(c) Subject to the provision of paragraph (f) of this subclause, where an employee has completed at least seven years' service but less than ten years' service since its commencement and the employee's employment is terminated—

- (i) by death; or
- (ii) in any circumstances, otherwise than by the employer for serious misconduct, the amount of leave shall be

such proportion of thirteen weeks' leave as the number of completed years of such service bears to ten years.

(d) In the cases to which the provisions of sub-paragraph (b)(iii) and paragraph (c) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.

(e) An employee whose service with the employer commenced before 1 January 1990 and whose service should entitle the employee to long service leave under this clause shall be entitled to leave calculated on the following basis—

- (i) For each completed year of service commencing before 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and
- (ii) For each completed year of service in the period commencing on or after 1 October 1964 and concluding 31 December 1989, an amount of leave calculated on the basis of 13 weeks' leave for 15 years' service; and
- (iii) For each completed year of service commencing on or after 1 January 1990 an amount of leave calculated on the basis of 13 weeks' leave for ten years' service.

Provided that such employee shall not be entitled to long service leave until the employee's completed years of service entitle the employee the amount of long service leave prescribed in either of sub-paragraphs (b)(i) or (ii) of this subclause as the case may be.

(f) An employee to whom the provisions of sub-paragraph (b)(iii) and paragraph (c) of this subclause apply whose service with the employer commenced before 1 January 1990 shall be entitled to an amount of long service leave calculated on the following basis—

- (i) For each completed year of service commencing before 1 October 1964 an amount of leave calculated on the basis of 13 weeks leave for 20 years service; and
- (ii) For each completed year of service in the period commencing on or after 1 October 1964 and concluding 31 December 1989 an amount of leave calculated on the basis of 13 weeks leave for 15 years service; and
- (iii) For each completed year of service commencing on or after 1 January 1990 an amount of leave calculated on the basis of 13 weeks leave for 10 years service.

#### (4) Payment of Period of Leave

An employee shall be entitled to be paid for each week of leave to which the employee becomes entitled, or is deemed to have become entitled, at the rate applicable to the employee for the standard weekly hours which are prescribed by this award, but in the case of part-time employees shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard, but shall not include shift premiums, overtime, penalty rates, special rates and allowances, fares and travelling allowances or the like.

#### (5) Taking Leave

(a) In a case to which the provisions of sub-paragraph (b)(i) and (ii) of subclause (3) apply—

- (i) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the employee or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the needs of the employer's establishment and the employee circumstances.
- (ii) Except where the time for taking leave is agreed to by the employer and the employee or determined by the Special Board of Reference the employer shall give to an employee at least one month's notice of the date from which the employee's leave is to be taken.
- (iii) Leave may be granted and taken in one continuous period or if the employer and the employee so agree in not more than three (3) separate periods in respect

of the first thirteen (13) weeks' entitlement and in not more than two (2) separate periods in respect of any subsequent period of entitlement.

- (iv) Any leave shall be inclusive of any public holidays specified in this award occurring during the period when the leave is taken but shall not be inclusive of any annual leave.
- (v) Payment shall be made in one of the following ways—
  - (aa) in full before the employee goes on leave; or
  - (bb) in any other way agreed between the employer and the employee.
- (vi) Where any periods of annual leave, long service leave or deferred accrued days off are taken together, the deferred accrued days off shall be deemed to have been taken first followed by the annual leave.

(b) In the case to which the provisions of sub-paragraphs (b)(iii) or (c) of subclause (3) apply and in any case in which the employment of the employee who has become entitled to leave under this clause is terminated before such leave is taken or fully taken the employer shall, upon termination of the employee's employment otherwise than by death pay to the personal representative of the worker upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which the employee was entitled or deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave under this clause.

#### (6) Granting Leave in Advance and Benefits to be Brought into Account

(a) Subject to paragraph (c) of this subclause, the employer may by agreement with an employee allow leave to such an employee before the right thereto has accrued due, but where leave is taken in such case the employee shall not become entitled to any further leave pursuant to this clause in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.

(b) Where leave has been granted to an employee pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the employee has been granted long service leave to which the employee was not at the date of termination of the employee's employment or prior thereto entitled.

(c) Proportionate leave may be granted to an employee after ten (10) years service and every five (5) years thereafter.

#### (7) Adjustment for Leave

In the event that an employee's service is, subject to paragraph (d) of subclause (2) of this clause, not continuous in that the employee has had absences from employment which do not count as service and the employee has previously made arrangements for utilizing the employee's long service leave, long service leave may be granted at the employee's unadjusted anniversary date (which in most instances will be the anniversary of the employee's commencement date with the employer) provided that the payment for long service leave is reduced proportionately to reflect the difference in service between the employee's unadjusted anniversary date and what would have been the employee's entitlement date for the purposes of this clause.

Notwithstanding paragraph (b) of subclause (3) of this clause the adjustment for the purposes of this paragraph shall be calculated on a daily basis. [For example, if the leave entitlement is 13 weeks for 10 years' service, the adjustment would be made on the basis of deducting 11.4 minutes for each day of absence which does not break continuity of service, but does not count as service. The unpaid portion of the long service leave shall not break continuity of service but shall not count as service.]

### 16.—COMPASSIONATE LEAVE

(1) 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, brother, sister, child or

stepchild, be entitled on notice to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

(2) Provided that payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with his roster, or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

#### 17.—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 twelve 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 provisions 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 twelve months' qualifying period.

(12) Effect of Maternity Leave on Accrued Day Off

(a) When an employee proceeds on maternity leave there will be no accrual towards an Accrued Day 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 Off as prescribed in subclauses (1) and (2) of Clause 7—Hours of this award.

18.—TIME AND WAGES RECORD

(1) Each employer shall keep a time and wages record showing the names and addresses of each employee, the nature of the work, the location of the work, the hours worked each day, the starting and finishing times of those hours, and the wages and allowances paid each week. Any system of automatic recording by means of a machine 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 accredited official shall be allowed to take extracts therefrom. The employer's works shall be deemed to be convenient place for the purpose of this paragraph, and if for any reason the record be not available at the works when the official calls to inspect it, it shall be made available for inspection within 12 hours either at the employer's office or at the works. The inspection of the records is to be conducted in such a manner that it does not interfere unduly with the conduct of the employer's business.

(3) (a) The age of junior employees shall be recorded when paid at junior rates of pay.

(b) If requested by the employer a junior employee shall state his/her age in writing. No employee shall have any claim upon an employer for additional pay in the event of the age of the employee being wrongly stated. If any junior shall wilfully mis-state his/her age he/she alone shall be guilty of a breach of this award and in the event of an employee having received a higher rate than that to which was entitled he/she shall make restitution to the employer.

(4) Leave is reserved to any employer party to this award to seek the variation or cancellation of the provision in subclause (1) hereof which requires an employee's work location to be disclosed to the Union, if it can be shown that the information thereby obtained by the Union Official has been used for purposes other than seeking or ensuring compliance with this award.

19.—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 7.—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 7.—Hours of this award for their class of work.

(2) When an employee is employed under the provisions of this clause, he/she 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 38 hours.

20.—WAGES

(1) (a) The minimum weekly rate of wage payable to cleaners covered by this award shall be—

Base Rate	Arbitrated Safety Net Adjustments	Wages Per Week
	1, 2 and 3	
\$	\$	\$
377.40	24.00	401.40

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

(2) A casual employee shall receive 20% of the ordinary rate in addition to the ordinary rates prescribed herein for his/her class of work.

(3) Leading Hands—

Any full-time employee placed in charge of other employees shall be paid, in addition to the appropriate wage prescribed, the following—

Cleaner In Charge of a High School	\$16.35 per week
Cleaner In Charge of a TAFE College	
35 hours or less	\$48.95 per week
35 hours or more	\$65.30 per week

(4) An employee who works less than 15 hours per week may, in lieu of the provisions of Clauses 12.—Public Holidays and 13.—Annual Leave and 14.—Sick Leave of this award, be paid at the rate prescribed for a casual employee provided that the employee so requests in writing and the Union agrees in writing.

21.—LOCATION ALLOWANCE

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

Town	Per Week \$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40

Town	Per Week \$
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(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  $66\frac{2}{3}$  per cent 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  $33\frac{1}{3}$ %; 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, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

(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.

## 22.—HIGHER DUTIES

(1) (a) An employee who is required to do work 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. Provided that if engaged in such higher grade of work for two hours in any one shift he or she shall be paid at the higher rate for the day.

(b) 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 7—Hours of this award.

(2) Any employee required to perform work in a lower grade for any shift or portion thereof shall not be reduced in wages whilst employed in such lower capacity.

## 23.—CONTINUITY OF ENTITLEMENT

(1) Subject to the following, where an employee is employed by a contractor to continue cleaning a school and that employee was previously employed by a different contractor to clean the same school, the employment with the outgoing contractor shall count and be deemed to be continuous for the purposes of calculating entitlement to sick leave and long service leave under this award.

(2) The provisions of this clause apply only from 1 March 1990.

(3) The outgoing contractor shall furnish to the Ministry of Education and to the incoming contractor details of the sick leave entitlement and service for long service leave purposes.

(4) Employment shall be deemed to be continuous at a change of contract if there is a break in continuity of employment of less than one month.

(5) When an employee's sick leave entitlement with a current employer is fully used, the employee may then claim payment for further absences against any entitlements accrued with a former employer.

## 24.—POSTING OF AWARDS AND NOTICES

(1) A copy of this award, if supplied by the union shall be placed by the employer in a suitable place agreed upon by both the employer and the union.

(2) The accredited union representative shall not be prevented from posting any notices of the union in a suitable place agreed upon between the employer and the union. Failing agreement the Board of Reference shall decide if and/or where the said copy of the award or the said notices shall be posted.

## 25.—NO REDUCTION

Nothing contained herein shall in itself operate so as to reduce the wages of any employee who at the date of this award is being paid above the minimum rate prescribed for his or her class of work.

## 26.—DEDUCTION OF UNION SUBSCRIPTIONS

(1) Upon request by an employee, the employer shall deduct normal subscriptions as equal amounts each pay period.

(2) Payroll Deduction Authority forms shall be completed by employees. Where the employer requires a standard procurement form, that form shall be used.

(3) Where required by the employer or Union, the Union Secretary, or person acting in his/her stead, shall countersign all forms and forward them to the employer's paymaster.

(4) (a) The employer shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the employee's period of employment, except as provided in subclause (5) of this clause or until the Authority is cancelled in writing by the employee.

(b) Where the Payroll Deduction Authority form authorises the employer to deduct union subscriptions in accordance with the rules of the Union, the Union shall notify the employer in writing of the level of union 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.

## 27.—DISPUTES SETTLEMENT PROCEDURE

## (1) Disputes Settlement Procedure

In all cases the following procedure shall apply—

- (a) all industrial relations matters of concern by an employee and/or union representative shall be raised with the immediate supervisor or employer as the case may be.
- (b) All matters are to be dealt with as soon as practicable following upon an issue being raised by or on behalf of the employee(s) concerned.
- (c) If the matter is not resolved, the union representative shall contact the union office, and as soon as practicable thereafter, the issue is to be discussed between the employer, the union and the union representative.
- (d) If the matter is not resolved the matter shall be referred to the Western Australian Industrial Relations Commission for conference, and if necessary, for hearing and determination.
- (e) The parties agree that no industrial action of any kind shall take place while the Disputes Settlement Procedure is in operation and that the status quo existing prior to the dispute shall prevail whilst in accordance with these procedures.
- (f) Nothing herein shall limit the employer's right to dismiss an employee for misconduct in accordance with the award provisions, nor limit the employee's rights in relation to unfair dismissal.

## (2) Essential Services

Where the health of employees is at risk or the hygiene of any work place needs to be maintained, employees of a contractor shall carry out essential cleaning of toilets, food areas and clearance of bins, notwithstanding the imposition of any bans, limitations or stoppages of work on the site.

Any other areas of health or hygiene which may arise, may be serviced following discussion between the Union and the employer concerned.

## 28.—BREAKDOWNS

(1) The employer is entitled to deduct payment for any day upon which an employee cannot be usefully employed because of a strike by any of the unions party to this award, or by any other association or union.

(2) The provisions of paragraph (a) of this subclause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union or unions concerned so agree or, in the event of disagreement, the Board of Reference so determines.

(3) 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 (2) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the employer to repair the breakdown.

## 29.—PAYMENT OF WAGES

(1) All employees shall be paid weekly or fortnightly at the option of the employer. The preceding provisions may be altered by agreement between the employer, the union and the employee or employees concerned. In the event of a dispute arising, the matter may be referred to the Board of Reference for determination.

(2) The employer shall keep no more than two working days' pay in hand in the case of all employees. Provided that this subclause shall not apply in the case of computer breakdown or other unforeseen circumstance for which the employer cannot be held responsible.

In the event of a dispute arising, the matter may be referred to the Board of Reference for determination.

(3) All outstanding monies owed to the employee shall be paid within two business days of termination, either directly to him or posted to his last known address.

(4) With each pay, all employees shall be provided with a pay advice detailing the following particulars—

- (a) Name.
- (b) Hourly Rate.
- (c) Overtime.
- (d) Penalties.
- (e) Allowances.
- (f) Gross Wage.
- (g) Deductions—broken down to—
  - (i) Taxation;
  - (ii) other.
- (h) Net Wage.

(5) By arrangement between an employer and an employee, wages may be paid into the employee's bank account or other account or by cheque. All charges and costs associated with the operation of the account shall be met by the employer.

(6) An employee shall be paid for Accrued Day(s) Off at the rate, including penalties, at which it was accumulated.

(7) No deduction shall be made from an employee's wages unless the employee has authorised such deduction in writing

### 30.—ROSTERED DAY OFF (38 HOUR WEEK)

(1) There will be no rostered day off duty applicable to employees whilst on long service leave nor any credit accumulated for such periods of leave.

(2) Where an employee is rostered off duty on a particular day, they will not be entitled to claim either sick leave or compassionate leave in substitution for the rostered day off.

(3) An employee on workers' compensation—

- (a) For a period of less than one complete 20-day work cycle shall accrue time towards a rostered day off.
- (b) For periods of one or more complete 20-day work cycles shall not accrue time towards a rostered day off.
- (c) For a period of less than one complete 20-day work cycle and a rostered day off falls within the period, the employee will not be re-rostered for an additional day off.

(4) An employee shall accrue an entitlement of 24 minutes per day whilst on sick leave towards a rostered day off. However, the employee's sick leave entitlement will be debited by eight hours.

(5) No higher duties allowances will be payable to employees when required to act in another position whilst the permanent occupant is on a rostered day off duty.

(6) There will be no entitlement to payment for time accrued towards a rostered day off on either termination or dismissal, nor will there be any requirement to accumulate a full credit prior to being entitled to a rostered day off.

(7) Implementation of the 38 hour week for full-time employees shall be applied to part-time employees on a proportional basis.

(8) Any dispute concerning rosters shall be referred to a meeting of the employer and the union.

(9) There will be no rostered days off duty applicable to employees whilst on leave without pay.

### 31.—SUPERANNUATION

The provisions of the Contract Cleaning (FMWU) Superannuation Award No. A 3 of 1988 shall apply *mutatis mutandis* to all employees covered by this award.

### 32.—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, 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.

(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.

### APPENDIX—RESOLUTION OF DISPUTES REQUIREMENTS

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.

(3) This Appendix shall come into effect on and from 16 August 1996.

### 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

Azaores Cleaning Company, 55 Brodie Crescent, South Hedland W.A. 6722

Berkeley Challenge, Lord Street, Perth W.A. 6000

Compact Cleaning Company, 2 Warri Road, City Beach W.A. 6015

Delron Cleaning Pty Ltd, 384 Oxford Street, Leederville W.A. 6007

Jastaine Pty Ltd, Trading as Jason Cleaning Service, 454 Scarborough Beach Road, Osborne Park W.A. 6017

Mastercare Property Services, 11 Church Street, Perth W.A. 6000

Quirks Property Services, 60 Guthrie Street, Osborne Park W.A. 6017

Tempo Services Pty Ltd, 21 Colray Avenue, Osborne Park W.A. 6017

Western Office Cleaning Company, 46 Cargill Street, Victoria Park W.A. 6100

### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

## ENGINE DRIVERS (GOVERNMENT) AWARD 1983. No. A 5 of 1983.

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 3rd day of July, 1997.

(Sgd.) J. CARRIGG,  
Registrar.

### Engine Drivers (Government) Award 1983

#### 1.—TITLE

This award shall be known as the "Engine Drivers (Government) Award 1983" and replaces the following Awards and Agreements, namely—

- Engine Drivers (Government) Award No. 29 of 1968
- Engine Drivers and Firemens (Country Pumping Stations) Award No. 43 of 1965.
- Engine Drivers (North West Ports-Harbour and Lights) Award No. 44 of 1965.
- Engine Drivers "Rottneest Island" Agreement No. 7 of 1974.

#### 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

#### 2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
- 2A. Award Modernisation
- 2B. Structural Efficiency
3. Area and Scope
4. Term
5. Definitions
6. Contract of Service
7. Higher Duties
8. No Reductions
9. Hours of Duty
10. Overtime
11. Shift Work
12. Fares and Travelling Time
13. District Allowance
14. Annual Leave
15. Sick Leave
16. Compassionate Leave
17. Long Service Leave
18. Public Holidays
19. Special Provisions
20. Right of Entry
21. Roster
22. Time and Wages Record
23. Payment of Wages
24. Wages
25. Maternity Leave
- Appendix—Resolution of Disputes Requirement
- Schedule A—Parties to the Award
- Schedule B—Respondents
- Appendix—S.49B—Inspection Of Records Requirements

#### 2A.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.

(2) The parties commit themselves to the following principles as part of structural efficiency process and have agreed to

participate in a testing process in accordance with the provisions of this clause.

- (a) Acceptance in principle that the new award skill level definitions will be more suitable for the needs of the parties, sometimes more broadly based, in other matters more truly reflective of the different skill levels of the task performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.
- (b) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.
- (c) Co-operation in the transition from the old structure to the new structure in an orderly manner without creating false expectations or disputations.

#### 2B.—STRUCTURAL EFFICIENCY

(1) (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.

(b) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

(2) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of Government instrumentalities and to enhance the career opportunities and job security of employees.

#### 3.—AREA AND SCOPE

This Award shall apply throughout the State of Western Australia to all employees employed in the classifications mentioned in Clause 24.—Wages by the respondents mentioned in the Schedule of Respondents.

#### 4.—TERM

The term of this Award shall be for a period of one year from the date hereof.

#### 5.—DEFINITIONS

(1) "Boiler Attendant or Fireman" means an employee who attends a Steam Boiler or Boilers or a Steam Generator or Generators in combination or otherwise whether in possession of a Certificate of Competency or not.

(2) "Casual employee" shall mean an employee who is engaged to work for less than five consecutive days.

(3) "In Charge of Plant" means—

- (a) when two or more employees are employed at the plant, at the one time, the employee who is invested with the superintendence and responsibility or who has to accept the superintendence and responsibility; or
- (b) an employee who has to accept the responsibility for plant under his control while being the only employee of his classification on duty at the one time.

(4) Hospital Employee Classifications & Definitions

(a) HOSPITAL PLANT OPERATOR—LEVEL 1: means an employee classified as such who is then engaged under the direction of the shift engineer to regularly carry out general, and specific duties listed below relating to the Hospital's energy systems, but does not possess a current Boiler Certificate or is not yet eligible for appointment to Hospital Plant Operator—Level 2;

duties: general cleaning of plant rooms, machinery, and AHU filters, lubricating and greasing of machinery, changing of gas cylinders, globes, and handsets. Treating of boiler water under instruction, maintaining security checks of plant rooms and workshops, assisting trades personnel on repair work, cleaning and very minor maintenance of vehicle fleet and incinerators, and responding to alarms under the direction of the shift engineer and capable of obtaining a Hoist Attendant's Certificate.

(b) HOSPITAL PLANT OPERATOR—LEVEL 2: means an employee classified as such who is then employed to regularly carry out general, including lesser paid, and specific duties listed below relating to the Hospital's energy systems, and who is prepared to train in order to obtain a Boiler Attendant's Certificate and achieve competence at a level required of a Hospital Plant Operator Level 3;

duties: is competent in water testing treatment (pool, chilled, condenser, heating water), changing of oil, recording of readings (other than for CMCS systems), changing Roller Media filters, cleaning or changing of steam traps, water, oil, or air filters that require hosing down, and isolating plant or lines, undertake very minor repairs on beds and wheelchairs, monitoring of CMCS, acknowledgement of alarms and actioning of same.

(c) HOSPITAL PLANT OPERATOR—LEVEL 3: means an employee classified as such who is then employed to regularly carry out general, including those lesser paid duties described for Levels 1 and 2 as may be directed by the Engineer, and specific duties listed below relating to the Hospital's energy systems and who possesses a current Boiler Attendant's Certificate and is prepared to undertake further training in order to achieve a level of competence required of a Hospital Plant Operator—Special Class when required;

duties: is competent in the operation of boilers, and under the direction of the shift engineer operating the CMCS on a relief basis, the carrying out of minor repairs at a work bench requiring some working knowledge and use of tools, the operation of other unspecified plant, the monitoring and operation of site fire detection systems, and site and key security.

(d) HOSPITAL PLANT OPERATOR—SPECIAL CLASS (LEVEL 4): means an employee classified as such and who is then employed to regularly carry out general duties, including some or all of those duties described for Levels 1, 2 and 3 as directed.

The HPOSC shall be required to operate all Engineering and Building Service plant and equipment and be generally responsible for the operation of any central monitoring or other control system, and who has undertaken an accredited course of study.

#### 6.—CONTRACT OF SERVICE

(1) Except in the case of a casual employee whose contract of service shall be by the hour, the contract of service shall be by the week, terminable by one week's notice on either side, given at any time, or the payment by the employer or the forfeiture by the employee (as the case may be) of a week's wages in lieu of notice.

(2) This clause does not affect the right to dismiss for misconduct, in which case wages shall be paid up to the time of dismissal only.

(3) 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.

(4) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself for duty, except such absence from work which is due to illness and comes within the provisions of Clause 15.—Sick Leave or such absence which is on account of holidays to which the employee is entitled under the provisions of this award.

#### 7.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of pay than his ordinary classification shall be paid the higher rate for the whole day or shift if he is so engaged for two hours or more in any one day or shift. If the employee is employed for less than two hours at work classified at a higher rate of pay, he shall be paid his ordinary rate of pay for the whole shift.

## 8.—NO REDUCTION

This Award shall not in itself operate to reduce the wages of any employee who is at present receiving above the total rate prescribed for his class of work.

