Western Australian
Industrial Gazette
PUBLISHED BY AUTHORITY

Sub-Part 3 WEDNESDAY, 25TH FEBRUARY, 1998 Vol. 78—Part 1

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

CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

FULL BENCH—
Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Swan Yacht Club (Inc)
Appellant

and

Leanne Bramwell
Respondent.

No 1485 of 1997.

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

18 December 1997.

Reasons for Decision.

INTRODUCTION

THE PRESIDENT: This is an appeal brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") against the decision of a single Commissioner.

By the decision made on 28 July 1997, in application No 1554 of 1996, the Commissioner made, formal parts omitted, the following orders (see page 44 of the appeal book (hereinafter referred to as "AB"))—

"(1) THAT Leanne Bramwell was unfairly dismissed on 25 October 1996;

(2) THAT reinstatement is impracticable;

(3) THAT the respondent pay to Leanne Bramwell compensation in the amount of $1,746.00."

It is against that decision that the appellant now appeals on the following grounds (see pages 3-6 (AB))—

"GROUND 1: UNFAIR DISMISSAL: WAS IT AT THE INITIATIVE OF THE EMPLOYER?

The learned Commissioner in his Reasons for Decision having concluded as a finding of fact and in law, that the employee was unfairly dismissed, erred in fact and in law, based upon the weight of the evidence, particularly when he ruled—

1. 1. The termination was at the initiative of the employer. The principles outlined in Mohazab *v.* Dick Smith Electronics (1995) 62 IR 200 clearly indicate that the employer's actions give the employee the conclusion that the employment relationship is at an end. The alleged letter of clarification from Leanne Bramwell in which she indicates that she did not resign, is a contradiction of these principles. Refer to Exhibit W4 and page 3 of the Reasons for Decision.

1.2. That the employee did not resign (Reasons for Decision pages 8 and 14).

1.3. The learned Commissioner has misapplied the law based upon the weight of evidence when he considered the principles of an employee changing their mind upon reflection after a heated argument with an employer. Refer to Wood J in Kwit-Fit (G.B.) Ltd *v.* Lineham (1992) IR 183 at 188.

1.4. The employee by her actions later in the day in an attempt to return to work has attempted to reverse her earlier decision to resign. Evidence given to the Commission indicated conflicts between Ms Bramwell and the Bar Manager, as well as allegations of sexual harassment in the workplace. These factors alone suggest that the employment relationship could not be restored.

1.5 The learned Commissioner has misapplied the principles in ABB Engineering Construction Pty Ltd (Print n6999), as well as the Mohazab case (supra), particularly when he considered the possibility of continuation of employment. The evidence given to the Commissioner in the first instance made it clear that there was a level of dissatisfaction on both parties towards the end of the employment relationship. Therefore the resignation of Miss Bramwell was not out of character.

1.6. Based upon the evidence of Messrs Robert Sutcliffe and Geoffrey Reynolds, as well as Ms Jenny Glossop, informed the Commission that she was her usual self on that particular day, and not in the least scared. Refer p. 3 of the Reasons for Decision. Also see pages 82, 84, 149, 160, 181-184, 188-190 of the Transcript of Proceedings.

1.7. The learned Commissioner has placed little weight in exercising his discretion upon the evidence Mr Robert Sutcliffe, yet has allowed

a lapse of memory in memory of the Applicant. The learned Commissioner should have equally applied the same principles of weight against these two witnesses after allowing for a lapse of time since the incident in the bar area of the Swan Yacht Club (Inc.). Also Mr Reynolds' evidence in chief was not challenged by the Applicant's Counsel in respect to the alleged dismissal, therefore his evidence should be given more weight in the Reasons for Decision.

1.8. The learned Commissioner in ruling that the managing Secretary had overreacted to the lack of greeting by Miss Bramwell when she passed through the office, contained a number of errors based upon evidence presented to the Commission, namely—

a) an attempt under cross-examination of Mrs Jenny Shepney when she was shown a document purporting to be notes of the incident in the office. This document was not tabled as an exhibit, and was challenged by the then Respondent (Refer to page 82 of the Transcript of Proceedings). As this document was never submitted as an exhibit, the Commissioner should have placed very little weight or no weight upon its contents or the reaction of Mrs Shepney as a witness.

b) The document failed to discredit the evidence given by Mr Reynolds that Bramwell had failed to greet him in the office. Refer to pages 138, 167-171 of the Transcript of Proceedings.

c) The learned Commissioner placed insufficient weight upon the evidence of the women who were present in the office at the time of the incident, and who gave evidence in Court (pages. 133-134, 139, 148, 149, 151, 152, 160 and 161 of the Transcript of Proceedings).

d) The learned Commissioner erred in assessing the time frame of events leading up to the conclusion of the employment relationship, by ruling that some of the critical clashes between the Applicant and Club Management took place over a two week period, instead of a two day period.

e) This omission is critical, as the Reasons for Decision give the impression that there was a cooling off period of several weeks before the breakdown of the working relationship took place, from the Swan Brewery incident to the final meeting in the bar area of the Club. Refer to page 13 of the Reasons for Decision. Refer to page 78 of Transcript of Proceedings.

f) The attempted (sic) to reconcile the differences between the Bar Manager, Club Secretary and the Applicant by holding a number of meetings. Evidence about the conflicts between management and the Applicant can be found on pages 15, 37, 37A, 49, 71, 103-105, 125, of the Transcript of Proceedings.