## 9.—HOURS

(1) Subject to the provisions of this clause the ordinary working hours shall be an average of 38 worked over any consecutive five days of the week in any of the following work patterns—

- (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 as though worked; or
- (b) Actual hours of 76 hours over nine days per fortnight with the tenth day to be taken as an unpaid rostered day off; or
- (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 paid days off in each twelve month period.

(2) The Accrued Paid Days Off referred to in paragraph (c) of subclause (1) of this clause may only be taken in any of the following ways—

- (a) 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 concerned; or
- (b) where the employer and employee mutually agree, the Accrued Days Off may be taken as single day absences.

(3) Subject to agreement between a majority of the employees affected and their own hospital administration the ordinary hours may be constituted by an actual 38 hours per week or 76 hours per fortnight.

(4) Subject to agreement between the parties to this award and a majority of the employees affected the ordinary hours may be constituted by any other agreed system provided in the result an average of 38 hours' ordinary time per week is achieved.

(5) Notwithstanding any other provision of this clause an employer and an employee may, subject to written agreement, substitute another day in lieu of a rostered Accrued Day Off in which case the original day shall be treated as an ordinary working day.

## 10.—OVERTIME

(1) (a) The provisions of this subclause shall apply only to employees other than continuous shift employees.

(b) All time worked in excess of or outside the ordinary working hours shall be paid for at the rate of time and one half for the first two hours and double time thereafter except that all time worked on Saturday after twelve noon or on Sunday shall be paid for at the rate of double time.

(c) All time worked on the holidays named in clause 18.—Public Holidays of this award shall be paid for at the rate of double time and one half.

(2) (a) The provisions of this subclause apply only to continuous shift work employees.

(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—

- (i) where an employee is called upon to work a sixth shift in not more than one week in any four weeks when he shall be paid for such shift at the rate of time and a half for the first two hours and double time thereafter, and
- (ii) where an employee is called upon to work outside his ordinary hours on a holiday named in clause 18.—Public Holidays of this award when he shall be paid for such work at the rate of double time and one half.

(c) Time worked in excess of the ordinary working hours shall be paid for at ordinary rates—

- (i) if it is due to private arrangements between the employees themselves; or
- (ii) if it does not exceed two hours and is due to a relieving man not coming on duty at the proper time; or

(iii) if it is for the purpose of effecting the customary rotation of shifts.

(3) (a) The provisions of this subclause shall apply to all employees.

(b) Meal Allowance—

(i) Where an employee without being notified on the previous day or earlier, has to continue working after his usual knockoff time for more than two hours, he shall be provided with a meal or shall be paid \$5.40 for a meal and, if owing to the amount of overtime worked, a second or subsequent meal is required he shall be supplied with each such meal by the employer or be paid \$3.70 for each meal so required. Provided that this paragraph shall not apply to an employee residing in the same locality as his place of employment who can reasonably return home for a meal.

Provided further that an employee who commences to work overtime before the usual starting time shall, if the overtime exceeds two hours and is continuous with his day's work, be supplied with a meal by his employer or be paid \$5.40 for a meal.

(ii) An employee required to work continuous from 12 midnight to 6.30 a.m. and ordered back to work at 8.00 a.m. the same day, shall be paid \$2.50 for breakfast.

(iii) All time worked during the usual meal time by any employee other than a continuous shift work employee shall be paid at overtime rates and such rates shall continue until the employee knocks off for his meal.

(c) Employees in such areas as agreed between the parties may be rostered for stand by duty outside of the ordinary hours of work and, in addition to any payment due under this award for any overtime worked, each employee so rostered for stand by duty shall be paid—

- (i) three hours pay at ordinary rates if he is rostered on any day Monday to Friday inclusive.
- (ii) four hours pay at ordinary rates if he is rostered on a Saturday or a Sunday.
- (iii) three hours pay at ordinary rates plus a day in lieu if he is rostered on a holiday.

(d) Ten or eight hours break—

(i) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive day.

(ii) An employee (other than a casual employee) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not at least ten consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iii) If, on the instructions of his employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, he shall be paid at double time rates until he is released from duty for such period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(iv) Where an employee (other than a casual employee or an employee engaged on continuous shift work) is called into work on a Sunday or holiday preceding an ordinary working day he shall, wherever reasonably practicable, be given ten consecutive hours off duty before his usual starting time on the next day. If this is not practicable, then the provisions of subparagraphs (ii) and (iii) of this paragraph shall apply mutatus mutandis. Provided that overtime worked as a result of a recall shall not be regarded as overtime for the purpose of this paragraph when the

actual time worked is less than three hours on such recall or on each of such recalls.

- (v) The provisions of this subclause shall apply in the case of shift work employees who rotate from one shift to another, as if eight hours were substituted for ten hours when overtime is worked—
- (aa) for the purpose of changing shift rosters; or
  - (bb) where a shift work employee does not report for duty; or
  - (cc) where a shift is worked by arrangement between the employees themselves.
- (e) Recall—  
When an employee is recalled to work after leaving the job—
- (i) he shall be paid for at least three hours at overtime rates, and
  - (ii) time reasonably spent in getting to and from work shall be counted as time worked.
- (f) (i) An employer may require any employee to work reasonable overtime at overtime rates and such employee, shall work overtime in accordance with such requirement.
- (ii) No union or association party to this award, or employee or employees covered by this award, shall in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(g) The provisions of this subclause shall not operate so as to require payment of more than double time rates, or double time and a half on a holiday prescribed under this award, for any work.

(4) This clause shall not apply to employees to whom subclause (1) of the clause 19.—Special Provisions applies.

#### 11.—SHIFT WORK

(1) (a) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked on that process, then employees employed on such afternoon or night shifts shall be paid at overtime rates.

(b) The sequence of work under the preceding paragraph shall not be deemed to be broken by reason of the fact that work on the process is not carried out on a Saturday or Sunday or on any public holiday.

(2) (a) A shift work employee when on afternoon or night shift shall be paid for such shift fifteen per cent more than his normal wage rate.

(b) Any employee who commences his ordinary hours between 5 a.m. and 7 a.m. shall be deemed to be employed on early morning shift and be paid five percent in addition to his normal wage rate.

(3) (a) For work performed during ordinary hours, a shift work employee shall be paid at the rate of time and one half on a Saturday, at the rate of time and three quarters on a Sunday and at the rate of double time on a public holiday.

(b) The rates prescribed in this subclause shall be paid in substitution for and not in addition to the shift allowance prescribed in subclause (2) of this clause.

(4) Where a shift commences at or after 11 p.m. then the whole shift shall be paid for at the rate which applies to the major portion of the shift.

(5) A continuous shift employee who is not required to work on a public holiday which falls on his rostered day off shall be allowed a day's leave with pay to be added to his annual leave or to be taken at some other time if the employee so agrees.

#### 12.—FARES AND TRAVELLING TIME

(1) An employee residing in the suburban area who is required to start work at some place other than his usual workshop or place of employment shall, if the time taken in travelling from his place of residence to the job and return exceeds the time normally taken in travelling from his usual place of residence to his usual workshop or place of employment and return, be paid for such excess travelling time at ordinary rates and if

the fares actually and reasonably incurred in such travelling exceed the fares normally paid by the employee in travelling from his place of residence and return, the employer shall pay the amount by which such fares exceed those usually paid for travelling to and from his usual workshop or place of employment.

(2) (a) An employee required to proceed on duty from the place where he is then or usually employed shall be paid for such fares, meals or board and lodging as are actually and reasonably incurred.

(b) Travelling time up to a maximum of eight hours in any day shall be paid for at the ordinary rates applying at the place of departure. Provided that if the employee is travelling at night and no sleeping facilities are supplied he shall receive an extra eight hours' pay.

(3) (a) The provisions of this subclause apply only to employees who are engaged for permanent employment at depots north of the 26th parallel of south latitude.

(b) In this subclause, "fare" includes the cost of transporting any tools owned by an employee and required by him in his employment.

(c) Subject to the provisions of this subclause, the fare of an employee from the place of engagement to any place of employment shall be paid by the employer and the employee shall be paid at ordinary rates for not more than eight hours in any day for time spent in travelling to the place of employment including time occupied in waiting for transport connections, but if the employee uses a mode of travel not approved by the employer travelling time in excess of eight hours shall not be allowed unless the Board of Reference otherwise determines.

(d) The amount of the fare paid by an employer pursuant to paragraph (c) of this subclause may be deducted from the subsequent earnings of the employee concerned in such manner as is agreed in writing between the employee and the employer.

(e) If an employee completes six months' continuous service with an employer or is dismissed before that time through no fault of his own, any amount deducted by that employer from the employee's wages pursuant to paragraph (d) of this subclause shall be refunded to the employee.

(f) The employer shall pay the fare of the employee from the place of employment to the place of engagement if the employment terminates and—

- (i) the employee has completed twelve months' continuous service with that employer; or
- (ii) the employee has completed six months' continuous service with that employer and is dismissed through no fault of his own.

(g) Where an employee has completed six months' continuous service and leaves for a reason deemed reasonable by his employer he shall be paid one sixth of the fare referred to in paragraph (f) of this subclause for each month of service in excess of six months.

(4) The provisions of this clause shall not be applied to those employees who are entitled to fares and travelling allowances under subclause (1) of clause 19.—Special Provisions of this award.

#### 13.—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 as described hereunder and as delineated on the plan at subclause (16) of this clause.

District—

1. The area within a line commencing on coast; thence east along latitude 28 to a point north of Talling Peak; thence due south to Talling Peak; thence southeast to Mt Gibson and Burracoppin; thence to a point southeast at the junction of latitude 32 and longitude 119; thence south along longitude 119 to coast.
2. That area within a line commencing on the south coast at longitude 119 then east along the coast to longitude 123; then north along longitude 123 to a point on latitude 30; thence west along latitude 30 to the boundary of No. 1 District.
3. The area within a line commencing on coast at latitude 26; thence along latitude 26 to longitude 123; thence south along longitude 123 to the boundary of No. 2 District.
4. The area within a line commencing on the coast at latitude 24; thence east to the South Australian border; thence south to the coast; thence along the coast to longitude 123; thence north to the intersection of latitude 26; thence west along latitude 26 to the coast.
5. That area of the State situated between the latitude 24 and a line running east from Carnot Bay to the Northern Territory border.
6. That area of the State north of a line running east from Carnot Bay to the Northern Territory border.

(3) An employee shall be paid a district allowance at the standard rate prescribed in Column II of subclause (6) of this clause, for the district in which the employee’s headquarters is located. Provided that where the employee’s headquarters is situated in a town or place specified in Column III of subclause (6), the employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of subclause (6).

(4) An employee who has a dependant shall be paid double the district allowance prescribed by subclause (3) of this clause for, the district, town or place in which the employee’s headquarters is located.

(5) Where an employee has a partial dependant the total district allowance payable to the employee shall be the district allowance prescribed by subclause (3) of this clause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.

(6) The weekly rate of district allowance payable to employees pursuant to subclause (3) of this clause shall be as follows—

COLUMN I DISTRICT	COLUMN II STANDARD RATE	COLUMN III EXCEPTIONS TO STANDARD RATE	COLUMN IV RATE
	\$ per week	Town or Place	\$ per week
6	50.40	Nil	Nil
5	41.20	Fitzroy Crossing Halls Creek Turner River Camp Nullagine Liveringa (Camballin) Marble Bar Wittenoom Karratha Port Hedland	55.40 51.60 48.60 45.10
4	20.70	Warburton Mission Carnarvon	55.90 19.50

COLUMN I DISTRICT	COLUMN II STANDARD RATE	COLUMN III EXCEPTIONS TO STANDARD RATE	COLUMN IV RATE
3	\$ per week 13.10	Town or Place Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	\$ per week 20.70
2	9.30	Kalgoorlie Boulder Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	3.10 12.40
1	Nil	Nil	Nil

Note: In accordance with subclause (4) of this clause employees with dependants shall be entitled to double the rate of district allowance shown.

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after 1 January 1991.

(7) When an employee is on approved annual recreation leave, the employee shall for the period of such leave, be paid the district allowance to which the employee would ordinarily be entitled.

(8) When an employee is on long service leave or other approved leave with pay (other than annual recreational leave), the employee shall only be paid district allowance for the period of such leave if the employee, dependants or partial dependants remain in the district in which the employee’s headquarters is situated.

(9) When an employee leaves his or her district on duty, payment of any district allowance to which the employee would ordinarily be entitled shall cease after the expiration of two weeks unless the employee’s dependant/s or partial dependant/s remain in the district or as otherwise approved by the employer.

(10) Except as provided in subclause (9) of this clause, a district allowance shall be paid to any employee ordinarily entitled thereto in addition to reimbursement of any travelling transfer or relieving expenses or camping allowance.

(11) Where an employee whose headquarters is located in a district in respect of which no allowance is prescribed in subclause (6) of this clause, is required to travel or temporarily reside for any period in excess of one month in any district or districts in respect of which such allowance is so payable, the employee shall be paid for the whole of such period a district allowance at the appropriate rate pursuant to subclauses (3), (4) or (5) of this clause, for the district in which the employee spends the greater period of time.

(12) When an employee is provided with free board and lodging by the employer or a Public Authority the allowance shall be reduced to two-thirds of the allowance the employee would ordinarily be entitled to under this clause.

(13) An employee who is employed on a part-time basis shall be entitled to district allowance on a pro-rata basis. The allowance shall be determined by calculating the hours worked by the employee as a proportion of the full-time hours prescribed by the Award under which the employee is employed. That proportion of the appropriate district allowance shall be payable to the employee.

(14) An employee who immediately prior to the 1st day of July, 1988 was in receipt of district allowance at a rate which was greater than the amount to which the employee is entitled under this clause shall have the difference reduced in accordance with the following—

- (i) As from the first pay period commencing on or after July 1, 1988 the difference shall be reduced by thirty-three and one third (33 1/3%) per cent; and
- (ii) As from the first pay period commencing on or after January 1, 1989 the difference remaining between the amount being paid pursuant to (i) above and that to which the employee is otherwise entitled under this clause shall be reduced by fifty (50%) per cent; and

- (iii) As from the first pay period commencing on or after July 1, 1989 payment shall be in accordance with the employee's entitlement under this clause.

(15) The rates expressed in subclause (6) of this clause shall be adjusted every twelve (12) months ending on December 31 in accordance with the official "Consumer Price Index" for Perth as published by the Australian Bureau of Statistics.

The adjustment of rates shall be effective from the beginning of the first pay period to commence on or after the first day of January each year.

(16) District Allowance Boundaries Map immediately after the District Allowance clause.

#### 14.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by his employer after a period of twelve months' continuous service with such employer.

(2) (a) "Ordinary wages" for an employee other than a shift employee shall mean the rate of wage the employee has received for the greatest proportion of the calendar month prior to his taking the leave.

(b) "Ordinary wages" for a shift employee shall mean the rate of wage the shift employee would receive under clause 11.—Shift Work of the award according to the employee's roster or projected roster including Saturday and Sunday shifts.

(3) (a) A seven day shift employee, i.e. a shift employee who is rostered to work regularly on Sundays and holidays shall be allowed one week's leave in addition to the leave to which he is otherwise entitled under this clause.

(b) Where an employee with twelve months continuous service is engaged for part of a qualifying twelve monthly period as a seven day shift employee he shall be entitled to have the period of annual leave to which he is otherwise entitled under this clause increased by one-twelfth of a week for each completed month he is continuously so engaged.

(4) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(5) If after one month's continuous service in any qualifying twelve monthly period an employee lawfully leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid 3.08 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 3.85 hours' pay at that rate in respect of each completed week of continuous service.

In addition to any payment to which he may be entitled under subclause (5) of this clause, an employee whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period, shall be given payment in lieu of that leave and the loading prescribed in subclause (10) hereof unless—

- (a) he has been justifiably dismissed for misconduct; and
- (b) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(7) An employee may be rostered off and granted annual leave with payment of ordinary wages as prescribed prior to his having completed a period of twelve months' continuous service, in which case should the services of such employee terminate or be terminated prior to the completion of twelve month's continuous service, the said employee shall refund to the employer the difference between the amount received by him for wages in respect of the period of his annual leave and the amount which would have accrued to him by reason of the length of his service up to the date of the termination of his services.

(8) (a) Subject to subclause (3) of this clause, when computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period that an

employee is on annual leave and/or holidays. Provided that no deduction shall be made for any sickness, with or without pay, unless the absence exceeds three calendar months, in which case deduction may be made for such excess only.

(b) Approved periods of absence from work caused through accident sustained in the course of employment shall not be considered breaks in continuity of service, but the first six months only of any such period shall count as service for the purpose of computing annual leave.

(9) When work is closed down for the purpose of allowing annual leave to be taken, employees with less than a full year's service shall only be entitled to payment during such period for the number of days leave due to them. Provided that nothing herein contained shall deprive the employer of his right to retain such employees during the close down period as may be required.

(10) In addition to the payment prescribed for annual leave, an employee shall receive a loading calculated on the rate of wage prescribed by subclause (2) hereof. This loading shall be as follows—

- (i) Day employees—an employee who would have worked on day work had he not been on leave—a loading of 17.5 per cent.
- (ii) Shift employees—an employee who would have worked on shift work had he not been on leave shall be paid either—
  - (a) the shift loadings prescribed by clause 11.—Shift Work he would have received; or
  - (b) a 20% loading on the rate prescribed by subclause 2(a) of this clause;

whichever is the greater.

The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(11) The provisions of this clause shall not apply to casual employees.

#### 15.—SICK LEAVE

(1) (a) An employee shall be entitled to payment for non-attendance on the ground of personal ill-health for one-sixth of a week's pay for each completed month of service.

(b) Payment hereunder may be adjusted at the end of each accruing year, or at the time the employee leaves the service of the employer in the event of the employee being entitled by service subsequent to the sickness in that year to a greater allowance than that made at the time the sickness occurred.

(2) The unused portion of the entitlement prescribed in paragraph (a) of subclause (1) in any accruing year shall be allowed to accumulate and may be availed of in the next or any succeeding year.

(3) In order to acquire entitlement to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice other than in extraordinary circumstances shall be given to the employer within 24 hours of the commencement of the absence.

(4) No employee shall be entitled to the benefit of this clause unless he produces proof to the satisfaction of the employer or his representative of such sickness provided that the employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of clause 14.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 14.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) 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.

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

#### 16.—COMPASSIONATE LEAVE

(1) An employee, other than a casual employee, 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 employee in two ordinary working days. Proof of such death to be furnished by the employee to the satisfaction of his employer.

(2) 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 any shift roster or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday.

(3) For the purpose of this clause the pay of an employee employed on shift work shall be deemed to include any usual shift allowances.

#### 17.—LONG SERVICE LEAVE

The conditions governing the granting of long service leave to Government wages employees generally shall apply to employees covered by this award.

#### 18.—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 any of the days named in the subclause.

(2) 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 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) Except in the case of continuous shift employees—

(a) Whenever any holiday falls on an employee's ordinary working day and the employee is not required to work on such day he shall be paid for the ordinary hours he would have worked on such day if it had not been a holiday.

(b) If any employee is required to work on a holiday he shall be paid for the time worked at the rate of double time and a half. Provided that in lieu of the foregoing provisions of this paragraph, and subject to agreement between the employer and the

employee, work done on any day prescribed as a holiday under this award shall be paid for at the rate of time and a half and the employee shall, in addition, be allowed a day's leave with pay to be added to his annual leave or be taken at some subsequent date if the employee so agrees.

(c) Payment for holidays shall be in accordance with the usual hours of work.

(4) When an employee is absent on leave without pay, sick leave without pay or 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 the employee is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a day observed as a holiday as prescribed by this clause, the employee shall be entitled to be paid for such holiday.

(5) This clause shall not apply to casual employees.

#### 19.—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.

#### 20.—RIGHT OF ENTRY

On notifying the officer in charge, any officer of the Union, authorised in writing by the President and Secretary of such union, shall have the right to enter any place or premises during ordinary working hours wherein members of such union covered by this award are engaged for the purpose of conversing with or interviewing the employees in such place or premises. Provided that such officer shall not hamper or otherwise hinder the employees in the carrying out of their work. The officer in charge shall determine whether employees are being hampered or hindered in their work.

#### 21.—ROSTER

(1) The employer shall cause to be prepared and exhibited at least 48 hours prior to its coming into operation, a roster showing the days and hours over which each employee shall be required to perform his ordinary hours and rostered overtime shifts.

(2) The employer may work any of his employees on shifts and may change any shift system in operation from time to time but before doing so shall give forty-eight hours' notice of his intention to the employees concerned. Provided that alterations to the roster, which arise because of contingencies the employer could not have reasonably foreseen, may be made at any time.

#### 22.—TIME AND WAGES RECORD

(1) Each employer shall keep a time and wages book showing the name of each employee, the nature of his work, the hours worked each day and the wages and allowances paid each week. Any system of automatic recording by means of machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The time and wages record shall be open for inspection by a duly accredited official of the union during the usual office hours, at the employer's office or other convenient place, and he shall be allowed to take extracts therefrom. The employer's works shall be deemed to be a convenient place for the purpose of this paragraph and if for any reason the record be not available at the works when the official calls to inspect it, it shall be made available for inspection on the next working day either at the employer's office or at the works.

23.—PAYMENT OF WAGES

(1) Each employee shall be paid the appropriate rate shown in Clause 24.—Wages of this Award. Payment shall be pro rata where less than the full week is worked.

(2) Wages may be paid weekly or fortnightly at the option of the employer, and the employer shall not keep more than three days pay in hand.

(3) On or prior to pay day the employer shall state in writing to each employee the amount of wages to which he is entitled, the amount of deductions made therefrom and the net amount being paid to him.

24.—WAGES

The rates of pay in this Award include the three arbitrated safety net adjustments totalling \$24.00 per week available under

		Base Rate	Safety Net Adjustments	Special Payment	Total Rate	%
		\$	\$	\$	\$	
(a) Operators of Equipment, as specified—						
(i) Winch Driver	(C12)	364.60	24.00	10.15	398.75	87.4
(ii) Pumpers, Country Pumping Stations	(C11)	385.50	24.00	10.60	420.10	92.4
(b) Mobile Crane Operator (classified according to lifting capacity of crane)—						
(i) Up to 20 tonnes	(C11)	385.50	24.00	7.70	417.20	92.4
(ii) Over 20 tonnes	(C10)	417.20	24.00	—	441.20	100.0
(c) Fireperson as defined	(C11)	385.50	24.00	—	409.50	92.4

(d) Special Payment—  
The special payment referred to in paragraph (a) hereof shall not apply to employees engaged after 12 July 1996. For employees so engaged, the total rate shall comprise the base rate and safety net adjustments only.

(2) Hospital Plant Operator

(a) The weekly rates of wages payable to employees defined as such shall be—

		Base Rate	Safety Net Adjustments	Total Rate	%
		\$	\$	\$	
Hospital Plant Operator—Level 1	(C12a)	380.80	24.00	404.80	91.55
Hospital Plant Operator—Level 2	(C11a)	399.20	24.00	423.20	95.77
Hospital Plant Operator—Level 3	(C10)	417.20	24.00	441.20	100.00
Hospital Plant Operator—Level 4	(C9a)	449.40	24.00	473.40	107.33

(b) Employees employed on boiler cleaning inside the boiler or flues or combustion chamber shall be paid 83 cents per hour while so engaged. Provided that this allowance shall not be payable to employees who are in receipt of the industry allowance or construction work allowance prescribed in subclause (1) of clause 19.—Special Provisions of this award.

(3) Additions to Wage Rates

Per Week  
\$

- (a) A classified employee engaged as hereinafter specified shall have his/her wage rate increased as follows—
  - (i) Attending to refrigerator and/or air compressor or compressors 18.25
  - (ii) Attending to an electric generator or dynamo exceeding 10 watt capacity 18.25
  - (iii) Attending to a switchboard where the generating capacity is 350kw or more 5.85
  - (iv) In charge of plant as defined 18.25
  - (v) Leading Fireperson, where two or more Firepersons are employed on one shift (per shift) 0.40

the Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the 1994 State Wage Decision or the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991 pursuant to enterprise agreements, 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, excluding those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

(1) The total rates of wages payable to employees covered by the Award shall be as follows—

(b) Employees employed on boiler cleaning inside the boiler or flues or combustion chambers shall be paid 88 cents per hour while so engaged. Provided that this allowance shall not be payable to employees who are in receipt of the industry allowance or construction allowance prescribed in subclause (1) of Clause 19.—Special Provisions of this Award.

(4) Pumpers shall be paid the Government Water Sewerage and Drainage Wage Loading as prescribed from time to time in the Government Water Supply, Sewerage and Drainage Employees Award 1981.

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.

Maternity leave shall mean unpaid maternity leave.

(2) Period of Leave and Commencement of Leave

- (a) Subject to subclauses (3) and (6) of this clause, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (c) An employee shall give not less than four weeks' notice in writing to her employer 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) of this

clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to a Safe-Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy 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 purpose of subclauses (7), (8), (9) and (10) of this clause.

(4) Variation of Period of Maternity Leave

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

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

(5) Cancellation of Maternity Leave

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

(b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—

- (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
- (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

(c) For the purpose of subclauses (7), (8) and (9) of this clause, maternity leave shall include special maternity leave.

(d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3) of this clause, to the position she held immediately before such transfer.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) of this clause does not exceed 52 weeks.

(a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.

(b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

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

(9) Termination of Employment

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

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(10) Return to Work After Maternity Leave

(a) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

(b) An employee, upon the expiration of the notice required by paragraph (a) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3) of this clause, to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

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

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

(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where the employment continues beyond the twelve months' qualifying period.

APPENDIX—RESOLUTION OF DISPUTES  
REQUIREMENT

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.

(a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

- (b) (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
- (ii) Discussions at this level will take place as soon as practicable.

(3) The terms of any agreed settlement should be jointly recorded.

(4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.

(5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.

(6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

(7) This appendix shall come into effect on and from 16 August 1996.

#### SCHEDULE A—PARTIES TO THE AWARD

The following organisation is a party to this award—

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

#### SCHEDULE B—RESPONDENTS

Board of Management, Fremantle Hospital  
Board of Management, Princess Margaret Hospital  
Board of Management, Royal Perth Hospital  
Commissioner for Main Roads  
Hon. Minister for Health  
Hon. Minister for Transport  
Hon. Minister for Water Resources  
Hon. Minister for Works  
Port Hedland Port Authority  
Rottnest Island Board

Dated at Perth this 24th day of June, 1983.

#### APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

#### HOSPITAL LAUNDRY AND LINEN SERVICE (SALARIED OFFICERS) AWARD, 1980. No. R36 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 25th day of March, 1997.

J. CARRIGG,  
Registrar.

Hospital Laundry and Linen Service (Salaried Officers)  
Award, 1980

#### 1.—TITLE

This Award shall be known as the Hospital Laundry and Linen Service (Salaried Officers) Award, 1980.

#### 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

## 2.—ARRANGEMENT

1. Title
- 1A Statement of Principles—August 1996
2. Arrangement
3. Scope
4. Area
5. Term
6. Definitions
7. Contract of Service
8. Salaries
9. Payment of Salaries
10. Higher Duties
11. Hours
12. Overtime
13. Meal Money
14. Holidays and Annual Leave
15. Short Leave
16. Sick Leave
17. Maternity Leave
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19. Motor Vehicle Allowances
20. Travelling
21. Transfers
22. Travelling Time
23. Relieving or Special Duty
24. Travelling, Transfers and Relieving Duty—Rates of Allowance
25. Removal Allowance
26. Dirty Work
27. Dispute Settlement Procedure
28. Shift Work
29. Protective Clothing and Uniforms
30. District Allowance
31. Child Allowance
32. Channel of Communication
33. Board of Reference
34. Part-Time Employees
35. Property Allowance
36. Casual Employees
37. Deduction of Union Subscriptions
38. Leave to Attend Union Business
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40. Introduction of Change
41. Skills Acquisition
42. Flexibility Agreements
- Schedule A—Named Union Party
- Schedule B—Minimum Salaries
- Schedule C—Classification to Salaries—Conversion Table
- Schedule D—Classification and Grading of Employees in Clerical and Administrative Division
- Schedule E—Classification and Grading of Employees in General Division
- Schedule F—Respondent

## 3.—SCOPE

This award shall apply to Professional, Administrative, Technical, Supervisory and Clerical employees employed by the Board of Management, Lakes Hospital.

Provided that any classification of work which, at the 24th October, 1975, was listed in the wages schedule of an Award or registered Industrial Agreement to which the respondent and the Metropolitan Laundry Employees' Industrial Union of Workers or the Western Australian Clothing and Allied Trades Industrial Union of Workers were parties shall be excluded.

## 4.—AREA

This Award shall operate throughout the State of Western Australia in the areas occupied and controlled by the respondent.

## 5.—TERM

The term of this Award shall be for a period of one year from the beginning of the first pay period commencing after the date hereof.

## 6.—DEFINITIONS

(1) "Metropolitan Area" means, that area within a radius of fifty kilometres from the Perth Railway Station.

(2) "Married Employee" means, an employee who is required to maintain a home and support dependants therein.

(3) "A Day" means, for the purposes of Clauses 20, 21, 23, 25, 27 and 28 from midnight to midnight.

(4) "Headquarters" means, that establishment in which the principal work is carried out, as defined by the employer.

(5) "Day Employee" means, an employee who works his ordinary hours from Monday to Friday inclusive and who commences work on such days after 6.00 a.m. and before 12.00 midday.

(6) "Shift Employee" means, an employee who is not a day employee as defined.

## 7.—CONTRACT OF SERVICE

(1) During the first six months of employment the contract of service shall be by the fortnight and may be terminated by two weeks' notice on either side given in writing on any day or by the payment by the employer, or the forfeiture by the employee of an amount equal to two weeks' salary provided that, a lesser period of notice may be agreed, in writing, between the employer and the employee concerned.

(2) (a) On the completion of six months' employment the contract of service shall be by the month unless the employer notifies the employee of an intention to continue the contract of service on a fortnightly basis for a further period of up to six months in which case the provisions of subclause (1) of this clause will apply during that period.

(b) Where the employer notifies an employee of an intention to continue the contract of service on a fortnightly basis and the employment continues for a period of twelve months the employer shall terminate the contract of service forthwith by one month's notice given in writing or by the payment of an amount equal to one month's salary or, if he fails to do so, the contract of service shall be deemed to be by the month.

(3) An employee whose contract of service is by the month may terminate the contract of service by one month's notice given in writing on any day or the forfeiture of an amount equal to one month's salary provided that, a lesser period of notice may be agreed, in writing, between the employer and the employee concerned.

(4) The employer may terminate the contract of service of any employee, whose contract of service is by the month, by one month's notice given in writing on any day but only if—

- (a) The employer has followed the disciplinary procedure in accordance with subclause (3) of Clause 27—Dispute Settlement Procedure and is satisfied that the employee is guilty of—
  - (i) wilful disobedience or disregard of any lawful order made or given by any person having authority to make or give such an order;
  - (ii) being negligent or careless in the discharge of his duties;
  - (iii) being inefficient or incompetent in the discharge of his duties and such inefficiency or incompetency appears to arise from causes within his own control;
  - (iv) using intoxicating beverages to excess; or
  - (v) disgraceful or improper conduct;
- (b) The employee is convicted of any indictable offence;
- (c) On the basis of Medical evidence, the employee does not have the capacity to continue to carry out the duties of his position, or
- (d) The position occupied by an employee is no longer considered necessary.

(5) The foregoing provisions of this clause do not affect the employer's right to dismiss an employee without notice for misconduct and in such a case the salary of the employee shall be paid up to the time of dismissal only but where an employee, whose contract of service is by the month, is dismissed the cause for dismissal shall be of the kind referred to in paragraphs (a) and (b) of subclause (4) of this clause.

(6) (a) Where an employer considers that a position occupied by an employee is no longer necessary and no other employment is available to that employee 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 employer 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 (4) of this clause.

(7) Where the employer seeks to terminate the services of an employee in accordance with subclauses (4) and (5) of this clause, he shall, upon written request, supply to the employee, a written statement setting out the full details of the incident, circumstance, event or matters upon which the employer based his decision. Each statement shall be supplied within seventy two hours of receipt of the request.

(8) The provisions of this clause shall not apply to casual employees.

#### 8.—SALARIES

(1) The minimum rates of salaries to be paid to employees covered by this award shall be those set out in Schedule A attached to this award. Nothing contained in this award shall preclude the payment by way of an allowance an amount in addition to that prescribed for the classification of a position set out in Schedules C and D of this award.

##### (2) Transition—

The provisions of this subclause shall apply notwithstanding provision elsewhere in this award.

##### (a) Interpretation of classifications to salary scale.

The classifications set out in Schedule C and D of the award shall be related to the salary scales set out in Schedule A of the award in accordance with the table set out in Schedule B of the award.

##### (b) Maintenance of Salary—

Where an employee's maximum salary is reduced as a result of the introduction of this agreement, the following shall apply—

All employees appointed to a classification or level prior to the date of implementation of this clause, will progress through the salary ranges (as adjusted by general salary movements) applicable to that classification or level irrespective of the level determined by this clause.

##### (c) Placement of Employees—

(i) Employees classified A1. L4 prior to the operation of this clause shall maintain their existing salary and incremental date.

(ii) Employees classified A3, A1. L1—L3 and B1.1 prior to the operation of this clause shall be classified Level 1 under this clause on the following basis.

(a) Under 21 years of age—age to age.

(b) 21 years of age and older—salary on promotion.

##### (d) Service Allowances—

(i) Employees classified A2.1 prior to the operation of this clause shall be paid an allowance to bring the employee's salary to L3.1 after completion of twelve months' service on the maximum salary applying to such A2.1 position, which allowance shall be increased to bring the employee's salary to L3.2 upon completion of a further twelve months' service.

Provided that and subject to—

(a) The employee's efficiency, diligence and good conduct and as to the ability of the employee to perform higher duties;

(b) On the promotion of an employee to a higher position any allowance received by that employee under this subclause shall be reduced to bring the employee's salary to the minimum salary of the position to which that employee is promoted, and thereafter, any allowance still received by the employee shall be reduced and converted to

salary as and when the employee becomes eligible for annual increments;

(c) An allowance under this subclause shall cease should the employee refuse to accept promotion;

(d) An employee shall not be eligible to receive an allowance under this subclause unless the employee has completed not less than nine years' continuous service in the Clerical Division as an adult salaried employee.

(ii) Employees classified A4.2/3 or A4.3 prior to the operation of this clause shall be entitled to progress to the first salary point of Level 3 after five continuous years of service on the maximum of A4.3.

Payment of the allowance shall be subject to the employee's efficiency, diligence and good conduct.

##### (e) Qualifications Allowances—

(i) Employees in receipt of a qualifications allowance at the date of operation of this clause or who would, but for the coming into operation of this clause, have become entitled to such allowance, or increase in such allowance, pursuant to the provisions contained in Schedule A Clause 8 of this Award prior to the date of operation of this clause, as a result of studies completed in the 1989 calendar year, shall continue to receive or be granted such allowance, or increase in allowance provided that such allowance shall be reduced or ceased in accordance with the following—

	Annual Allowance Diplomates	Annual Allowance Graduates and Associates
Up to and including Level 4, second increment	\$ 200	\$ 300
Level 4, 3rd and 4th increments	100	200
Level 5, 1st increment	Nil	100
Level 5, 2nd increment and above	Nil	Nil

(ii) Employees who are not entitled to a qualifications allowance pursuant to paragraph (i) of this subclause or who attain a higher qualification subsequently shall not be entitled to receive an allowance or increase the allowance.

##### (f) Employee Supporting Dependents Allowance—

(i) Employees previously classified B1.1, B1.2 or B.3 who were in receipt of an allowance of one increment for wholly or substantially supporting a spouse and/or dependent relative prior to the date of operation of this clause shall continue to receive such allowance of one increment whilst wholly or substantially supporting a spouse and or dependent relative. Provided that the maximum remuneration inclusive of such allowance shall be the rate of pay at Level 2 fifth increment in respect of an employee who is classified in a classification equivalent to Level 2 or, age 24 or fourth year of adult service in respect of employees classified in a classification equivalent to Level 1.

(ii) Payment of the employee supporting dependants allowance shall cease should an employee be promoted or reclassified above a classification equivalent to Level 2.

(iii) This provision shall not apply to any employee who was not in receipt of the employee supporting dependants allowance at the operative date of this clause.

##### (g) Higher Duties—

(i) Where an employee was acting in a position classified higher than his/her substantive position prior to the introduction of this clause

and who continued to act in the same position at the operative date of this clause, the employee shall receive higher duties allowance equivalent to the salary that would have been payable to the permanent occupant.

Provided that should the employee cease to act in that higher classified position, any future periods of acting in the same position or other positions classified higher than the employee's substantive classification shall be paid a higher duties allowance in accordance with Clause 10.—Higher Duties, of the award.

(h) Incremental Dates—

(i) Where an employee is in receipt of a salary that equates to a salary under this clause and the employee is classified at that level, the employee will remain on that salary and retain his/her current incremental date.

(ii) An employee in receipt of a salary which does not equate to a salary under this clause shall be placed on the nearest salary point higher at the date of operation of this clause which shall become the employee's new incremental date.

(i) Efficiency and Personal Allowance—

Officers in receipt of efficiency and personal allowances at the date of operation of this clause shall have their allowances included as salary when determining placement under this clause.

(3) Commitment—

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 principle.

### 9.—PAYMENT OF SALARIES

(1) Salaries shall be paid fortnightly but, where the usual pay day falls on a holiday prescribed in Clause 14 of this Award, payment shall be made on the previous day.

(2) A fortnight's salary shall be computed by dividing the annual salary rate by 313 and multiplying the result by 12.

(3) The hourly rate shall be calculated as one-seventy-fifth of the fortnight's salary.

(4) Salaries shall be paid by direct funds transfer to the credit of an account nominated by the employee at such bank, building society or credit union approved by the employer. Provided that where such form of payment is impractical or where some exceptional circumstances exists and by agreement between the employer and the union, payment by cheque may be made.

(5) Annual increments shall be subject to the employee's satisfactory performance over the preceding twelve months which shall be assessed according to an agreed system of performance appraisal.

### 10.—HIGHER DUTIES

(1) An employee, other than one classified as a Relieving Officer above the automatic range, who is directed by the employer or a duly authorised senior officer to act in an office which is classified higher than his own and who performs the full duties and accepts the full responsibility of the higher office for five consecutive working days or more, shall, subject to the provisions of this award, be paid an allowance equal to the difference between his own salary and the salary he would receive if he were permanently appointed to the office in which he is so directed to act.

(2) Where the full duties of a higher office are temporarily performed by two or more employees they shall each be paid an allowance as determined by the employer: Provided that any dispute or disagreement as to the amount of any such allowance shall be referred to the Board of Reference.

(3) Where a Relieving Officer classified above the automatic range acts in an office or offices classified one class higher than his own for a continuous period exceeding four weeks, he shall be paid higher duties allowance as prescribed in subclause (1) of this clause for all that part of such period in excess of four weeks.

(4) Where a Relieving Officer classified above the automatic range acts in an office classified two or more classes higher than his own, he shall be paid higher duties allowance as prescribed in subclause (1) of this clause.

(5) Where an employee is directed to act in an office which has an incremental range of salaries he shall be entitled to receive an increase in higher duties allowance equivalent to the annual increment he would have received had he been permanently appointed to such office: Provided that acting service with allowances for acting in offices of the same classification or higher than the office during the eighteen months preceding the commencement of so acting shall aggregate as qualifying service toward such an increase in the allowance.

(6) Where an employee, who has qualified for payment of higher duties allowance under this clause, is required to act in another office or other offices classified higher than his own for periods of less than five consecutive working days without any break occurring in acting service, he shall be paid a higher duties allowance in respect of such further period or periods of so acting: Provided that payment shall be made at the highest rate the employee has been paid during his term of continuous acting or at the rate applicable to the office in which he is currently acting—whichever is the less.

(7) Where an employee who is in receipt of an allowance granted under this clause and has been so for a continuous period of twelve months or more, proceeds on—

- (i) a period of normal annual leave;
- (ii) a period of any other approved leave of absence of not more than one calendar month;

he shall continue to receive the allowance for the period of leave. This subclause shall also apply to an employee who has been in receipt of an allowance for less than twelve months if during his absence no other employee acts in the office in which he was acting immediately prior to proceeding on leave and he resumes in the office immediately after his leave.

For the purposes of this subclause, the expression—

(a) "normal annual leave" shall mean the annual period of leave referred to in subclause (4) and subclause (8) of clause 14.—Holidays and Annual Leave and shall include any holidays mentioned in subclause (1) of that clause and leave in lieu accrued during the preceding twelve months, taken in conjunction with such annual leave;

(b) "any other approved leave of absence" shall include any period of long service leave of not more than one calendar month.

(8) Where an employee who is in receipt of an allowance granted under this clause proceeds on—

- (i) a period of annual leave in excess of the normal; or
- (ii) a period of any other approved leave of absence of more than one calendar month;

he shall not be entitled to receive payment of such allowance for the whole or any part of the period of such leave.

(9) Where the full duties of a higher office are not performed, an employee shall be paid such proportion of the allowance provided for in subclause (1) as the duties performed bear to the full duties of the higher office. Where such a proportionate allowance is to be paid, however, officers shall be advised of the allowance to be paid before commencing the duties of the higher office.

The allowance may be adjusted during the period of higher duties.

### 11.—HOURS

(1) The ordinary hours of work shall be an average of thirty seven and one half per week and shall be worked by one of the following arrangements—

- (a) Prescribed hours of work of thirty seven and one half per week;
- (b) Flexitime roster covering a settlement period of four weeks;
- (c) Actual hours of seventy five over nine days with the tenth day to be taken as a paid rostered day off;
- (d) Such other arrangements as are agreed between the employer and employee;

- (e) Where the Union and the employer so agree, shifts of more than 10 hours but not more than 12 hours may be worked for the purpose of trialling alternative shift arrangements only.

(2) The operation of working arrangements prescribed in subclause (1) above, shall be consistent with those working arrangements prescribed in Administrative Instruction 701, Hours of Duty, governing State Public Service employees.

(3) Where an employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and Union shall occur consistent with Clause 40.—Introduction of Change.

#### 12.—OVERTIME

(1) Subject to the provisions of subclauses (3) and (11) of this clause and, except as provided in subclause (2) of this clause, all time worked at the direction of the employer outside an employee's ordinary working hours shall be paid for at the rate of time and a half for the first three hours and double time thereafter.

(2) (a) Subject to the provisions of subclauses (3) and (11) of this clause all time worked at the direction of the employer outside an employee's ordinary working hours on any day between midnight and 6.00 a.m. or on a Saturday after 12.00 noon or on a Sunday shall be paid for at the rate of double time.

(b) Subject to the provisions of subclauses (3) and (11) of this clause all time worked at the direction of the employer outside an employee's normal hours of labour or ordinary hours in the case of a shift employee on a public holiday observed in accordance with Clause 14 hereof shall be paid at the rate of double time and a half of the ordinary time rate.

(3) Subclauses (1) and (2) of this clause shall not apply in respect of any day on which the time worked, in addition to the ordinary hours, is less than thirty minutes.

(4) In lieu of payment for overtime an employee, on request, may be allowed time off proportionate to the payment to which he is entitled but if he so requests in writing he shall be allowed such time off up to a maximum of five days in each year of service. Time off shall be taken at a time convenient to the employer.

(5) Notwithstanding anything contained elsewhere in this clause an employee, whose salary exceeds that determined from time to time as the maximum payable to an employee in Class 8 in Table A2 of Schedule A—Salaries—Clerical And Administrative Division attached to this Award, shall—

- (a) Be entitled to the benefit of the provisions of this clause if he is rostered to work regular overtime or is instructed by his employer to hold himself on-call in accordance with the provisions of subclause (10) of this clause.
- (b) In all other cases but subject to the provisions of subclause (3) of this clause, be allowed time off equivalent to the overtime worked. Such time off shall be taken at a time convenient to the employer.

(6) Payment for overtime shall be computed on the rate applicable to the day on which the overtime is worked which shall include any loading for afternoon or night shift, provided that with the exception of overtime worked on public holidays the maximum rate payable under this award shall not exceed double the ordinary time rate.

(7) For the purpose of assessing overtime each day shall stand alone.

(8) An employee required to work overtime beyond 2.00 p.m. or beyond 7.00 p.m. on any day shall be allowed an unpaid break of at least thirty minutes between 12.00 noon and 2.00 p.m. or between 5.00 p.m. and 7.00 p.m. as the case may be.

(9) (a) Subject to the provisions of paragraph (b) of this subclause a worker, other than one accommodated at the employer's establishment, who is recalled to work for any purpose shall be paid a minimum of two hours at the appropriate overtime rate but he shall not be obliged to work for two hours if the work for which he was recalled is completed in less time,

provided that if a worker is called out within two hours of starting work on a previous call he shall not be entitled to any further payment for the time worked within that period of two hours.

(b) Where a worker, other than one accommodated at the employer's establishment, is recalled to work for any purpose, within two hours of commencing normal duty, he shall be paid at the appropriate overtime rate for that period up until the commencement time of normal duty, but the worker shall not be obliged to work for the full period if the work for which he was recalled is completed in less time.

(c) Where a worker is recalled to duty in accordance with Paragraphs (a) or (b) of Subclause (9) in this clause, then the payment of the appropriate overtime rate shall commence from—

- (i) In the case of a worker who is on-call, from the time the worker starts work;
- (ii) In the case of a worker who is not on-call, time spent travelling to and from the place of duty where the worker is actually recalled to perform emergency duty shall be included with actual duty performed for the purpose of overtime payment.

Provided that where a worker is recalled within two hours of commencing normal duty, only time spent in travelling to work shall be included with actual duty for the purpose of overtime payment.

(d) A worker other than one accommodated at the employer's establishment shall, if recalled to work—

- (i) Except as provided in placitum (ii) of this paragraph, be provided free of charge with transport from his home to the employer's establishment and return or, be paid the vehicle allowance provided in Clause 19 of this Award.
- (ii) If recalled to work within two hours of commencing normal duty and the worker remains at work, he shall be provided free of charge with transport from his home to the employer's establishment or, be paid the vehicle allowance provided in Clause 19 of this Award for the journey from the worker's home to the employer's establishment.

(10) (a) (i) For the purposes of this Award an employee is on-call when he is directed by the employer to remain at such a place as will enable the employer to readily contact him during the hours when he is not otherwise on duty. In so determining the place at which the employee shall remain, the employer may require that place to be within a specified radius from the hospital.

(ii) An employee shall be paid an allowance of 18.75% of the hourly rate of a Medical Laboratory Technologist on the first year rate of Table C3 Level 1 in the Hospital Salaried Officers Award No. 39 of 1968, for each hour or part thereof that he is on call.

Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this clause when the employee is recalled to work.

(iii) Where the employer determines that there is a need for a worker to be on call or to provide a consultative service and the means of contact is to be by telephone or telepage, the employer shall where the telephone is not already installed bear the cost of such installation.

(iv) (a) Where the worker pays or contributes towards the payment of the rental of such telephone the employer shall pay the employee an amount being a proportion of the telephone rental calculated on the basis that for each seven days on which an employee is required to be on call, the employer shall pay the employee 1/52nd of the annual rental paid by the employee.

(b) Provided that where as a usual feature of the work an employee is regularly required to be on call or to provide a consultative service the employer shall pay the full amount of the telephone rental.

(v) Where the employer determines that the means of contact is to be by a telepage or similar device the employer shall supply such device to the employee at no cost to the employee.

(vi) Where the employer determines otherwise or it is not possible to contact an employee by telephone, or telegage, the employer may send a taxi to the employee's residence or such other place with instructions for the employee to return to work.

(vii) Notwithstanding the provisions of this subclause, where the employer and the Union, in writing agree, other arrangements may be made for compensation of on call work.

(11) An Engineer or Maintenance Officer working singly may be required by the employer to hold himself available for duty outside normal working hours in accordance with the following provisions—

- (a) No restriction shall be placed on the Engineer's (or Maintenance Officer's) movements but he shall be required to advise the employer of his whereabouts while he remains in the metropolitan area.
- (b) Before the Engineer (or Maintenance Officer) leaves the metropolitan area, at any time outside normal working hours, he shall advise the employer of the following—
  - (i) the present condition of the engineering services in the employer's establishment,
  - (ii) the name of any employee or private tradesman who may be contacted in the event of an emergency,
  - (iii) where he will be located in his absence and how he may be contacted if necessary, to provide advice and consultation,
  - (iv) the approximate duration of his proposed absence.
- (c) In lieu of payment of any allowance for being required to hold himself available for duty outside normal working hours and any overtime worked, an Engineer or Maintenance Officer working singly shall be entitled to an additional two weeks' leave per annum with pay and an allowance equivalent to seven percent of the B2 5 (Maximum) salary.

(12) Notwithstanding the foregoing provisions of this clause, where the employer and the Union agree, in writing, other arrangements may be made for compensation in lieu of payment of overtime.

(13) (a) Where an employee performs overtime duty after the time at which normal hours of duty end on one day and before the time at which normal hours of duty are to commence on the next succeeding day which results in the employee not being off duty between these times for a continuous period of not less than ten hours, the employee shall be entitled to be absent from duty without loss of salary, until from the time the employee ceased to perform overtime duty the employee has been off duty for a continuous period of ten hours.

(b) Provided that where an employee is required to return to or continue work without the break provided in paragraph (a) of this subclause, then the employee shall be paid at double the ordinary rate until released from duty, or until the employee has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.

(c) Where an employee (other than a casual employee or an employee engaged on continuous shift work) is called into work on a Sunday or holiday preceding an ordinary working day, the employee shall, whenever reasonably practicable, be given ten consecutive hours off duty before the employee's usual starting time on the next day. If this is not practicable then the provision of paragraph (b) shall apply.

(d) The provisions of this subclause shall apply in the case of shift employees who rotate from one shift to another, as if eight hours were substituted for ten when overtime is worked for the purpose of changing shift rosters.

(e) The provisions of paragraphs (a) and (b) of this subclause shall not apply to employees included in subclause 10 of this clause.

#### 13.—MEAL MONEY

An employee required to work overtime before or after his ordinary working hours on any day shall, when such additional duty necessitates taking a meal away from his usual place of residence, be supplied by his employer with any meal

required or be reimbursed for each meal purchased at the rate of \$4.70 for breakfast, \$5.80 for the midday meal, and \$6.95 for the evening meal: Provided that the overtime worked before or after the meal break totals not less than two hours. Such reimbursement shall be in addition to any payment for overtime to which he is entitled.

#### 14.—HOLIDAYS AND ANNUAL LEAVE

(1) (a) 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, Boxing Day and any other Public Service holiday prescribed under Section 59 of the Public Service Act, 1979 and Regulation 12 of the Regulations to the Public Service Act. 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) Where any of the days mentioned in subclause (1) (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.

(2) (a) When any of the days observed as a holiday in this clause fall during a period of annual leave the holiday or holidays shall be observed on the next succeeding work day or days as the case may be after completion of that annual leave.

(b) When any of the days observed as a holiday as prescribed in this clause fall on a day when a shift employee is rostered off duty and the employee has not been required to work on that day he shall be paid as if the day was an ordinary working day or if the employer agrees be allowed to take a day's holiday in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) (a) Any employee, subject to paragraph (b) of this subclause, who is required to work on the day observed as a holiday as prescribed in this clause in his normal hours of labour or ordinary hours in the case of a shift employee shall be paid for the time worked at the rate of double time and a half or if the employer agrees be paid for time worked at the rate of time and a half and in addition be allowed to observe the holiday on a day mutually acceptable to the employer and the employee.

(b) (i) An employee who is instructed by the employer to hold himself on-call in accordance with the provisions of subclause (10) of Clause 12.—Overtime on a day observed as a public holiday during his normal hours of labour or his ordinary hours in the case of a shift employee shall be allowed to observe that holiday on a day mutually acceptable to the employer and the employee.

(ii) An employee who is holding himself on-call during the period specified in the preceding paragraph in accordance with subclause (10) of clause 12.—Overtime shall be paid for any time worked during the period at the rate of time and a half in accordance with the provisions of subclause (9) of Clause 12.—Overtime.

(c) An employee who is required to work on a public holiday outside of the hours referred to in subclause (3)(a) hereof shall be paid in accordance with subclause (2)(b) of Clause 12.—Overtime.

(4) Except as hereinafter provided a period of four consecutive weeks' leave shall be allowed to an employee by the employer after each period of twelve months' continuous service with such employer.

(5) The employee shall be paid for any period of annual leave prescribed by this clause at the ordinary rate of salary, and in the case of shift employees that rate of salary shall include the shift and weekend penalties the employee would have received had the employee not proceeded on annual leave. Where it is not possible to calculate the shift and weekend penalties the employee would have received, the employee shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking leave.

(6) By mutual agreement, an employee may be allowed to take the annual leave prescribed by this clause before the completion of twelve months' continuous service as prescribed by subclause (4) of this clause.

(7) (a) 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 one-third of a week's pay or in the case of employees provided for in subclause (8) of this clause five-twelfths of a week's pay at his ordinary rate of salary in respect of each completed month of continuous service in that qualifying period.

(b) The rate prescribed in subclause (3) hereof shall be paid in lieu of the amounts to which an employee may be entitled pursuant to clause 29.—Shift Work of this Award.

(c) If the services of an employee terminate and the employee has taken a period of leave in accordance with subclause (6) 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 (6) 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.

(8) Shift employees who are rostered to work their ordinary hours on Sundays and/or public holidays during a qualifying period of employment for annual leave purposes shall be entitled to receive additional annual leave as follows—

- (i) If thirty five ordinary shifts on such days have been worked—one week.
- (ii) If less than thirty five ordinary shifts on such days have been worked the employee shall be entitled to have one additional day's leave for each seven ordinary shifts so worked, provided that the maximum additional leave shall not exceed five working days.

(9) The annual leave prescribed in subclause (4) of this clause may by mutual agreement be taken in two portions provided that no portion shall be less than two consecutive weeks.

(10) When on annual leave an employee who does not avail himself of the board and lodging provided in his classification shall be granted an allowance for the period of his leave at the rate of \$3.00 per week.

(11) The provisions of this clause shall not apply to casual employees.

(12) (a) An employee shall be paid a loading of 17.5 per cent calculated on the rate as prescribed in subclause (5) of this Clause.

(b) Shift workers when proceeding on annual leave including accumulated annual leave shall be paid—

- (i) shift and weekend penalties the employer would have received had he not proceeded on annual leave, or;
- (ii) a loading equivalent to 20% of normal salary; whichever is the greater.

(c) Provided that the maximum loading payable shall not exceed the amount set out in the Australian Bureau of Census and Statistics Publication for "average weekly earnings per male employed" in Western Australia for the September quarter immediately proceeding the date the leave became due.

(d) The loading prescribed in this subclause shall not apply to proportionate leave on termination.

(e) The loading prescribed in this subclause shall be payable on Retirement, provided the employee is over 55 years of age.

(13) A full-time employee who, during a qualifying period towards an entitlement of annual leave was employed continuously on both a full-time and part-time basis may elect to take a lesser period of annual leave calculated by converting the part-time service to equivalent full-time service.

15.—SHORT LEAVE

The employer may upon sufficient cause being shown, grant an employee leave of absence not exceeding two consecutive working days, but any leave of absence granted under the provisions of this clause shall not exceed, in the aggregate, three working days in any one calendar year.

16.—SICK LEAVE

(1) An employee who is incapacitated for duty in consequence of illness or injury shall as soon as possible advise his

supervisory officer in sufficient time to enable arrangements to be made for the performance of his duties. Any such employee who fails to do so shall be treated as absent without leave.

(2) An employee so incapacitated for duty shall notify his supervisory officer in sufficient time of the date on which he will resume duty, to enable any necessary arrangements to be made.

(3) (a) An application for leave of absence on the grounds of illness exceeding two consecutive working days shall be supported by the certificate of a registered Medical Practitioner or, where the nature of illness consists of a Dental condition and the period of absence does not exceed five consecutive working days by a certificate of a registered Dentist.

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

(4) Subject to the provisions of subclause (3) of this clause no leave of absence on the grounds of illness shall be granted with pay without the production of a Medical certificate.

An employee who finds that he is unable to resume duty on the expiration of the period shown on the first certificate shall thereupon furnish a further certificate and shall continue to do so upon the expiration of the period respectively covered by such certificate.

(5) Where an employee is ill during the period of his annual leave for recreation and produces at the time or as soon as practicable thereafter Medical evidence to the satisfaction of the employer that he is or was as a result of his illness confined to his place of residence or a hospital for a period of at least seven days, he may, with the approval of the employer, be granted at a time convenient to the employer additional leave equivalent to the period during which he was so confined.

(6) Where an employee is ill during the period of his long service leave and produces at the time or as soon as practicable thereafter Medical evidence to the satisfaction of the employer that he is or was confined to his place of residence or a hospital for a period of at least fourteen days, he may, with the approval of the employer, be granted at a time convenient to the employer additional leave equivalent to the period during which he was so confined.

(7) The basis for determining the leave of absence on the grounds of illness that may be granted shall be ascertained by crediting the employee concerned with the following periods, but the leave shall be cumulative—

	Leave On Full Pay. Working Days.	Leave On Half Pay. Working Days.
(a) On date of employment of the employee	5	2
(b) On completion by the employee of six months' service	5	3
(c) On completion by the employee of twelve months' service	10	5
(d) On completion of each additional twelve months' service by the employee	10	5

(8) When an employee is duly absent on account of illness and his entitlement to sick leave on full pay is exhausted, he may, with the approval of the employer, elect to convert any part of his entitlement to sick leave on half pay to sick leave on full pay, but so that his sick leave entitlement on half pay is reduced by two days for each day of sick leave on full pay that he received by the conversion.

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

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

(11) Where, on or after the first day of August, 1972, an employee in the discharge of his duties suffers personal injuries by accident that are compensable in accordance with the provisions of the Workers' Compensation Act, 1912, and which necessitates the granting of leave of absence under this subclause—

- (a) no charge shall be made against his sick leave credits in respect of so much of the period of leave as does not exceed twenty six weeks and the employee shall receive full pay for any such part of his leave of absence; and
- (b) where the employee is unable to resume duty at the expiration of the period of twenty six weeks, he shall be granted on full pay or half pay as the case requires, such further leave under this subclause as is required, but half the period only of such further leave shall be charged against his sick leave credits on full pay or half pay, as the case may be.

(12) Where an employee resigns or is dismissed by the employer through no fault of his own and is engaged by a respondent to Award No. 39 of 1968 within one working week of the expiration of any period for which payment in lieu of annual leave or public holidays has been made, the period of sick leave that has accrued to the employee's credit shall remain to such employee's credit and the provisions of subclause (7) of this clause shall continue to apply to such employee.

(13) A pregnant employee shall not be refused sick leave by reason only that the "illness or injury" encountered by the employee is associated with the pregnancy.

(14) The provisions of this subclause shall not apply to casual employees.

#### 17.—MATERNITY LEAVE

(1) A female employee who has become pregnant may, on application to the employer, be granted permission to be absent from duty for a period not exceeding twelve months.

(2) Every application made in accordance with subclause (1) of this clause shall be supported by the certificate of a duly qualified Medical Practitioner and such certificate shall indicate the expected date of confinement.

(3) The minimum period of absence from duty which may be granted to an employee by the employer in accordance with subclause (1) of this clause, is a period commencing eight weeks before the expected date of her confinement and ending at the expiration of eight weeks from the day on which her pregnancy terminates.

(4) An employee who had made application under subclause (1) of this clause may, at any time whilst she is absent from duty in accordance with this clause, make further application so as to extend or reduce the period referred to in the original application, but so that the amended period complies with the requirements of subclauses (1) and (3) of this clause, and the employer may vary its permission in accordance with the amended application.

(5) Nothing contained in this clause prevents the grant of annual leave or long service leave to an employee in respect of the whole or any part of the period referred to in subclause (1) of this clause.

(6) Except by reason of a grant of annual leave or long service leave with pay, an employee is not entitled to salary in respect of the period of absence from duty permitted in accordance with this clause.

(7) Absence of an employee which has been permitted in accordance with the provisions of this clause shall not be deemed absence by reason of illness for the purpose of Clause 16.—Sick Leave.

#### 18.—LONG SERVICE LEAVE

(1) An employee shall be entitled to three months' long service leave on full pay if he has completed—

- (a) seven years' continuous service under the terms of this Award, or
- (b) eight and a half years' continuous service, of which not less than eighteen months shall have been served in a capacity which would normally entitle that employee to long service leave on the basis laid down for full time State Government wages employees.

(2) For each and every subsequent period of seven years' continuous service an employee shall be entitled to an additional three calendar months' long service leave on full pay.

(3) Upon application by an employee, the employer may approve of the taking by the employee—

- (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 long service leave entitlement on full pay or double such period on half pay.
- (c) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.
- (d) Notwithstanding the provisions of paragraph (b) of this subclause an employee who has elected to compact an accrued entitlement to long service leave in accordance with paragraph (c) of this subclause shall only take such leave in one period of full pay.

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

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

(6) Any holiday occurring during the period in which an employee 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 employer but within three years next after becoming entitled thereto: Provided that the employer may approve the accumulation of long service leave not exceeding six months.

(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 employee 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 employee has completed not less than twelve months' continuous service.
- (b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his retirement.
- (c) To the widow of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his death.

(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 employee 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 Award shall remain to the credit of each employee.

(11) Subject to the provisions of subclauses (4), (5), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, if he resigns from the employment of the employer and commences with another employer a party to Award No. 39 of 1968 within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been

made by the employer from whom he resigned or, if no such payment has been made, within one working week of the day on which his resignation became effective;

- (b) if his employment is ended by the employer for any reason other than misconduct or unsatisfactory service but only, if—
  - (i) the employee resumes employment with an employer a party to Award No. 39 of 1968 not later than six months from the day on which his employment ended, and
  - (ii) payment pursuant to subclause (8) of this clause has not been made, or
- (c) by any absence approved by the employer as leave whether with or without pay.

(12) The expression “continuous service” in this clause includes any period during which an employee is absent on full pay or part pay, from his duties in the employer’s service, but does not include—

- (a) any period exceeding two weeks during which the employee is absent on leave without pay;
- (b) any period during which the employee is taking his long service leave entitlement or any portion thereof;
- (c) any service of the employee prior to his attaining the age of eighteen years;
- (d) Any service of the employee who resigns or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which the employee is dismissed when such prior service has actually entitled the employee to long service leave under this clause.

#### 19.—MOTOR VEHICLE ALLOWANCE

(1) Allowance for Employees Required to Supply and Maintain a Vehicle as a Term of Employment—

- (a) An employee who is required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment and who is not in receipt of an allowance provided by subclause (5) shall be reimbursed monthly in accordance with the appropriate rates set out in subclause (7) for journeys travelled on official business and approved by the employer or an authorised employee.
- (b) An employee who is reimbursed under the provisions of subclause (1)(a) will also be subject to the following conditions—
  - (i) For the purposes of subclause (1)(a) an employee shall be reimbursed with the appropriate rates set out in subclause (7) for the distance travelled from the employee’s residence to the place of duty and for the return distance travelled from place of duty to residence except on a day where the employee travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the day.
  - (ii) Where an employee, in the course of a journey, travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in subclause (7).
  - (iii) Where an employee does not travel in excess of 4,000 kilometres in a year an allowance calculated by multiplying the appropriate rate per kilometre by the difference between the actual distance travelled and 4,000 kilometres shall be paid to the employee provided that where the employee has less than 12 months’ qualifying service in the year then the 4,000 kilometre distance will be reduced on a pro rata basis and the allowance calculated accordingly.
  - (iv) Where a part-time employee is eligible for the payment of an allowance under (iii) above such allowance shall be calculated on the proportion of total hours worked in that year by the

employee to the annual standard hours had the employee been employed on a full time basis for the year.

- (v) An employee who is required to supply and maintain a motor vehicle for use on official business is excused from this obligation in the event of the employee’s vehicle being stolen, consumed by fire, or suffering a major and unforeseen mechanical breakdown or accident, in which case all entitlement to reimbursement ceases while the employee is unable to provide the motor vehicle or a replacement.
- (vi) It shall be open to the employer or his representative to elect to waive the requirement that an employee supply and maintain a motor vehicle for use on official business, but three months’ written notice of the intention so to do shall be given to the employee concerned.

(2) Allowance for Employees Relieving Employees Subject to subclause (1)—

- (a) An employee not required to supply and maintain a motor vehicle as a term of employment who is required to relieve an employee required to supply and maintain a motor vehicle as a term of employment shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in subclause (7) for all journeys travelled on official business and approved by the employer or an authorised employee where the employee is required to use his/her vehicle on official business whilst carrying out the relief duties.
- (b) For the purposes of subclause (2)(a) an employee shall be reimbursed all expenses incurred in accordance with the appropriate rates set out in subclause (7) for the distance travelled from the employee’s residence to place of duty and the return distance travelled from place of duty to residence except on a day where the employee travels direct from residence to headquarters and return and is not required to use the vehicle on official business during the day.
- (c) Where an employee in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in subclause (7).
- (d) For the purpose of this subclause the allowance provided in subclause (1)(b)(iii) and (iv) shall not apply.

(3) Allowance for Other Employees Using Vehicle on Official Business—

- (a) An employee who is not required to supply and maintain a motor vehicle for use when travelling on official business as a term of employment, but when requested by the employer or an authorised employee, voluntarily consents to use the vehicle and who is not in receipt of an allowance provided by subclause (5) shall, for journeys travelled on official business approved by the employer or an authorised employee be reimbursed all expenses incurred in accordance with appropriate rates set out in subclauses (8) and (9).
- (b) For the purpose of subclause (3)(a) an employee shall not be entitled to reimbursement for any expenses incurred in respect to the distance between the employee’s residence and headquarters and the return distance from headquarters to residence.
- (c) Where an employee in the course of a journey travels through two or more separate areas, reimbursement shall be made at the appropriate rate applicable to each of the areas traversed as set out in subclause (8).

(4) Allowance for Towing Employer’s Caravan or Trailer—

In cases where employees are required to tow employer’s caravans on official business, the additional rate shall be three cents per kilometre. When an employer’s trailer is towed on official business the additional rate shall be two cents per kilometre.

(5) Commuted Allowance—

The employer may authorise a commuted amount for reimbursement of costs for motor vehicles or any other conveyance belonging to an employee.

(6) Increase of Inadequate Rates—

The employer may increase the rates prescribed by this clause in any case in which it is satisfied that they are inadequate.

(7) Requirement to Supply and Maintain a Motor Car—

(EDIT NOTE: See subclause (11). Rates subsequently varied, see variation record for details.)

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc 2600cc	1600 cc & Under
<b>Metropolitan Area</b>			
First 4000 kilometres	71.0	60.6	54.0
Over 4000-8000 kilometres	31.2	26.9	24.2
Over 800-16000 kilometres	18.0	15.6	14.3
Over 16000 kilometres	25.9	21.9	19.5
<b>Engine Displacement (in Cubic Centimetres)</b>			
Area and Details	Over 2600cc	Over 1600cc	1600 cc & Under
<b>South West Land Division</b>			
First 4000 kilometres	72.5	62.0	55.3
Over 4000-8000 kilometres	32.1	27.7	25.0
Over 8000-16000 kilometres	18.6	16.3	14.8
Over 16000 kilometres	26.5	22.4	19.9
<b>North of 23.5° South Latitude</b>			
First 4000 kilometres	81.5	69.9	62.6
Over 4000-8000 kilometres	35.3	30.5	27.6
Over 8000-16000 kilometres	20.0	17.4	15.9
Over 16000 kilometres	23.0	19.8	17.1
<b>Rest of the State</b>			
First 4000 kilometres	75.6	64.6	57.5
Over 4000-8000 kilometres	33.4	28.8	25.9
Over 8000-16000 kilometres	19.3	16.8	15.4
Over 16000 kilometres	24.3	21.0	19.0

(8) Voluntary Use of a Motor Car—

(EDIT NOTE: See subclause (11). Rates subsequently varied, see variation record for details.)

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc 2600cc	1600 cc & Under
Metropolitan Area	34.5	29.7	26.7
South West Land Division	35.5	30.6	27.5
North of 23.5° South Latitude	39.2	33.8	30.5
Rest of the State	36.9	31.7	28.5

(9) Voluntary Use of a Motor Cycle—

(EDIT NOTE: See subclause (11). Rates subsequently varied, see variation record for details.)

Distance Travelled During a Year on Official Business	Rate Cents per kilometre
Rate per kilometre	12.1

(10) In this clause the following expressions shall have the following meaning—

“A year” means twelve months commencing on the first day of July and ending on the thirtieth day of June next following.

“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.

“Rest of the State” means that area south of 23.5 degrees south latitude, excluding the Metropolitan Area and the South West Land Division.

“Term of Employment”—means a requirement made known to the employee at the time of applying for the position by way of publication in the advertisement for the position, written advice to the employee contained in the offer for the position or oral communication at

interview by an interviewing employee and such requirement is accepted by the employee either in writing or orally.

(11) The allowances in this clause shall be varied in accordance with any movement in the allowances in the Public Service Motor Vehicle Allowances Consolidation Award 1986, No. 13 of 1976.

20.—TRAVELLING

(1) An employee who travels on official business shall be reimbursed reasonable expenses in accordance with the provisions of this clause.

(2) When a trip necessitates an overnight stay away from his headquarters and he—

is supplied with accommodation and meals free of charge, or

attends a course, conference, etc., where the fee paid includes accommodation and meals, or

travels by rail and is provided with a sleeping berth and meals, or

is accommodated at a Government institution, hostel or similar establishment and supplied with meals,

reimbursement shall be in accordance with the rate prescribed in Column A, Items 1, 2 or 3 of Clause 24.

(3) When a trip necessitates an overnight stay away from his headquarters and he is fully responsible for his own accommodation, meals and incidental expenses—

(i) Where hotel or motel accommodation is utilised reimbursement shall be in accordance with the rates prescribed in Column A, Items 4 to 8 of Clause 24.

(ii) Where other than hotel or motel accommodation is utilized reimbursement shall be in accordance with the rates prescribed in Column A, Items 9, 10 or 11 of Clause 24.

(4) To calculate reimbursement under subclause (2) and (3) for a part of a day, the following formulae shall apply—

(i) if departure from headquarters is—

Before 8.00 a.m.—100% of the daily rate.

8.00 a.m. or later but prior to 1.00 p.m.—90% of the daily rate.

1.00 p.m. or later but prior to 6.00 p.m.—75% of the daily rate.

6.00 p.m. or later—50% of the daily rate.

(b) If arrival back at headquarters is—

Before 8.00 a.m. or later but prior to 1.00 p.m.—10% of the daily rate.

1.00 p.m. or later but prior to 6.00 p.m.—25% of the daily rate.

6.00 p.m. or later but prior to 11.00 p.m.—50% of the daily rate.

11.00 p.m. or later—100% of the daily rate.

(5) When an employee travels to a place outside a radius of fifty kilometres measured from his headquarters, and the trip does not involve an overnight stay away from his headquarters, reimbursement for all meals claimed shall be at the rate set out in Column A, Items 12 or 13 of Clause 24., subject to the employee’s certification that each meal claimed was actually purchased.

Provided that when an employee departs from his headquarters before 8.00 a.m. and does not arrive back at his headquarters until after 11.00 p.m. on the same day he shall be paid at the appropriate rate prescribed in Column A, Items 4 to 8 of Clause 24.

(6) When it can be shown to the satisfaction of the employer by the production of receipts that reimbursement in accordance with Clause 24 does not cover an employee’s reasonable expenses for a whole trip he shall be reimbursed the excess expenditure.

(7) In addition to the rates contained in Clause 24 an employee shall be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.

(8) If on account of lack of suitable transport facilities an employee necessarily engages reasonable accommodation for

the night prior to commencing travelling on early morning transport he shall be reimbursed the actual cost of such accommodation.

(9) Reimbursement of expenses shall not be suspended should an employee become ill whilst travelling, provided leave for the period of such illness is approved in accordance with the provisions of this Award and the employee continues to incur accommodation, meal and incidental expenses.

(10) Reimbursement claims for travelling in excess of fourteen days in one month shall not be passed for payment by a certifying officer until the employer has endorsed the account.

(11) An employee who is relieving at or temporarily transferred to any place within a radius of fifty kilometres measured from his headquarters shall not be reimbursed the cost of mid-day meals purchased, but an employee travelling on duty within that area which requires his absence from his headquarters over the usual midday meal period shall be paid the rate prescribed by Item 16 for each meal necessarily purchased provided that—

- (i) such travelling is not a normal feature in the performance of his duties, and
- (ii) such travelling is not within the suburb in which he resides, and
- (iii) his total reimbursement under this subclause for any one pay period shall not exceed the amount prescribed by Item 17.

#### 21.—TRANSFERS

(1) Except as provided in subclause (3) a married or single employee who is transferred to a new locality in the public interest, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, shall be paid at the rates prescribed in Column A, Items 4, 5 or 6 of Clause 24 for a period of fourteen days after arrival at his new headquarters: Provided that if an employee is required to travel on official business during the said periods, such travelling will be extended by the time spent in travelling. Under no circumstances, however, shall the provisions of this subclause operate concurrently with those of Clause 20 to permit an employee to be paid allowances in respect of both travelling and transfer expenses for the same period.

(2) If a married employee is unable to obtain reasonable accommodation for the transfer of his home within the prescribed period referred to in subclause (1) of this clause and the employer is satisfied that the employee has taken all possible steps to secure reasonable accommodation, such employee shall, after the expiration of the prescribed period be paid in accordance with the rates prescribed by Column B, Items 4, 5, 6, 7 or 8 of Clause 24 as the case may require, until such time as he has secured reasonable accommodation: Provided that the period of reimbursement under this subclause shall not exceed seventy seven days without the approval of the employer. A single employee shall not be paid allowances under this subclause.

(3) When it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred by an employee on transfer, an appropriate rate of reimbursement shall be determined by the employer.

In the event of a dispute, the matter may be referred to the Board of Reference for determination.

(4) An employee who is transferred to departmental accommodation shall not be entitled to reimbursement under this clause: Provided that where entry into departmental accommodation is delayed through circumstances beyond his control an employee may, subject to the production of receipts, be reimbursed actual reasonable accommodation and meal expenses for himself and his wife and dependant children under sixteen years of age or other children wholly dependant on him, less a deduction for normal living expenses prescribed in Column A, Items 14 and 15 of Clause 24 and provided that if any costs are incurred under subclause (5)(b), they shall be reimbursed.

(5) (a) Where an employee transfers his employment in accordance with the other provisions of this clause and incurs expenses referred to in paragraph (b) hereof as a result of that

transfer, then the employee shall be granted a Disturbance Allowance and shall be reimbursed by the new employer the actual expenditure incurred upon production of receipts or such other evidence as may be required.

(b) The Disturbance Allowance shall include—

- (i) Costs incurred for telephone installation at his new residence provided that the cost of telephone installation shall be reimbursed only where a telephone was installed at the employee's former residence including departmental accommodation and provided further that reimbursement shall not apply to an employee's private residence wherein a telephone was not installed prior to his first transfer in accordance with this provision.
- (ii) Costs incurred with the connection or reconnection of services to his household including departmental accommodation for water, gas or electricity.

#### 22.—TRAVELLING TIME

An employee who, in the course of his duties, is called upon to travel before the usual time for commencing or after the usual time for ceasing duty may, at the discretion of the employer, be granted time off in respect of such time or part of such time spent in travelling.

#### 23.—RELIEVING OR SPECIAL DUTY

(1) An employee who is required to take up duty away from his usual headquarters on relief duty or to perform special duty, and necessarily resides temporarily away from his usual place of residence shall be reimbursed reasonable expenses in accordance with the provisions of this clause.

(2) Where the employee—

- is supplied with accommodation and meals free of charge, or
- is accommodated at a Government institution, hostel or similar establishment and supplied with meals,

reimbursement shall be in accordance with the rates prescribed in Column A, Items 1, 2 or 3 of Clause 24.

(3) Where the employee is fully responsible for his own accommodation and incidental expenses and hotel or motel accommodation is utilised—

- (i) For the first forty-two days after arrival in the new locality reimbursement shall be in accordance with the rates prescribed in Column A, Items 4 to 8 of Clause 24.
- (ii) For periods in excess of forty-two days after arrival in the new locality reimbursement shall be in accordance with the rates prescribed in Column B, Items 4 to 8 of Clause 24 for married employees or Column C, Items 4 to 8 of Clause 24 for single employees.

Provided that the period of reimbursement under this subclause shall not exceed forty-nine days without the approval of the employer.

(4) Where the employee is fully responsible for his own accommodation, meals and incidental expenses and other than hotel or motel accommodation is utilised, reimbursement shall be in accordance with the rates prescribed in Column A, Items 9, 10 or 11 of Clause 24. -Travelling, Transfers and Relieving Duty—Rates of Allowance.

(5) Reimbursement of expenses shall not be suspended should an employee become ill whilst on relief duty, provided leave for the period of such illness is approved in accordance with Clause 16.—Sick Leave and the employee continues to incur accommodation, meal and incidental expenses.

(6) When an employee who is required to relieve or perform special duties in accordance with subclause (1) of this clause is authorised by the employer to travel to the new locality in his own motor vehicle he shall be reimbursed for the return journey as follows—

- (i) Where the employee will be required to maintain a motor vehicle for the performance of the relieving or special duties, reimbursement shall be in accordance with the appropriate rate prescribed by Clause 19 of this Award.
- (ii) Where the employee will not be required to maintain a motor vehicle for the performance of the

relieving or special duties reimbursement shall be on the basis of one-half of the appropriate rate prescribed by Clause 19 of this Award: Provided that the maximum amount of reimbursement shall not exceed the cost of the fare by public conveyance which otherwise would be utilized for such return duty.

(7) The rate applicable to a married employee under subclause (2)(ii) shall be paid to a single employee if the employer is satisfied that the employee has to maintain a home and support dependants therein, in a locality other than that to which he has been sent. A certificate to this effect must be furnished by a single employee claiming the higher rate.

(8) Where it can be shown by the production of receipts or other evidence that an allowance payable under this clause would be insufficient to meet reasonable additional costs incurred, an appropriate rate of reimbursement shall be determined by the employer.

In the event of a dispute, the matter may be referred to the Board of Reference for determination.

(9) The provisions of Clause 20 shall not operate concurrently with the provisions of this clause to permit an employee to be paid allowances in respect of both travelling and relieving expenses for the same period: Provided that where an employee is required to travel on official business which involves an overnight stay away from his temporary headquarters the employer may extend the periods specified in subclause (3) by the time spent in travelling.

(10) An employee who is directed to relieve another employee or to perform special duty away from his usual headquarters and is not required to reside temporarily away from his usual place of residence shall, if he is not in receipt of a higher duties or special allowance for such work, be reimbursed the amount of additional fares paid by him in travelling by public transport to and from his place of temporary duty.

24.—TRAVELLING, TRANSFERS AND RELIEVING DUTY—RATES OF ALLOWANCE

(EDIT NOTE: See final paragraph of this clause. Rates subsequently varied, see variation record for details.)

Item	Particulars	COLUMN A Daily Rate	COLUMN B Daily Rate Married Officer: Relieving Allowance for Period in Excess of 42 Days (Clause 23 (3)(a)) Transfer Allowance for Period in Excess of Prescribed Period (Clause 21(2))	COLUMN C Daily Rate Single Officer: Relieving Allowance for Period in Excess of 42 Days (Clause 23(3)(a))
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ALLOWANCE TO MEET INCIDENTAL EXPENSES

		\$	\$	\$
1.	W.A.—South of 26° South Latitude	3.60		
2.	W.A.—North of 26° South Latitude	5.10		
3.	Interstate	5.10		

ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL

4.	W.A.—Metropolitan Hotel or Motel	58.80	29.40	19.60
5.	Locality South of 26° South Latitude	51.90	25.95	17.30
6.	Locality North of 26° South Latitude—			
	Broome	84.40	42.20	28.15
	Carnarvon	57.20	28.60	19.05
	Dampier	76.10	38.05	25.35
	Derby	76.50	38.25	25.50
	Exmouth	83.35	41.65	27.80
	Fitzroy Crossing	55.10	27.55	18.35
	Gascoyne Junction	50.10	25.05	16.70
	Halls Creek	68.10	34.05	22.70
	Karratha	94.60	47.30	31.55
	Kununurra	78.75	39.35	26.25
	Marble Bar	68.10	34.05	22.70
	Newman	86.60	43.30	28.85
	Nullagine	61.10	30.55	20.35

Item	Particulars	COLUMN A Daily Rate	COLUMN B Daily Rate Married Officer: Relieving Allowance for Period in Excess of 42 Days (Clause 23 (3)(a)) Transfer Allowance for Period in Excess of Prescribed Period (Clause 21(2))	COLUMN C Daily Rate Single Officer: Relieving Allowance for Period in Excess of 42 Days (Clause 23(3)(a))
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ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL—continued

	Onslow	73.60	36.80	24.55
	Pannawonica	71.10	35.55	23.70
	Paraburdoo	80.10	40.05	26.70
	Port Hedland	72.00	36.00	24.00
	Roebourne	60.10	30.05	20.05
	Shark Bay	61.35	30.65	20.45
	Tom Price	76.60	38.30	25.55
	Wickham	89.10	44.55	29.70
	Wittenoom	73.60	36.80	24.55
	Wyndham	76.45	38.20	25.50
7.	Interstate—Capital City	77.55	38.75	25.85
8.	Interstate—Other than Capital City	51.90	25.95	17.30

ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL

9.	W.A.—South of 26° South Latitude	25.65		
10.	W.A.—North of 26° South Latitude	35.70		
11.	Interstate	35.70		

TRAVEL NOT INVOLVING AN OVERNIGHT STAY

12.	W.A.—South of 26° South Latitude—			
	Breakfast	5.25		
	Lunch	5.25		
	Evening Meal	11.55		
13.	W.A.—North of 26° South Latitude—			
	Breakfast	6.60		
	Lunch	8.40		
	Evening Meal	15.60		

DEDUCTION FOR NORMAL LIVING EXPENSES (Clause 21 (4))

14.	Each Adult	10.00		
15.	Each Child	1.70		
MIDDAY MEAL (Clause 20 (11))				
16.	Rate per meal	2.40		
17.	Maximum reimbursement per pay period	12.00		

The Allowances prescribed in this clause shall be varied in accordance with any movement in the equivalent allowances in the Public Service Miscellaneous Allowances Award, 1982.

25.—REMOVAL ALLOWANCE

(1) When a married employee is transferred in the public interest, or in the ordinary course of promotion or transfer, or on account of illness due to causes over which the employee has no control, he shall be reimbursed

- (i) The actual reasonable cost of conveyance of himself and his wife and children under sixteen years of age or other children wholly dependent upon him.
- (ii) The actual reasonable cost up to an amount of \$1,100.00 for conveyance of his furniture, including insurance of such furniture whilst in transit unless a higher sum is approved by the employer in any special case: Provided that only necessary household furniture, effects and appliances shall be taken into account. In the event of a dispute, the matter may be referred to the Board Of Reference for determination.
- (iii) An allowance of \$250.00 for accelerated depreciation and extra wear and tear on furniture, effects and appliances. Provided that the employer is satisfied that the value of household furniture, effects and appliances moved by the employee is at least \$1,500.00.

In the case of a single employee, an application for any reimbursement under this clause shall be considered by the employer.

(2) An employee who is transferred solely at his own request or on account of misconduct must bear the whole cost of

his removal unless otherwise determined by the employer prior to removal.

(3) An employee shall be reimbursed the full freight charges necessarily incurred in respect of the removal of his motor vehicle. If authorised by the employer to travel to a new locality in his own motor vehicle, reimbursement shall be as follows—

- (i) Where the employee will be required to maintain a motor vehicle for use on official business at his new headquarters, reimbursement for the distance necessarily travelled shall be on the basis of the appropriate rate prescribed by Clause 19 of this Award.
- (ii) Where the employee will not be required to maintain a motor vehicle for use on official business at his new headquarters, reimbursement for the distance necessarily travelled shall be on the basis of one-half of the appropriate rate prescribed by Clause 19 of this Award.

(4) Where practicable furniture, effects and appliances shall be removed by State-owned transport. Where it is impracticable to use State-owned transport the employee shall, before removal is undertaken, obtain quotes from at least two carriers which shall be submitted to the employer, who may authorise the acceptance of the more suitable: Provided that the maximum amount prescribed by subclause (1)(ii) of this clause is not exceeded without the written approval of the employer having first been obtained.

(5) The employer may, in lieu of conveyance, authorise payment of an amount not exceeding the maximum prescribed by subclause (1)(ii) of this clause to compensate for loss in any case where an employee with prior approval of the employer, disposes of his furniture, effects and appliances instead of removing them to his new headquarters: Provided that such payment shall not exceed the sum which would have been paid if such furniture, effects and appliances had been removed by the cheapest method of transport available.

(6) Where an employee is transferred to departmental accommodation where furniture is provided and as a consequence is obliged to store his own furniture, he shall be reimbursed the actual cost of such storage up to a maximum allowance of \$400.00 per annum. An allowance under this subclause shall not be paid for a period in excess of one year without the approval of the employer.

Provided that nothing in this subclause shall preclude the employer from reimbursing an employee the actual cost of storage where it exceeds the prescribed maximum allowance, if the employer considers that cost has been necessarily and reasonably incurred in the circumstances of a particular case.

(7) Newly appointed employees shall be entitled to receive the benefits of this clause if they are required by the employer to participate in any training course prior to being posted to their respective positions. This entitlement shall only be available to employees who have completed their training and who incur costs when moving to their first posting.

(8) Receipts must be produced for all sums claimed.

#### 26.—DIRTY WORK

A special allowance, to be determined by the employer, shall be paid to an employee when engaged in any dirty work (including moving or sorting old books and documents) which is not part of the regular duty of the employee concerned: Provided that a dispute or disagreement as to the amount of such allowance shall be referred to the Board Of Reference.

#### 27.—DISPUTE SETTLEMENT PROCEDURE

##### (1) Preamble

Subject to the provisions of the Industrial Relations Act 1985 (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.

This clause in no way limits the rights of employers, employees and the Union under the Occupational Health, Safety and Welfare Act 1984 or other related legislation.

##### (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 two working days, 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 working 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 paragraph (b) above the employee(s) or the shop steward shall notify the Union Secretary 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 calendar 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 subclauses (2)(a), (b) or (c)(ii).

##### (3) Disciplinary Procedure

Where an 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 twelve months continuous service, the contract of service shall, upon the giving of that third reprimand, be terminable in accordance with Clause 8.—Contract of Service.
  - (iv) The employee shall have the right to request representation when being reprimanded in accordance with this subclause.
  - (v) 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 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 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 subclause (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 procedure—

“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 WAIRC 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.

#### 28.—SHIFT WORK

(1) (a) The loading on the ordinary rates of pay for an afternoon or night shift of seven and one half hours, worked in ordinary hours, shall be the same rate as prescribed from time to time in Clause 5.—Shift Work Allowance, subclause (a) of the Public Service Shift Work Agreement, 1978, No. 24 of 1978.

(b) For the purposes of this subclause—

- (i) “Day Shift” shall mean a shift which commences after 6.00 a.m. and before 12.00 midday.
- (ii) “Afternoon Shift” shall mean a shift which commences at or after 12.00 midday and before 6.00 p.m.
- (iii) “Night Shift” shall mean a shift which commences at or after 6.00 p.m. and before 6.01 a.m.

(2) (a) Shift work performed during ordinary hours on Saturdays or Sundays shall be paid for at the rate of time and a half and on the days prescribed in subclause (1) of Clause 14.—Holidays and Annual Leave it shall be paid in accordance with subclause (3)(a) of Clause 14 hereof.

(b) The rates prescribed in this subclause shall be in substitution for and not cumulative on the rates prescribed in subclause (1) of this clause.

(c) Work performed by an employee in excess of the ordinary hours of his shift, or on a rostered day off, shall be paid for in accordance with Clause 12.—Overtime.

#### 29.—PROTECTIVE CLOTHING AND UNIFORMS

(1) (a) The employer may supply and require to be worn such protective clothing as is considered necessary.

(b) The employer may supply uniforms and require them to be worn at all times when considered necessary by the employer.

(c) Protective clothing or uniforms supplied under paragraphs (a) or (b) of this subclause shall be laundered free of charge and remain the property of the employer.

(2) When the employer requires a uniform to be worn, such uniform shall be supplied in accordance with paragraph (b) of

subclause (1) of this clause or an allowance shall be paid to each staff member required to wear a uniform. The amount of such allowance shall be agreed upon between the employer and the Association, or, failing agreement, as may be determined by the Board Of Reference.

#### 30.—DISTRICT ALLOWANCE

##### (1) DEFINITIONS

For the purpose of this clause—

- (a) “Dependant” in relation to an employee means—
  - (i) a spouse; or
  - (ii) where there is no spouse, a child or any other relative resident within the State who rely on the employee for their main support;

who does not receive a district or location allowance of any kind.

- (b) “Partial Dependant” in relation to an employee means—
  - (i) a spouse; or
  - (ii) where there is no spouse, a child or any other relative resident within the State who rely 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.

- (c) “Spouse” means an employee’s spouse including defacto spouse.
- (d) “Defacto 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) DISTRICT ALLOWANCE

- (a) An employee shall be paid a District Allowance at the standard rate prescribed in Column II of subclause (7) 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, subclause (7) the employee shall be paid a district allowance at the rate appropriate to that town or place as prescribed in Column IV of the said subclause.
- (b) An employee who has a dependant shall be paid double the district allowance prescribed by paragraph (a) of this subclause for the district, town, or place in which the employee’s headquarters is located.
- (c) Where an employee has a partial dependant the total district allowance payable to the officer shall be the district allowance prescribed by paragraph (a) of this subclause plus an allowance equivalent to the difference between the rate of district or location allowance the partial dependant receives and the rate of district or location allowance the partial dependant would receive if he or she was employed in a full time capacity under the Award, Agreement or other provision regulating the employment of the partial dependant.
- (d) 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 or she would ordinarily be entitled.
- (e) 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, dependant/s or partial dependant/s remain in the district in which the employee’s headquarters is situated.
- (f) 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.

- (g) Except as provided in paragraph (f) of this subclause, 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.
- (h) Where an employee whose headquarters is located in a district in respect of which no allowance is prescribed in subclause (7) 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, then notwithstanding the employee's entitlement to any such allowance provided by Clause 24.—Travelling, Transfers and Relieving Duty—Rates of Allowance or Clause 23.—Relieving or Special Duty, the employee shall be paid for the whole of such period a district allowance at the appropriate rate prescribed by paragraph (a), (b) or (c) of this subclause, for the district in which the employee spends the greater period of time.
- (i) 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.

**(3) PART TIME EMPLOYEES**

An employee who is employed on a part time basis shall be paid a proportion of the appropriate district allowance payable in accordance with the following formula—

$$\frac{\text{Hours worked per fortnight}}{75} \times \frac{\text{Appropriate District Allowance}}{1}$$

**(4) TRANSITION**

An employee who immediately prior to July 1, 1989 was in receipt of district allowance at a rate which was greater than the amount to which the employee is entitled under this clause shall have the difference reduced in accordance with the following—

- (a) As from the first pay period commencing on or after July 1, 1989 the difference shall be reduced by thirty-three and one third (33 1/3%) per cent; and
- (b) As from the first pay period commencing on or after January 1, 1990 the difference remaining between the amount paid pursuant to (a) above and that to which the employee is otherwise entitled under this clause shall be reduced by fifty (50%) per cent; and
- (c) As from the first pay period commencing on or after July 1, 1990 payment shall be in accordance with the employee's entitlement under this clause.

**(5) BOUNDARIES**

For the purpose of subclause (7) of this clause, the boundaries of the various districts shall be as described hereunder and as delineated on the following plan.

District—

1. The area within a line commencing on the coast; thence east along lat. 28 to a point north of Talling Peak, thence due south to Talling Peak; thence southeast to Mt Gibson and Burracoppin, thence to a point southeast at the junction of lat. 32 and long. 119; thence south along long. 119 to coast.
2. That area within a line commencing on the south coast at long. 119 then east along the coast to long. 123; then north along long. 123 to a point on lat. 30; thence west along lat. 30 to the boundary of No. 1 District.
3. The area within a line commencing on the coast at lat. 26, thence along lat. 26 to long. 123; thence south along long. 123 to the boundary of No. 2 District.
4. The area within a line commencing on the coast at lat. 24; thence east to the South Australian border; thence south to the coast; thence along the coast to long. 123 thence north to the intersection of lat. 26 thence west along lat. 26 to the coast.
5. That area of the State situated between the lat. 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.

**(6) ADJUSTMENT OF RATES**

The allowances prescribed in this clause shall be varied in accordance with any movement in the equivalent allowances in the Public Service District Allowance Award 1988.

**(7) DISTRICT ALLOWANCES**

(a) Employees Without Dependants [Subclause (2)(a)]

COLUMN I DISTRICT NO.	COLUMN II STANDARD RATE \$ p.a.	COLUMN III EXCEPTIONS TO STANDARD RATE TOWN OR PLACE	COLUMN IV \$ p.a.
6	2269	Nil	Nil
5	1857	Fitzroy Crossing Halls Creek Turner River Camp Nullagine Liveringa (Camballin) Marble Bar Wittenoom	2499
4	934	Karratha Port Hedland Warburton Mission	2186 2034 2514
3	590	Carnarvon Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	881 934
2	422	Kalgoorlie Boulder Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	141 558
1	Nil	Nil	Nil

(b) Employees with Dependants [Subclause (2)(b)]

Double the appropriate rate as prescribed in (a) above for employees without dependants.

The allowances prescribed in this subclause shall operate from the beginning of the first pay period commencing on or after January 1, 1989.

**31.—CHILD ALLOWANCE**

(1) An employee whose permanent headquarters are located north of 26° South latitude, including Shark Bay, shall be paid an allowance at the rate of \$100.00 per annum in respect of each one of his children of school age who is resident in the North: Provided that the total reimbursement per family unit under this clause shall not exceed \$400.00 per annum.

(2) An allowance under this clause shall continue to be paid to an employee when he is absent from his headquarters on long service leave, annual leave or other leave as approved by the employer.

**32.—CHANNEL OF COMMUNICATION**

During the currency of this Award no employer shall recognise or negotiate with any organised body other than the Association in regard to the conditions of employment of employees covered by this award.

**33.—BOARD OF REFERENCE**

There is hereby appointed for the purpose of this award a Board of Reference to be constituted in accordance with Section 48 of the Industrial Arbitration Act, 1979.

The Board Of Reference is assigned the function of altering, approving, fixing or determining any matter which under this award may be allowed, approved, fixed or determined by the Board Of Reference.

**34.—PART-TIME EMPLOYEES**

(1) (a) Notwithstanding anything contained in this Award an employee may be regularly employed to work less hours per week than are prescribed in Clause 11.—Hours and such hours may be worked in less than five days per week.

(b) Notwithstanding the provisions of subclause (2) of Clause 11.—Hours the employer may vary the ordinary hours of a part-time employee where the employee consents in writing provided that the employer shall give the part-time employee at least 48 hours notice of such variation in hours.

(2) When an employee is employed under the provisions of this clause he shall be paid at a rate pro-rata to the rate prescribed for the class of work on which he is engaged in the proportion to which his weekly hours bear to the weekly hours of an employee engaged full-time on that class of work.

(3) When an employee is employed under the provisions of this clause, he shall be entitled to the same leave, penalties and other conditions as prescribed in the Award for full-time employees, with payment being in the proportion to which his weekly hours bear to the weekly hours of an employee engaged full-time in that class of work.

(4) The employer shall advise the Secretary of the Union within twenty eight days of the date of this order as to the offices occupied, the days on which and number of hours worked by those employees employed in a part-time capacity.

(5) The employer shall advise the Secretary of the Union within seven days of any part-time office created or altered after the date of this Award.

(6) Any dispute as to whether a part-time office is necessary shall be referred to the Board Of Reference.

(7) Notwithstanding the provisions of Clause 28.—Shift Work, for employees employed part-time in accordance with this clause, “Day Shift” shall include a shift which commences after 12.00 noon and finishes ordinary hours before 6.00pm.

### 35.—PROPERTY ALLOWANCE

(1) When an employee is transferred from one locality to another in the public interest or in the ordinary course of promotion or transfer, or on account of illness due to causes over which he has no control, he shall be entitled to be paid a property allowance for reimbursement of expenses incurred by him—

- (a) In the sale of a residence in his former locality, which, at the date on which he received notice of his transfer to his new locality—
  - (i) he owned and occupied; or
  - (ii) he was purchasing under a contract of sale providing for vacant possession; or
  - (iii) he was constructing for his own permanent occupation, on completion of construction and
- (b) In the purchase of a residence or land for the purpose of erecting a residence thereon for his own permanent occupation in the new locality.

(2) An employee shall be reimbursed such following expenses as are incurred in relation to the sale of a dwelling/house—

- (a) if the employee engaged an agent to sell the dwelling/house on his behalf—fifty percent of the amount of the commission paid to the agent in respect of the sale of the dwelling/house;
- (b) if the employee engaged a solicitor to act for him in connection with the sale of the dwelling/house—the amount of the professional costs and disbursements necessarily incurred and paid to the solicitor in respect of the sale of the dwelling/house;
- (c) if the land on which the dwelling/house is created was subject to a first mortgage and that mortgage was discharged on the sale, then an employee shall, if, in a case where a solicitor acted for the mortgagee in respect of the discharge of the mortgage and the employee is required to pay the amount of the professional costs and disbursements necessarily incurred by the mortgagee in respect of the discharge of the mortgage—the amount so paid by the employee;
- (d) if the employee did not engage an agent to sell the dwelling/house on his behalf—the amount of the expenses reasonably incurred by the employee in advertising the dwelling/house for sale.

(3) An employee shall be reimbursed such following expenses as are incurred in relation to the purchase of a dwelling/house—

- (a) if the employee engaged a solicitor or settlement agent to act for him in connection with the purchase

of the dwelling/house—the amount of the professional costs and disbursements necessarily incurred and paid to the solicitor or settlement agent in respect of the purchase of the dwelling/house;

- (b) if the employee mortgaged the land on which the dwelling/house was erected in conjunction with the purchase of the dwelling/house, then an employee shall, if, in a case where a solicitor acted for the mortgagee and the employee is required to pay and has paid the amount of the professional costs and disbursements (including valuation fees but not a procuracy fee payable in connection with the mortgage) necessarily incurred by the mortgagee in respect of the mortgage—the amount so paid by the employee;
- (c) if the employee did not engage a solicitor or settlement agent to act for him in connection with the purchase or such a mortgage—the amount of the expenses reasonably incurred by the employee in connection with the purchase or the mortgage, as the case may be, other than a procuracy fee paid by the employee in connection with the mortgage.

(4) An employee is not entitled to be paid a property allowance under subclause (1)(b) unless he is entitled to be paid a property allowance under subclause (1)(a); provided that the employer may approve the payment of a property allowance under subclause (1)(b) to an employee who is not entitled to be paid a property allowance under subclause (1)(a) if the employer is satisfied that it was necessary for the employee to purchase a residence or land for the purpose of erecting a residence thereon in his new locality because of his transfer from his former locality.

(5) For the purpose of this Award it is immaterial that the ownership, sale or purchase is—

- (a) In the case of married employee, solely or jointly or in common with—
  - (i) his spouse;
  - (ii) a dependant relative; or
  - (iii) his spouse and a dependant relative, or
- (b) In the case of any other employee, solely or jointly or in common with a dependant relative living with him.

(6) Where an employee sells or purchases a residence jointly or in common with another person—not being a person referred to in subclause (5)—he shall be paid only the proportion of the expenses for which he is responsible.

(7) An application by an employee for a property allowance shall be accompanied by evidence of the payment by the employee of the expenses, being evidence that is satisfactory to the employer.

(8) Notwithstanding the foregoing provisions, an employee is not entitled to the payment of a property allowance—

- (a) In respect of a sale or purchase prescribed in subclause (1) which is effected—
  - (i) more than twelve months after the date on which he took up duty in his new locality; or
  - (ii) after the date on which he received notification that he was being transferred back to his former locality;

provided that the employer may, in exceptional circumstances grant an extension of time for such period as is deemed reasonable.

- (b) Where the employee is transferred from one locality to another solely at his own request or on account of misconduct.

(9) For the purpose of this clause—

- (a) “Agent” means a person carrying on business as an estate agent in a State or Territory of the Commonwealth, being, in a case where the law of that State or Territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under that law.
- (b) “Dependant Relative” in relation to an employee means a relative or other person who is solely dependant on the employee for support.

- (c) "Expenses" in relation to an employee means all costs incurred by the employee in the following areas—
- (i) legal fees in accordance with the Solicitor's Remuneration Order, 1976 as amended and varied, duly paid to a solicitor or in lieu thereof fees charged by a settlement agent for professional costs incurred in respect of the sale or purchase, the maximum fee to be claimed shall be as set out under item 8 of the above order;
  - (ii) disbursements duly paid to a solicitor or a settlement agent necessarily incurred in respect of the sale or purchase of the residence;
  - (iii) Real Estate Agent's Commission in accordance with that fixed by the Real Estate and Business Agents Supervisory Board, acting under Section 61 of the Real Estate and Business Agents Act, 1978, duly paid to an agent for services rendered in the course of and incidental to the sale of the property, the maximum fee to be claimed shall be fifty per cent (50%) as set out under Items 1 or 2—Sales by Private Treaty or Items 1 or 2—Sales by Auction of the Maximum Remuneration Notice;
  - (iv) stamp duty;
  - (v) fees paid to the Registrar of Titles or to the officer performing duties of a like nature and for the same purpose in another State of the Commonwealth;
  - (vi) expenses relating to the execution or discharge of a first mortgage;
  - (vii) the amount of expenses reasonably incurred by the employee in advertising the dwelling/house for sale.
- (d) "Locality" in relation to an employee means—
- (i) within the metropolitan area, that area within a radius of fifty kilometres from the Perth Central Railway Station; and
  - (ii) outside the metropolitan area, that area within a radius of fifty kilometres from an employee's headquarters when they are situated outside of the metropolitan area.
- (e) "Residence" includes any accommodation of a kind commonly known as a flat or a home unit that is, or is intended to be, a separate tenement.
- (f) "Settlement Agent" means a person carrying on business as settlement agent in a State or Territory of the Commonwealth, being, in a case where the law of that State or Territory provides for the registration or licensing of persons who carry on such a business, a person duly registered or licensed under that law.
- (10) Where there is a dispute of disagreement concerning—
- (a) the necessity to purchase a residence or land;
  - (b) the amount of the disbursements necessarily incurred and duly paid by the employee;
  - (c) the amount of expenses reasonably incurred by an employee when—
    - (i) he did not engage an agent to sell the dwelling/house on his behalf; or
    - (ii) he did not engage a solicitor or settlement agent to act for him in connection with the purchase or mortgage,
- it shall be deemed to be a dispute or disagreement and shall be referred to the Board Of Reference.

### 36.—CASUAL EMPLOYEES

- (1) "Casual Employee" shall mean an employee engaged by the hour for a period of less than two consecutive weeks in any period of engagement.
- (2) A casual employee shall be paid one-seventy-fifth of the ordinary fortnightly rate of salary prescribed by this Award for the classification in which the casual employee is employed for each hour so employed, with the addition of 20 per centum.
- (3) On Monday of each week any respondent which has employed a casual employee or casual employees during the

preceding week shall supply to the applicant a schedule setting out the following information—

- (a) the name of the casual employee or employees.
- (b) the address of such employee or employees.
- (c) the classification in which such an employee was engaged and the number of hours so engaged.
- (d) the rate of salary paid to such employee or employees.

### 37.—DEDUCTION OF UNION SUBSCRIPTIONS

- (1) The employer shall deduct normal subscriptions as equal amounts each pay period.
- (2) Payroll Deduction Authority forms shall be completed by employees. Where the employer requires a standard procurement form, that form shall be used.
- (3) Where required by the employer or Union, the Union Secretary, or person acting in his/her stead, shall countersign all forms and forward them to the employer's paymaster.
- (4) (a) The employer shall commence deduction of subscriptions from the first full pay period following receipt of a completed Payroll Deduction Authority form and continue deducting throughout the employee's period of employment, except as provided in subclause (5) of this clause or until the Authority is cancelled in writing by the employee.
  - (b) Where the Payroll Deduction Authority form authorises the employer to deduct the union subscriptions in accordance with the rules of the Union, the Union shall notify the employer in writing of the level of union subscription to be deducted. The employer shall implement any change to union subscriptions no later than one month after being notified by the Union except where the Union nominates a later date.
- (5) (a) The collection of any nomination fee, arrears, levies or fines are not the responsibility of the employer.
  - (b) Where a deduction is not made from an employee in any pay period, either inadvertently or as a result of an employee not being entitled to wages sufficient to cover the subscription, it shall be the employee's responsibility to settle the outstanding amount with the Union direct.
- (6) The employer shall not make any deduction of subscriptions from an employee's termination pay on termination of service, other than normal deductions for the preceding pay period.
- (7) The employer shall forward contributions deducted, together with supporting documentation, to the relevant Union party to this award at such intervals as are agreed between the employer and Union.

### 38.—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.

#### 39.—TRADE UNION TRAINING LEAVE

(1) Subject to the provisions of this clause—

(a) The employer shall grant paid leave of absence to employees who are nominated by their Union to attend short courses conducted by the Australian Trade Union Training Authority.

(b) Paid leave of absence shall also be granted to attend similar courses or seminars as from time to time approved by agreement between the parties.

(2) An employee shall be granted up to a maximum of five days' paid leave per calendar year for trade union training or similar courses or seminars as approved. However, leave of absence in excess of five days and up to ten days may be granted in any one calendar year provided that the total leave being granted in that year and in the subsequent year does not exceed ten days.

(3) (a) Leave of absence will be granted at the ordinary rate of pay and shall not include shift allowances, penalty rates or overtime.

(b) Where a public holiday or rostered day off falls during the duration of a course, a day off in lieu of that day will not be granted.

(4) Subject to subclause (3) of this clause shift workers attending a course shall be deemed to have worked the shifts they would have worked had leave not been taken to attend the course.

(5) The granting of leave pursuant to the provisions of subclause (1) of this clause is subject to the operation of the organisation not being unduly affected and to the convenience of the employer.

(6) (a) Any application by an employee shall be submitted to the employer for approval at least four weeks before the commencement of the course, provided that the employer may agree to a lesser period of notice.

(b) All applications for leave shall be accompanied by a statement from the relevant Union indicating that the employee has been nominated for the course. The application shall provide details as to the subject, commencement date, length of course, venue and the Authority which is conducting the course.

(7) A qualifying period of 12 months in government employment shall be served before an employee is eligible to attend courses or seminars of more than one-half day duration. An employer may, where special circumstances exist, approve an application to attend a course or seminar where an employee has less than 12 months' government service.

(8) (a) The employer shall not be liable for any expenses associated with an employee's attendance at trade union training courses.

(b) Leave of absence granted under this clause shall include any necessary travelling time in normal working hours immediately before or after the course.

#### 40.—INTRODUCTION OF CHANGE

(1) (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 the Association.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion 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) (a) The employer shall discuss with the employees affected and the Association, inter alia, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or the Association in relation to the changes.

(b) The discussion shall commence as early as practicable after a firm decision has been made by the employer to make the changes referred to in subclause (1) hereof.

(c) For the purposes of such discussion, the employer shall provide to the employees concerned and the Association, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that the employer shall not be required to disclose confidential information the disclosure of which, would be inimical to his/her interests.

#### 41.—SKILLS ACQUISITION

(1) Classification by Skill Level

(a) The parties to this award shall determine the appropriate range of skills applicable to each classification contained in Schedules C and D.

(b) Each employee shall be paid the salary rate specified for a classification level defined in accordance with (1)(a).

(c) Where the employee is required to apply skills which in total or in part correspond to the skills required of a higher classification than that under which they are usually paid, the employee shall receive the rate of pay corresponding to that higher classification in accordance with Clause 10.—Higher Duties of this Award.

(d) The level of skills possessed by each employee shall be determined by training standards, certification and experience in accordance with subclauses (2) and (3) of this clause.

(e) "Experience" for the purposes of this clause, means skills gained in an industry or occupation or away from work and which are recognised within the classification structure.

(2) Training Standards

(a) Where relevant training standards have been developed by the statutory State Training Authority, those standards shall be adopted in respect of matters relating to training in the industries and classifications covered by this Award;

(b) Where relevant national training standards have been registered by the National Training Board, those standards shall be adopted in respect of matters relating to training in the industries and classifications covered by this Award;

(c) Where relevant training standards have not been developed by the statutory State Training Authority or registered by the National Training Board, the parties to this Award shall establish the standards to be adopted with respect of matters relating to training in the industries and classifications covered by this Award.

(d) "Training Standards" for the purpose of this clause shall include, but not be limited to, the following—

(i) the standards and competencies of skills required for each classification;

(ii) curricula development;

(iii) training courses;

- (iv) articulation and accreditation requirements for both on and off the job training;  
 (v) on the job training guidelines.

(3) Training Standards, Vocational Education and Accreditation

All training and vocational education for the purpose of imparting skills corresponding to the classification structure of this award shall be—

- (a) consistent with the training standards established in accordance with subclause (2).  
 (b) of a form which is recognised for the purpose of attainment or contributory towards the attainment of an accredited vocational educational qualification; and  
 (c) accredited by the statutory State Training Authority; or  
 (d) in the absence of the statutory State Training Authority, agreed by the parties to this award as adequate in meeting the requirements of this subclause (3).

42.—FLEXIBILITY AGREEMENTS

(1) (a) Employers and employees covered by this award may endeavour to reach agreement to vary the provisions of this award to meet the requirements of the employers' business and the consequential aspirations of the employees concerned.

The purpose of an agreement is to make the enterprise or workplace operate more efficiently according to its particular needs.

(b) Any such agreement shall be subject to the procedures contained in subclause (2) of this clause.

(2) (a) At each enterprise or workplace, consultative mechanisms and procedures appropriate to the organisation shall be established comprising representatives of the employer and employees.

(b) The particular mechanism and procedures established shall be appropriate to the size, structure, and needs of the enterprise and/or workplace.

(c) Nothing in this clause shall prevent the employees from seeking advice from, or representation by, the union during such negotiations, nor prevent the union from being party to the consultative processes.

(d) Before the agreement is finalised the employer must take reasonable steps to explain the likely effect of the proposed agreement to the employees affected.

(e) The agreement shall be provided to all employees who may be affected by the agreement. If the union has not been involved in the negotiations, a copy shall be sent to the Secretary of the Union.

(f) 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.

(g) In deciding the reasonableness of an agreement, account will be taken by the parties of whether or not terms and conditions are on balance, no less favourable than those prescribed by this award.

(h) Any agreement reached under the provisions of this clause shall be processed in accordance with section 40 or 41 of the Industrial Relations Act, 1979 and shall be subject to approval or registration as the case may be by the Western Australian Industrial Relations Commission.

(i) Any agreement made pursuant to this clause shall take precedent over any provision of this award to the extent of any inconsistency.

SCHEDULE A—NAMED UNION PARTY

Hospital Salaried Officers Association of Western Australia (Union of Workers) is a named party to this Award.

SCHEDULE B

MINIMUM SALARIES

(1) Subject to the provision of Clause 8.—Salaries and to the provisions of this Schedule the minimum annual salaries for employers bound by the award are set out hereinafter.

(2) Minimum Salaries—

LEVELS	Salary P/Annum \$	Arbitrated Safety Net Adjustments Per Annum \$	Salary P/Annum Total Min Rate \$
Level 1 under			
17 years of age	10,452	643	11,095
17 years of age	12,206	751	12,957
18 years of age	14,248	877	15,125
19 years of age	16,491	1015	17,506
20 years of age	18,520	1141	19,661
21 years of age			
1st year of service	20,343	1252	21,595
22 years of age			
2nd year of service	20,997	1252	22,249
23 years of age			
3rd year of service	21,647	1252	22,899
24 years of age			
4th year of service	22,295	1252	23,547
Level 2	22,946	1252	24,198
	23,597	1252	24,849
	24,346	1252	25,598
	24,864	1252	26,116
	25,629	1252	26,881
Level 3	26,533	1252	27,785
	27,236	1252	28,488
	27,975	1252	29,227
	29,154	1252	30,406
Level 4	29,771	1252	31,023
	30,696	1252	31,948
	31,647	1252	32,899
	32,998	1252	34,250
Level 5	33,702	1252	34,954
	34,669	1252	35,921
	35,664	1252	36,916
	36,688	1252	37,940
Level 6	38,660	1252	39,912
	40,124	1252	41,376
	42,204	1252	43,456
Level 7	43,317	1252	44,569
	44,727	1252	45,979
	46,188	1252	47,440
Level 8	48,323	1252	49,575
	50,073	1252	51,325
Level 9	52,721	1252	53,973
	54,563	1252	55,815
Level 10	56,580	1252	57,832
	59,824	1252	61,076
Level 11	62,415	1252	63,667
	65,050	1252	66,302
Level 12	68,663	1252	69,915
	71,104	1252	72,356
	73,888	1252	75,140

(3) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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 agreement, are not to be used to offset arbitrated safety net adjustments.

SCHEDULE C

CLASSIFICATION TO SALARIES—CONVERSION TABLE

LEVEL	CLASSIFICATION
L1	A1.L1—L3, A3, A1.L4, B1.1, B.6
L1/2	B3, B5
L2	A1.L5, A4.1-3, B1.2 & 3, A2.1, B2.1
L3	A4.4, 5 & 6, A2.2 & 3, B2.2 & 3

LEVEL	CLASSIFICATION	Post No.	Table	Classification
L4	A2.4 & 5, B2.4 & 5	LS211		
L5	A2.6 & 7, B2.6 & 7			
L6	A2.8 & 9, B2.8 & 9			
L7	A2.10 & 11, B2.10 & 11	LS212		
L8	AA.1 & 2, B2.12 & 13			
L9	AA.3 and AA.4			
L10	AA.5 and AA.6			
L11	AA.7 and AA.8			
L12	AA.9, AA.10 and AA.11			

## SCHEDULE F

## RESPONDENT

The Chairman, Board of Management, Lakes Hospital.

DATED at Perth this 13th day of November, 1980.

## SCHEDULE D

CLASSIFICATION AND GRADING OF EMPLOYEES  
IN CLERICAL AND ADMINISTRATIVE DIVISION.

Post No.		Table	Classification
LAKES HOSPITAL (AND HOSPITAL LAUNDRY AND LINEN SERVICE)—			
LS101	Planning Officer	A2	10
LS102	Administration Assistant	A2	3/4
LS103	Shorthand Typist	A4	2
LS104	Manager, Hospital Laundry and Linen Service	A2	11
LS105	Deputy Manager, Hospital Laundry and Linen Service	A2	8/9
LS106	Accountant, Hospital Laundry and Linen Service	A2	5
LS107	Work Study Officer, Hospital Laundry and Linen Service	A2	2/3
LS108	Personnel Officer, Hospital Laundry and Linen Service	A2	2
LS109	Clerk, Hospital Laundry and Linen Service	A1	
LS110	Secretary, Hospital Laundry and Linen Service	A4	2
LS111	Data Processing Operator, Hospital Laundry and Linen Service	A3	
LS112	Clerk Typist, Hospital Laundry and Linen Service	A3	
LS113	Secretary, Hospital Laundry and Linen Service	A4	1
LS114	Clerk Typist	A3	
LS115	Clerk (Staff), Hospital Laundry and Linen Service	A2	2

## SCHEDULE E

CLASSIFICATION AND GRADING OF EMPLOYEES  
IN GENERAL DIVISION

Post No.		Table	Classification
LAKES HOSPITAL (AND HOSPITAL LAUNDRY AND LINEN SERVICE)—			
LS201	Assistant Manager, Hospital Laundry and Linen Service	B2	6/7
LS202	Engineer, Hospital Laundry and Linen Service	B2	6/7
LS203	Production Officer, Hospital Laundry and Linen Service	B2	4/5
LS204	Linen Service Officer, Hospital Laundry and Linen Service	B2	4/5
LS205	Shift Engineer, Hospital Laundry and Linen Service	B2	4/5
LS206	Shift Engineer, Hospital Laundry and Linen Service	B2	4/5
LS207	Assistant Production Officer, Hospital Laundry and Linen Service	B2	2/3
LS208	Assistant Linen Service Officer, Hospital Laundry and Linen Service	B2	2/3
LS209	Relieving Officer, Hospital Laundry and Linen Service	B2	2
LS210	Storekeeper, Hospital Laundry and Linen Service	B2	2/3

## POLICE CADETS' AWARD.

## No. R7 of 1976.

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 25th day of June, 1997.

J. CARRIGG,  
Registrar.

## Police Cadets' Award

## 1.—TITLE

This Award shall be known as the Police Cadets' Award.

## 1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 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 matters No. 1164 of 1995 and No. 915 of 1996.

## 2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
- 2A. Wage Fixing Principles
3. Term
4. Scope
- 4A. Definitions
5. Hours
6. Overtime
7. Meal Allowances
8. Travelling Allowances
9. Rates of Pay
10. Annual Leave
11. Holidays
12. Sick Leave
13. Short Leave
14. Long Service Leave
15. District Allowance
16. Cadets Living Away from Home Allowance
17. Contract of Service
18. Liberty to Apply
19. Camping Allowance
20. Establishment of Consultative Mechanisms
21. Award Modernisation
22. Allowance for use of Employee's Own Vehicle.
23. Death of an Employee.
24. Named Parties

## 2A.—WAGE FIXING PRINCIPLES

It is a term of this award or industrial agreement 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.—TERM

This Award shall be for a term of two years from the date hereof.

## 4.—SCOPE

This Award shall apply to all persons employed as Police Cadets by the respondent.

## 4A.—DEFINITIONS

“Distance Rate” means the rate per kilometre applicable in the North West of the State that is prescribed by the Award under Clause 22.—Allowance for Use of Employee’s Own Vehicle as payment to an employee for the use by the employee of the employee’s vehicle for the performance of police duties.

“Family” in relation to an employee means the employee, spouse and all dependent children attending school and to those dependent children living with the employee who are unemployed.

“Public Transport” means any means of public transport approved by the Commissioner.

“Special Area” means—

- (a) any portion of the State that is—
  - (i) east of longitude 119 degrees east; or
  - (ii) north of 26 degrees of south latitude;
- (b) Yalgoo, Mount Magnet, Cue and Meekatharra; and
- (c) any area outside the State designated a special area by the Minister.

“Union” means the Western Australian Police Union of Workers.

## 5.—HOURS

(1) Forty hours inclusive of a daily meal break of forty minutes shall constitute an ordinary week’s work.

(2) A day’s work shall consist of eight hours, Monday to Friday inclusive, and shall be worked between the hours of 7.00 a.m. and 11.00 p.m.

(3) Shifts shall be rotated weekly so that a Police Cadet shall have at least the same number of day shifts as afternoon shifts.

(4) Police Cadets, when employed on afternoon shift, shall be paid an allowance of \$11.38.

(5) For the purpose of this clause, afternoon shift shall mean a shift commencing at or after 1.00 p.m.

(6) Notwithstanding any other provision of this clause, where, in the opinion of a Commissioned Officer it is in the public interest to do so, because of a special event or other extraordinary occurrence requiring optimum manpower availability, the commencing times of employees’ shifts may be varied on a daily basis.

## 6.—OVERTIME

(1) Overtime shall mean and include all time worked in excess of or outside the ordinary rostered hours of duty.

(2) Overtime shall be paid for at time and a half for the first three hours and double time thereafter.

(3) Notwithstanding the provisions of paragraph 2 of this clause, all time worked on Saturday afternoons and Sundays shall be paid for at double time.

(4) Records of overtime worked shall be kept at each station and shall be available at all reasonable times for inspection by the workers concerned and the Secretary of the Union.

(5) A Police Cadet who is required to work on a day observed as a Holiday prescribed by clause 11.—Holidays of this Award shall be paid for the time worked at the rate of double time and a half.

(6) The following formulae shall be used in calculating the hourly rate for overtime—

(a) Time and one half		
Fortnightly salary	3	
_____	X	—
80		2
(b) Double Time		
Fortnightly salary	2	
_____	X	—
80		1

## 7.—MEAL ALLOWANCES

(1) A Police Cadet required to work before or after prescribed working hours on any day shall, when such additional duty necessitates taking a meal away from his usual place of residence, be reimbursed for each meal purchased at the rate of one dollar and twenty cents for breakfast and one dollar and eighty cents for the evening meal; provided that the overtime worked before and after the meal break totals not less than two hours. Such reimbursement shall be in addition to any payment for overtime to which he is entitled.

(2) A Police Cadet required to work on a Saturday, Sunday or Public Service Holiday shall, when such additional duty necessitates taking a meal away from his usual place of residence, be reimbursed for each meal purchased at the rate of one dollar and twenty cents for breakfast, one dollar and fifty cents for the midday meal and one dollar and eighty cents for the evening meal provided that the overtime worked before and after the meal break totals not less than two hours. Such reimbursement shall be in addition to any payment for overtime to which he is entitled.

(3) A Police Cadet required to work for two hours beyond the hour of 11.00 p.m. shall be reimbursed by the employer for any supper purchased provided that such reimbursement shall not exceed fifty cents. This allowance shall be paid in addition to any payment for overtime to which he is entitled.

(4) The allowances prescribed in this clause shall be automatically adjusted whenever any variation occurs in the relevant Public Service Allowance.

## 8.—TRAVELLING ALLOWANCE

An employee who travels on official business shall be reimbursed reasonable expenses on the following basis—

- (1) When a trip necessitates an overnight stay away from headquarters and the employee—

is supplied with accommodation and meals free of charge; or

attends a course, conference, etc., where the fee paid includes accommodation and meals; or travels by rail and is provided with a sleeping berth and meals; or

is accommodated at a Government institution, hostel or similar establishment and supplied with meals

reimbursement shall be in accordance with the rates prescribed in Item 1, 2 or 3 of the Schedule hereto.

- (2) When a trip necessitates an overnight stay away from headquarters and the employee is fully responsible for his or her own accommodation, meals and incidental expenses—

(a) where hotel or motel accommodation is utilised reimbursement shall be in accordance with the rates prescribed in Items 4 to 8 of the Schedule hereto; and

(b) where other than hotel or motel accommodation is utilised reimbursement shall be in accordance with the rates prescribed in Item 9, 10 or 11 of the Schedule hereto.

- (3) To calculate reimbursement under subclauses (1) and (2) for a part of a day, the following formulae shall apply—

(a) If departure from headquarters is—  
before 8.00am—100% of the daily rate.  
8.00am or later but prior to 1.00pm—90% of the daily rate.  
1.00pm or later but prior to 6.00pm—75% of the daily rate.  
6.00pm or later—50% of the daily rate.

(b) If arrival back at headquarters is—  
8.00am or later but prior to 1.00pm—10% of the daily rate.  
1.00pm or later but prior to 6.00pm—25% of the daily rate.  
6.00pm or later but prior to 11.00pm—50% of the daily rate.

- 11.00pm or later—100% of the daily rate.
- (4) (a) When an employee stationed in the metropolitan area travels to a place outside of that area and the trip does not involve an overnight stay away from headquarters, reimbursement for all meals claimed shall be at the rates set out in Item 12 or 13 of the Schedule hereto subject to the employee's certification that each meal claimed was actually purchased. Provided that when an employee departs from headquarters before 8.00am and does not arrive back at headquarters until after 11.00pm on the same day the employee shall be paid at the appropriate rate prescribed in Items 4 to 8 of the Schedule hereto.
- (b) When an employee stationed outside the metropolitan area travels to a place outside a radius of twenty four (24) kilometres measured from the employees headquarters and the trip does not involve an overnight stay away from headquarters, reimbursement for all meals claimed shall be at the rates set out in Item 12 or 13 of the Schedule hereto subject to the employee's certification that each meal claimed was actually purchased. Provided that when an employee departs from headquarters before 8.00am and does not arrive back at headquarters until after 11.00pm on the same day the employee shall be paid at the appropriate rate prescribed in Items 4 to 8 of the Schedule hereto.
- (5) When it can be shown to the satisfaction of the Commissioner by the production of receipts that reimbursement in accordance with the Schedule hereto does not cover an employee's reasonable expenses for a whole trip the employee shall be reimbursed the excess expenditure.
- (6) In addition to the rates contained in the Schedule hereto an employee shall be reimbursed reasonable incidental expenses such as train, bus and taxi fares, official telephone calls, laundry and dry cleaning expenses, on production of receipts.
- (7) If on account of lack of suitable transport facilities an employee necessarily engages reasonable accommodation for the night prior to commencing travelling on early morning transport the employee shall be reimbursed the actual cost of such accommodation.
- (8) Reimbursement of expenses shall not be suspended should an employee become ill whilst travelling, provided such illness is approved in accordance with the provisions of the Police Regulations and the employee continues to incur accommodation, meal and incidental expenses.
- (9) Reimbursement claims for travelling in excess of fourteen days in one month shall not be passed for payment by a certifying officer unless the Commissioner or his nominee has endorsed the account.
- (10) An employee stationed in the metropolitan area who is relieving at or temporarily transferred to any place within that area shall not be reimbursed the cost of meals purchased, but an employee travelling on duty within that area which requires absence from the employee's headquarters over the usual meal period shall be paid at the rate prescribed by Item 14 of the Schedule hereto for each meal necessarily purchased, provided that—
- (a) such travelling is not within the suburb in which the employee resides; and
- (b) the employee's total reimbursement under this subclause for any one pay period shall not exceed the amount prescribed by Item 15 of the Schedule hereto.
- (11) (a) An employee who is prevented by continuous duty from taking a meal during the recognised meal period shall be paid the allowance set out adjacent to Item 14 of the Schedule hereto. Provided that an employee shall only be entitled to reimbursement for one meal per shift.
- (b) An employee's total reimbursement under this subclause for any one pay period shall not exceed the amount set out adjacent to Item 15 in the Schedule hereto. If the Commissioner is satisfied that the claim is warranted he may grant the payment of this allowance in excess of five days per pay period.
- (12) For the purpose of subclauses (4) and (10) of this clause the recognised meal periods shall be—
- |           |                      |
|-----------|----------------------|
| Breakfast | 7.00am to 9.00am     |
| Lunch     | 12.00 noon to 2.00pm |
| Dinner    | 5.00pm to 7.00pm     |
- (13) Where the Officer-in-Charge certifies that an employee whose shift commenced after 5.00pm and before 7.00am was unable to have a meal within 5 hours 30 minutes of commencing duty the employee shall be paid the allowance set out adjacent to Item 14 of the Schedule hereto.
- (14) Where an employee claims reimbursement for meals or the daily rate specified for hotel or motel in Items 4 to 13 of the Schedule hereto the employee shall certify that the meals were purchased or hotel or motel accommodation was actually utilised. An employee may be required to produce receipts or other evidence to substantiate any claim.
- (15) An employee shall not be paid an allowance under more than one of the subclauses (10), (11), and (13) in respect of any one meal.

## SCHEDULE

ITEM	PARTICULARS	DAILY RATE
		\$
ALLOWANCE TO MEET INCIDENTAL EXPENSES—		
1	WA—South of 26° South Latitude	4.55
2	WA—North of 26° South Latitude	7.15
3	Interstate	7.15
4	WA—Metropolitan Hotel or Motel	80.75
5	Locality South of 26° South Latitude	65.50
ITEM	PARTICULARS	DAILY RATE
		\$
6	Locality North of 26° South Latitude	
	Broome	114.05
	Carnarvon	80.05
	Dampier	134.15
	Derby	105.65
	Eucla	84.05
	Exmouth	109.40
	Fitzroy Crossing	77.15
	Gascoyne Junction	64.15
	Goldsworthy	106.00
	Halls Creek	90.40
	Karratha	142.65
	Koolan Island	92.05
	Kununurra	117.50
	Marble Bar	96.15
	Newman	135.90
	Nullagine	73.15
	Onslow	102.15
	Pannawonica	119.15
	Paraburdoo	125.15
	Port Hedland	106.00
	Roebourne	70.65
	Sandfire	74.65
	Shark Bay	85.65
	Shay Gap	106.00
	South Hedland	106.00
	Tom Price	128.85
	Wickham	117.65
	Wittenoom	89.05
	Wyndham	101.35
7	Interstate—Capital City	107.00
8	Interstate—Other than Capital City	65.50

**ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL**

9	W.A.—South of 26° South Latitude	33.60
10	W.A.—North of 26° South Latitude	48.40
11	Interstate	48.40

**TRAVEL NOT INVOLVING AN OVERNIGHT STAY**

12	W.A.—South of 26° South Latitude—	
	Breakfast	7.15
	Lunch	7.15
	Evening Meal	14.75
13	W.A.—North of 26° South Latitude—	
	Breakfast	8.20
	Lunch	10.60
	Evening Meal	22.45

**MIDDAY MEAL (SUBCLAUSE (10))**

14	Rate per meal	3.10
15	Maximum reimbursement per day period	15.50

An employee who travels on official business shall be reimbursed reasonable expenses on the following basis—

**9.—RATES OF PAY**

The rates of pay in this award include three safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$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, or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it 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.

(1) The rates payable in respect of the ordinary hours of duty for Cadets shall be as described hereunder—

	Existing Salary \$	1st, 2nd & 3rd Arbitrated Safety Net Adjustment \$	Total Salary P/A \$
Under 17 years	10,445	642	11,087
17 years	12,207	751	12,958
18 years	14,238	876	15,114
19 years	16,481	1014	17,495
20 years	18,507	1139	19,646
21 years	20,331	1251	21,582

(2) Salaries shall be paid by direct funds transfer to the credit of an account nominated by the employee at a bank, building society or credit union approved by the Under Treasurer or an Accountable Officer. Provided that where such form of payment is impracticable or where some exceptional circumstances exist, and by agreement between the Minister and the Union, payment by cheque may be made.

**10.—ANNUAL LEAVE**

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a Police Cadet by his employer after a period of twelve months' continuous service with that employer.

(2) If any award holiday falls within a Police Cadet's period of annual leave and is observed on a day which in the case of that Police Cadet 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) Any time in respect of which a Police Cadet 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. Provided that no deductions of service shall be made for any approved period a Police Cadet is absent from duty through sickness with or without pay unless the absence exceeds three calendar months, in which case deductions may be made for such excess only.

(4) If after one month's continuous service in any qualifying twelve monthly period a Police Cadet leaves his employment or his employment is terminated by his employer through no fault of the Police Cadet, the Police Cadet shall be paid one-third of a week's pay at his ordinary rate of wage in respect of each completed month of continuous service in that qualifying period.

(5) In addition to any payment to which he may be entitled under sub-clause (4) of this clause, a Police Cadet whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this Award, in respect of that qualifying period shall be given payment in lieu of that leave, unless—

- 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.

(6) (a) An employee when stationed in the North West who desires to commence leave in the South shall not commence such leave until after arrival in the metropolitan area.

(b) The following travelling concessions apply to and in relation to an employee stationed in a special area who for the employee's annual leave travels to Perth or other place outside the employee's sub-region which is approved of by the Commissioner—

- where public transport is used—free return passes to Perth or that other place on public transport for the employee and the employee's family.
- where a private vehicle is used—the distance rate to that place so long as the amount so paid does not exceed the cost of free passes granted under paragraph (i);
- where both public transport and a private vehicle are used—free return passes to that place in respect of the persons travelling by public transport and the distance rate to that place payable under paragraph (ii) so long as the amount so paid does not exceed the cost of providing the persons travelling by private vehicle with a free return pass granted under paragraph (i).

(c) With mutual consent of the Commissioner and the employee annual leave may be taken in more than one period. Such periods to be not less than 14 days.

(d) The travelling concession payable under this subclause is payable only in respect of an employee—

- who has completed 12 months' service in the special area; or
- if the employee has not completed 12 months' service in the special area before the employee proceeds on annual leave, the employee does so on their return from annual leave before the employee again takes annual leave;
- shall be repaid to the Department by the employee if the employee fails to complete 12 months' service in the special area unless the failure is due to causes beyond the employee's control.

(e) An employee when stationed at headquarters are situated more than 240kms from the Perth City Railway Station and travelling to Perth during annual leave shall be allowed such additional leave as is reasonable and necessary to enable the employee to travel to Perth and return.

(f) To standardise the entitlement the following criteria is to be used—

- 240 kms to 500 kms—half day travelling each way but taken as one additional day;
- 500 kms to 1000 kms—one day's travelling time each way;
- In excess of 1000 kms and north of the 26th parallel—two and one half day's each way, and all stations south of the 26th parallel but in excess of 1000 kms be allowed the equivalent of a counterpart north of the 26th parallel.

(7) A loading of 17½% shall be paid to a Police Cadet when proceeding on annual leave, calculated on the Award rate of pay with respect to a maximum of four weeks annual leave,

provided in no case shall the loading for four weeks leave exceed 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 of accrual of such leave.

(8) Annual leave loading to which an employee is entitled shall not be paid in respect of any pro rata annual leave to which an employee is entitled on resignation.

11.—HOLIDAYS

(1) The following days or the days observed in lieu thereof shall be observed as holidays without deductions of pay, namely; New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

In addition to the foregoing, Police Cadets covered by this Award shall be allowed Public Service holidays as and when they occur.

(2) Whenever any holiday falls on a Police Cadet's ordinary working day and he is not required to work on such day, he shall be paid for the ordinary hours he would have worked on such day if it had not been a holiday.

(3) When a Police Cadet is off duty owing to leave without pay or sickness, including accidents on or off duty, except time for which he is entitled to claim sick pay, any holiday falling during such absence shall not be treated as a paid holiday. Where the Police Cadet is on duty or is available on the working day immediately preceding the holiday, or resumes duty or is available on the working day immediately following a holiday, as prescribed in this clause, the Police Cadet shall be entitled to a paid holiday on all such holidays.

12.—SICK LEAVE

(1) An application for leave of absence on the grounds of illness exceeding two consecutive working days shall be supported by the certificate of a medical practitioner registered under the Medical Act, 1894.

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

(3) Subject to subclause (1) and (2) no leave of absence on the grounds of illness shall be granted with pay without the production of a medical certificate or medical certificates as required by this clause.

(4) A Police Cadet who is unfit for duty as a consequence of an illness or injury shall inform his superior officer, or arrange for him to be so informed, forthwith and shall as soon as reasonably possible thereafter, make a formal application for sick leave to cover his absence from duty; otherwise he shall be treated as being absent without leave.

(5) The basis for determining and the entitlement to leave of absence on the grounds of illness which a Police Cadet may be granted shall be ascertained by crediting the Police Cadet concerned with the following cumulative periods—

	Leave on Full pay Working days	Leave on Half pay Working days
On the date of permanent appointment	5	2
On the completion of six months' service	5	3
On completion of each twelve months' service	10	5

(6) Debits for leave of absence on account of illness shall be made on the basis of working days and shall not include any Public Service holidays occurring during the period of that leave.

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

(8) Where a Police Cadet is ill during the period of his annual leave for recreation and produces at the time or as soon as practicable thereafter medical evidence to the satisfaction of the Commissioner of Police that he is or was as a result of his illness confined to his place of residence or a hospital for a period of at least seven days, he may with the approval of the Commissioner, be granted at a time convenient to the Police Department additional leave entitlement to the period during which he was so confined.

(9) A Police Cadet who is duly absent on leave without pay is not eligible for leave of absence on account of illness or injury under this clause during the currency of that leave without pay.

(10) Where the Commissioner of Police has occasion to doubt the cause of illness or the reason for the absence he may send a registered medical practitioner to attend on and examine the Police Cadet, or may direct the Police Cadet to attend on the medical practitioner for examination.

If the report of the medical practitioner does not confirm that the Police Cadet is ill, or if the Police Cadet is not available for examination at the time of the visit of the medical practitioner or the Police Cadet 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 Police Cadet.

13.—SHORT LEAVE

On sufficient cause being shown, a Police Cadet may be granted leave of absence for a period not exceeding three days (not more than two days of which may be consecutive) in any one year in accordance with the Public Service Regulation No. 86.

14.—LONG SERVICE LEAVE

(1) The conditions governing the granting of Long Service Leave to full-time Government wages employees generally shall apply to Police Cadets covered by this Award.

(2) (a) Subject to the approval of the Commissioner, an employee shall take long service leave at any time within six (6) years of the leave becoming due. Provided that the Commissioner may approve the deferment of taking long service leave beyond six (6) years in "exceptional circumstances".

"Exceptional circumstances" shall include retirement within seven (7) years of entitlement.

(b) Approval to defer the taking of long service leave may be withdrawn or varied at any time by the Commissioner giving the employee notice in writing of the withdrawal or variation.

(3) (a) Employees having an entitlement to long service leave at 1 March 1988 are required to clear one full entitlement of long service leave before 1 March 1994.

(b) Employees having more than one entitlement to long service leave at 1 March 1988 shall be required to clear one full entitlement of long service leave by 1 March 1994 and a further full entitlement within each six (6) years thereafter, until the employee's entitlement to long service leave has been cleared.

(4) (a) On the first working day of March in each year the Commissioner shall by notice in writing advise each relevant employee in the Department—

- (i) of the amount of long service leave which the employee is then entitled under the provisions of this clause.
- (ii) of the amount of long service leave to which the employee will become entitled at any time during the next succeeding 12 months.

(b) The notice referred to in paragraph (a) of this subclause shall require the employee to furnish to the Commissioner within one month of the receipt of the notice, particulars of the dates between which the employee desires to take the long service leave to which the employee is or will become entitled, and whether, to what extent and for what reasons the employee desires to defer the taking of leave.

15.—DISTRICT ALLOWANCE

District allowances shall be paid in accordance with the scale in force from time to time in the Public Service of Western Australia.

16.—CADETS LIVING AWAY FROM HOME ALLOWANCE

- (1) Subject to (2) hereof, a Police Cadet who has—
  - (a) been recruited from outside the metropolitan area and lives in the metropolitan area; or
  - (b) until enlistment resided in the metropolitan area and has been transferred to headquarters outside the metropolitan area;

- (c) who, in respect of either (a) or (b) above, on account of distance necessarily lives away from his/her family home and incurs additional expenses by way of board and lodging.

shall be paid an allowance of two thousand and fourty dollars (\$2040.00) per annum.

(2) The allowance prescribed in subclause (1) of this clause shall not be payable by the employer if the Cadet is entitled to a similar allowance under the Department of Employment, Education and Training (DEET) Traineeship Scheme or similar employment arrangements.

#### 17.—CONTRACT OF SERVICE

(1) The Contract of Service shall be by the fortnight and shall be terminable by two week's notice on either side, or by the payment or forfeiture as the case may be, of a fortnight's wages in lieu of notice.

(2) The employer shall be under no obligation to pay for any day not worked on which the Police Cadet is required to present himself for duty except where such absence is due to illness and comes within the provisions of clause 12.—Sick Leave or such absence is on account of holidays to which the Police Cadet is entitled under the provisions of this Award.

#### 18.—LIBERTY TO APPLY

Liberty to apply is reserved to the Union with respect to clause 9.—Rates of Pay after the expiration of one year from the date hereof.

#### 19.—CAMPING ALLOWANCE

(1) For the purposes of this clause "Camp of a Permanent Nature" means single room accommodation in skid mounted or mobile type units, caravans, or barrack type accommodation where the following are provided in the camp—

- Water is freely available;
- Ablutions including a toilet, shower or bath and laundry facilities;
- Hot water system;
- A kitchen, including a stove and table and chairs, except in the case of a caravan equipped with its own cooking and messing facilities;
- An electricity or power supply; and
- Beds and mattresses except in the case of caravans containing sleeping accommodation.

For the purpose of this definition caravans located in caravan parks or other locations where the above are provided shall be deemed a camp of a permanent nature.

"House" means a house, duplex or cottage including transportable type accommodation which are self contained and in which the facilities prescribed for "camp of a permanent nature" are provided.

"Other than a Permanent Camp" means a camp where any of the above are not provided.

#### (2) Camping Allowance

- (a) An employee, who is stationed in a camp of a permanent nature, shall be paid the appropriate allowance prescribed by Item 1 or Item 2 of subclause (3) or (4) of this clause for each day spent camping.
- (b) An employee who is stationed in a camp—other than a permanent camp—or is required to camp out, shall be paid the appropriate allowance prescribed by Item 3 or Item 4 of subclause (3) or (4) of this clause for each day spent camping.
- (c) Employees who occupy a house shall not be entitled to allowances prescribed by this clause.
- (d) Employees accommodated at a Government institution, hostel or similar establishment shall not be entitled to allowances prescribed by this clause.
- (e) Where an employee is provided with food and/or meals by the Department free of charge, then the employee shall only be entitled to receive one half (1/2) of the appropriate allowance to which the employee would otherwise be entitled for each day spent camping.
- (f) (i) An employee shall not be entitled to receive an allowance under this clause for periods in

excess of ninety one (91) consecutive days unless the Commissioner otherwise determines. Provided that where the provisions of Clause 10.—Travelling Allowance of this Award are availed of then such periods shall be included for the purposes of determining the ninety one (91) consecutive days.

- (ii) The Commissioner in reviewing any claim under this subclause may determine an allowance other than is contained in this clause.
- (g) When camping, an employee shall be paid the allowance on Saturdays and Sundays if available for work immediately preceding and succeeding such days and no deduction shall be made under these circumstances when an employee does not spend the whole or part of the weekend in camp, provided the provisions of Clause 10.—Travelling Allowance of this Award are not availed of by the employee.
- (h) This Agreement shall be read in conjunction with Clauses 10.—Travelling Allowance, 11.—Relieving Allowance, and 12.—Transfer Allowance, of this Award for the purpose of paying allowances, and camping allowance shall not be paid for any period in respect of which travelling, transfer or relieving allowances are paid. Where portions of a day are spent camping, the formula contained in Clause 10.—Travelling Allowance of the Award shall be used for calculating the portion of the allowance to be paid for that day.
- (i) Employees in receipt of an allowance under this clause shall not be entitled to receive the incidental allowance prescribed by Clause 10.—Travelling Allowance of this Award.
- (j) Whenever an employee provided with a caravan is obliged to park the caravan in a caravan park an employee shall be reimbursed the rental charges paid to the authority controlling the caravan park, in addition to the payment of camping allowance.
- (k) Where an employee who is not supplied with camping equipment by the Department, hires such equipment as is reasonable and necessary, the employee shall be reimbursed such hire charges, in addition to the payment of camping allowance.
- (l) The rates contained in subclauses (3) and (4) shall be adjusted from time to time as agreed between the parties.

#### (3) South of 26° South Latitude

	RATE PER DAY	ITEM
Permanent Camp—Cook provided by the Department	14.30	1
Permanent Camp—No cook provided	19.10	2
Other Camping—Cook provided by the Department	23.90	3
Other Camping—No cook provided	28.65	4
(4) North of 26° South Latitude		
Permanent Camp—Cook provided by the Department	21.70	1
Permanent Camp—No cook provided	26.50	2
Other Camping—Cook provided by the Department	31.30	3
Other Camping—No cook provided	36.05	4

#### 20.—ESTABLISHMENT OF CONSULTATIVE MECHANISMS

The parties to this award are required to establish a consultative mechanism/s and procedures appropriate to the size, structure and needs, for consultation and negotiation on matters affecting the efficiency and productivity of the Police Force.

## 21.—AWARD MODERNISATION

(1) The parties are committed to modernising the terms of the Award so that it provides for more flexible and efficient working arrangements, enhances productivity, improves the quality of working life, skills and job satisfaction and assists positively in the restructuring process.

(2) In conjunction with testing the current Award structure the Union is prepared to discuss all matters raised by the employer for increased flexibility and efficiency. As such, any discussions with the employer must be premised on the understanding that—

- (a) the majority of employees stationed in the section, station or branch must genuinely agree;
- (b) no employee will lose income as a result of the change;
- (c) the Union must be party to the agreement, in particular, where the employees at any section, station or branch are holding discussions which would require any award variation. The Union shall be invited to participate;
- (d) the Union shall not unreasonably oppose any agreement;
- (e) subject to the provision of this award, any agreement reached may require ratification by the Commission.

(3) Should an agreement be reached pursuant to subclause (2) hereof and that agreement requires an award variation, no party will oppose the award variation.

(4) There shall be no limitation on any award matter being raised for discussion.

## 22.—ALLOWANCE FOR USE OF EMPLOYEE'S OWN VEHICLE

(1) An employee who is authorised to receive a motor vehicle allowance because the employee is required to place the employee's vehicle at the disposal of the Police Department for the performance of normal Police duties, shall be paid an allowance of ten (10) dollars per month for each calendar month the employee is so required.

(2) (a) An employee who is required to use the employee's motor car or motorcycle for the performance of Police Duties shall be paid an allowance as set out below.

(b) Where vehicles are fitted with odometers registering in miles, the distance travelled must be converted to kilometres by multiplying the number of miles by 1.61.

## MOTOR VEHICLE ALLOWANCES

## (a) MOTORCAR

Rate per Kilometre (in cents)	1600cc and under	over 1600cc up to 2600cc	over 2600cc
(1) Metro, Area	37.9	43.5	49.4
(2) South West Land Division	38.9	44.6	50.5
(3) North of 23.5 deg. South Latitude	43.5	50.0	56.2
(4) Rest of State	40.0	46.0	52.2

## (b) MOTORCYCLE

17.1 cents per kilometre necessarily travelled.

## 23.—DEATH OF AN EMPLOYEE

## (1) Allowances Paid on Death of an Employee

Where an employee dies the spouse of the employee and such of the children of the employee as are under the age of 18 years are entitled to the allowances prescribed by Clause 8.—Travelling Allowances, of the Award for the conveyance of themselves and their furniture and effects to the Metropolitan area or to any part of the State approved of by the Commissioner.

## (2) Leave Entitlement to be Paid Out.

On the death of an employee the Minister may on the recommendation of the Commissioner grant to the relatives of the employee who were dependent on the employee at the date of the employee's death the monetary equivalent, computed to the date of death, of—

- (a) annual leave accrued and owing to the employee;
- (b) long service leave accrued and owing to the employee;
- (c) pro rata leave for each completed month of service of the employee in the current year.

## 24.—NAMED PARTIES

The named parties to this award are The Western Australian Police Union of Workers, 73 Burswood Road, Victoria Park, 6100 and The Minister for Police, 13th Floor, Dumas House, 2 Havelock Street, West Perth, 6005.

## RESPONDENT

Hon. Minister for Police

DATED at Perth this 3rd day of September, 1976.

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**RECLASSIFICATION  
APPEALS—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pamela Ruth Pleskus

and

Director General, Ministry of Justice.

No. PSA 22 of 1997.

PUBLIC SERVICE ARBITRATOR

COMMISSIONER J. F. GREGOR.

1 July 1997.

*Order.*

WHEREAS on 19 March 1997, Pamela Ruth Pleskus filed notice of appeal to the Public Service Arbitrator against the salary of the office occupied by her at the Guardianship and Administration Board; and

WHEREAS on 25 June 1997, the Commission conducted a conference between the parties; and

WHEREAS at the conference the Commission was advised that Ms Pleskus had occupied a position as Word Processor Operator for a period of 3 months when she first commenced with the Guardianship Board in 1992; and

WHEREAS the Commission was advised that from 1 February 1993, it is not disputed that Ms Pleskus undertook duties in the Guardianship Administration at a level consistent with the duties of a level 2 position; and

WHEREAS the Commission was also advised that since April 1995, the employer had recognised the performance of those duties by the performance of a temporary special allowance to level 2; and

WHEREAS the Commission was told that the structure of the Guardianship Administration Board has been reviewed a number of times, is currently still under review and has not yet been settled and therefore it is impossible to conduct a reclassification review of the work being done by Ms Pleskus; and

WHEREAS the parties were of the view that it would be equitable in all of the circumstances if Ms Pleskus was granted a temporary special allowance to level 2 from 1 February 1993; and

WHEREAS the Commission concluded that the granting of a temporary special allowance of this nature is appropriate in the circumstances and is not inconsistent with the Wage Principles nor would it interfere with the hierarchal structure of the Guardianship Appeal Board and that the allowance in all the circumstances should be granted.

NOW THEREFORE the Commission pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby orders—

THAT Pamela Ruth Pleskus receive a temporary special allowance from 1 February 1993, the said allowance to continue to be paid while Pamela Ruth Pleskus performs duties at the standard of a level 2 officer.

(Sgd.) J. F. GREGOR,

[L.S.]

Commissioner.

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## NOTICES— Union matters—

INDUSTRIAL RELATIONS ACT 1979.

PUBLICATION OF APPLICATION PURSUANT TO  
SECTION 72A

Application Number 1083 of 1997 has been lodged pursuant to Section 72A of the Industrial Relations Act 1979 by the Civil Service Association of Western Australia (Incorporated) and is published hereunder.

The application has been listed before the Full Bench at 10.30am on the 8th and 9th of September 1997.

Any person who wishes to be heard shall file a notice of application to be heard in accordance with Form 1, setting out the grounds upon which the person claims sufficient interest to be heard in relation to the application and serve it on the applicant at least 7 days before the above date of hearing in accordance with Regulation 101A of the Industrial Relations Commission Regulations 1985.

7th July 1997. J. G. CARRIGG,  
Registrar.

Form 1

Industrial Relations Act 1979.

IN THE WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

No. 1083 of 1997

### NOTICE OF APPLICATION

TO: NOT APPLICABLE

(name and address of respondent/s—attach schedule if space insufficient)

TAKE NOTICE THAT THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED), 445 HAY STREET, PERTH WA 6000 (name and address of applicant/s—attach schedule if necessary)

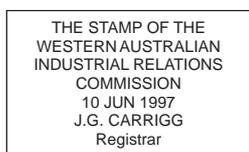
has this day applied to the Commission (if to a constituent authority, state which FULL BENCH)

for ORDERS PURSUANT TO S72A TO THE FOLLOWING EFFECT: SEE SCHEDULE "B"

(state object of application—for example, conference, award, amendment or interpretation of a specified award or as the case may be)

The grounds on which the application is made are SEE ATTACHED SCHEDULE "C"

(give details—attach schedule if necessary)



Karen Faye Franz

.....  
Applicant's signature

(Affix stamp of Commission)

THE APPROPRIATE FEE IS TO BE PAID UPON  
LODGEMENT OF THIS APPLICATION

This notice must be completed by the applicant, signed and, where necessary, sealed by him, and a written statement of claim or other adequate description of the subject matter of the application must be attached.

For endorsements see back hereof.

### SCHEDULE A

The Hon A K R Prince, LLB, MLA  
Minister for Health  
30th Floor, Allendale Square  
77 St Georges Terrace  
Perth WA 6000

Mr Alan Bansemmer  
Commissioner of Health  
Health Department of Western Australia  
189 Royal Street  
East Perth WA 6004

The Board of Management  
Armadale Kelmscott Health Service  
3056 Albany Highway  
Armadale, WA 6112

The Board of Management  
Gascoyne Health Service  
c/- Carnarvon Regional Hospital  
Cleaver Street  
Carnarvon WA 6701

The Board of Management  
Avon Health Service  
82 Newcastle Street  
Northam WA 6401

The Board of Management  
Geraldton Health Service  
Shenton Street  
Geraldton WA 6530

The Board of Management  
Swan Health Service  
Eveline Road  
Middle Swan WA 6056

The Board of Management  
Lower North Metropolitan Health Service  
c/- Osborne Park Hospital  
Osborne Place  
Stirling WA 6021

The Board of Management  
Peel Health Service  
110 Pinjarra Road  
Mandurah WA 6210

The Board of Management  
Bunbury Health Service  
Blair Street  
Bunbury WA 6230

The Board of Management  
Fremantle Hospital  
Cnr Alma Street and South Terrace  
Fremantle WA 6160

The Board of Management  
Royal Perth Hospital  
Wellington Street  
Perth WA 6000

The Board of Management  
Bentley Health Service  
33 Mills Street  
Bentley WA 6102

The Board of Management  
Rockingham Kwinana Health Service  
Elanora Drive  
Rockingham WA 6168

The Board of Management  
Princess Margaret Hospital for Children  
Roberts Road  
Subiaco WA 6008

The Board of Management  
King Edward Memorial Hospital  
374 Bagot Road  
Subiaco WA 6008

### SCHEDULE "B"

#### ORDERS

1. The Civil Service Association of Western Australia (Incorporated) ("CSA") seeks an order that it has the right to represent the Industrial interests of salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by the Honourable the Minister for Health in the business, alternatively the activity of, the provision of hospital and health services (or either of them, or any part of them) including the businesses, alternatively activities described in Schedule "A" hereof, and who are eligible for membership of the CSA to the exclusion of the

Hospital Salaried Officers Association of Western Australia (Incorporated) ("HSOA") and any other organisation of employees registered under the Industrial Relations Act save for persons eligible for membership of the Australian Medical Association.

2. The Civil Service Association of Western Australia (Incorporated) ("CSA") seeks an order that it has the right to represent the Industrial interests of salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by the Commissioner of Health in the business, alternatively the activity of, the provision of hospital and health services (or either of them, or any part of them) including the businesses, alternatively activities described in Schedule "A" hereof, and who are eligible for membership of the CSA to the exclusion of the Hospital Salaried Officers Association of Western Australia (Incorporated) ("HSOA") and any other organisation of employees registered under the Industrial Relations Act save for persons eligible for membership of the Australian Medical Association.

3. The CSA seeks orders that it has the right to represent the industrial interests of all salaried employees (including professional, administrative, clerical, technical, and supervisory employees) employed by each of the enterprises, businesses or activities listed in Schedule "A" hereto or any successor to any such entity in the provision of hospital and health services (or either of them, or any part of them) to the exclusion of the HSOA and any other organisation of employees registered under the Industrial Relations Act save for the Australian Medical Association.

#### SCHEDULE "C"

1. The Full Bench has jurisdiction pursuant to Section 72A of the Industrial Relations Act 1979 to grant the orders sought.

2. The CSA currently has constitutional coverage of persons employed in—

- (a) the Psychiatric Health Services alternatively the Mental Health Service (or any business alternatively activity or any part thereof carried on by this name or any name of this ilk), the Minister for Health and/or the Commissioner of Health, and/or the Director of Mental Health Services being the employer of employees in the Psychiatric Health Services or alternatively the Mental Health Services; and
- (b) the Public and Mental Health Services—the Minister for Health and/or the Minister for Public Health and/or the Commissioner of Health being the employer of employees in the Public and Mental Health Services.

3. The CSA currently has award coverage of persons employed in—

- (a) the Psychiatric Health Services alternatively the Mental Health Service (or any business alternatively activity or any part thereof carried on by this name or any name of this ilk), the Minister for Health and/or the Commissioner of Health, and/or the Director of Mental Health Services being the employer of employees in the Psychiatric Health Services or alternatively the Mental Health Services; and
- (b) the Public and Mental Health Services—the Minister for Health and/or the Minister for Public Health and/or the Commissioner of Health being the employer of employees in the Public and Mental Health Services.

4. The CSA has a significant number of members employed in professional, administrative, clerical, technical and supervisory capacities employed by the employers listed in 2 and 3.

5. Current CSA members have expressed a desire to continue membership of and award coverage by the CSA.

6. The CSA has historically had coverage of individuals employed in the Health Department by the Honourable Minister for Health, the Director of Mental Health Services and the Commissioner for Health, employed to administer the State's public and mental health system.

7. Both the CSA and its members will be directly affected by any such orders which may be issued by the Full Bench and therefore have a direct interest.

8. The CSA has over its historic coverage of such employees facilitated such enterprises high degree of industrial harmony, efficiency and productivity.

9. Failure to grant the orders sought would result in a difficult demarcation in the public health sector. This dispute will be potentially exacerbated in the future with the creation of new employment positions and evolution of employment positions in the sector. Such disputes will not be conducive to industrial harmony, minimisation of disputes and therefore not in the public interest.

10. The CSA ought to be granted coverage to the exclusion of the Hospital Salaried Officers Association of Western Australia ("HSOA"), on the following basis—

- (a) That the majority of employees affected would prefer such coverage.
- (b) Such coverage would be consistent with and present an opportunity for furtherance of State legislation and general principles for the rationalisation of industrial representation in enterprises. The orders would create single or limited effective union representation at any given time in the specified enterprises.
- (c) The CSA is better placed to deal with the interests of persons providing public and mental health services than the HSOA. The CSA is better equipped to give existing and prospective members the industrial and other services which they require. The CSA has better human, financial and technological resources than the HSOA.
- (d) The CSA has structures which permit the participation of its members in the affairs of the organisation.
- (e) Industrial protection and services provided by the CSA are superior to those of the HSOA.
- (f) Historically the CSA has provided impetus in relation to public health sector employees in matters of award entitlement etc. In contrast the HSOA has simply followed initiatives introduced by the CSA for its membership.
- (g) If the Applicant's application is not granted, there will be a reduction in union membership as existing CSA members will not join the HSOA.
- (h) In the circumstances the CSA will be a more effective and efficient representative of the effected employees interests and concerns.

11. In the circumstances it is fitting and just to allow the CSA coverage of its historically covered positions to the exclusion of the HSOA and others of the enterprises specified in the application.

CPSU/CSA

Enquiries: Deana Whittaker

Telephone: 323 3800

June, 1997.