2. GROUND 2: EMPLOYMENT STATUS OF APPLICANT.

2.1. The learned Commissioner in his Reasons for Decision miss-applied the law based upon the evidence when he ruled that the employment nature of the employee was not of a casual nature. Under the Club Workers Award, 1976, there is no restriction of length of time a casual bar person can be employed by a respondent employer.

2.2. The primary principle in Serco Australia Pty Ltd *v.* John Joseph Moreno (1996) 76 WAIG 2314 was that the employer breached the casual provisions of the Shop and Warehouse (Wholesale and Retail Establishments) award No. R32 of 1976, which specifically provided for a restriction of four weeks continuous service for a casual employee. The Club workers Award has no such restriction.

2.3. In Squirell *v.* Bibra Lakes Adventure World T/A Adventure World (1984) 64 WAIG 1834 per Fielding C. (as he was then), indicated that the label does not necessarily determine the exact nature of the employment relationship. However, although the employee's conditions of employment were of a casual nature and regular hours for a period of time, there was ample evidence to suggest that due to the incompatibility between the employee and the bar manageress, the employment relationship could not have been of a long term nature.

2.4. Neither decisions mentioned above other than a specific award provision which does not apply to the Club Workers Award, specifies a minimum period for an on-going casual. A more recent reference to a restriction for a casual employee was in the former Australian Industrial Relations Act, 1988, in which the former Regulation 30(B) restricted a remedy for unfair dismissal for casuals under six months service.

2.5. Due to the absence of a specific period of time in relevant authorities on casual employment, the learned Commissioner should have informed himself as to the restrictions outlined in the former regulation which infer that a casual employee with less than six months service may not automatically be a permanent employee.

GROUND 3: SUPPLEMENTARY REASONS FOR DECISION.

3.1. The learned Commissioner in his investigations with the Department of Social Security, only recorded part of Miss Bramwell's income received as a single parent. The applicant in the substantive hearing under cross-examination failed to inform the Commission of her true income, in particular with her parenting allowance which is separate from the allowance mentioned. Refer to page 62 of the Transcript of Proceedings.

3.2. A parenting allowance is an integral part of income supplied to parents of low income families. This should have been taken into consideration by the learned Commissioner in assessing her income and compensation.

3.3. The learned Commissioner erred in fact when he stated in his Supplementary Reasons for Decision that the Commissioner is not bound to deducting the whole of the Social Security Payments to the Applicant, and that there was no specific test. In Shan Marie Walker *v.* Phoenix Holden Pty Ltd no. 671/97 dated 7 July 1997, Fielding SC (unreported), that particular applicant from her compensation awarded by the Commissioner, lost the total amount of Social Security payments received during the period amounting to $1806.00. This principle should have been applied likewise in the Bramwell case.

REMEDIES SOUGHT—

1 That the Order of the Commission dated the 28th day of July 1997 in respect to matter no. 1554/96, be quashed, and

2. That application no. 1554/96 be dismissed."

BACKGROUND

The background to this matter was as follows.

The respondent, Leanne Bramwell, by application filed in the Commission on 29 October 1996, sought orders on the ground that her dismissal from her employment by the appellant was unfair. She also applied for an order for contractual benefits, which application was subsequently abandoned.

She was employed in the bar at the appellant club, commencing there on 25 May 1996 and ceasing employment there upon her dismissal on 25 October 1996.

The Commissioner heard evidence from Ms Leanne Michelle Bramwell. She was the only witness called on behalf of the respondent. For the appellant, evidence was given by Mr Geoffrey Phillip Reynolds, the appellant's managing secretary, Ms Jennifer Bonnie Shepney, an accounting employee of the appellant, Ms Jennifer Ann Glossop, the appellant's bar manager, and Mr Errol Francis Millane, a committee member of the appellant and uncle of the respondent. Mr Barry Robert Rae, the food and beverage manager at the East Fremantle Yacht Club, gave evidence, as did Mr Robert Winston Sutcliffe, boatswain at the appellant club.

The respondent alleged that on 25 October 1996 she went to work, that she said hello to Ms Glossop and Mr Reynolds who were sitting in a room as she entered the appellant club. She then gave evidence that as she went up the stairs to the bar, Mr Reynolds followed her, was abusive to her, pointed a finger at her, and as a result of which there was an argument. As a result of what Mr Reynolds said, she took it that her services were no longer required and left the premises. She then telephoned the premises hoping to discuss the matter further.

The appellant forwarded a letter to her dated 28 October 1996 which, formal parts omitted, reads as follows (see exhibit W4, page 21 (AB))—

> "I have accepted your resignation of Friday 25th October 1996.
>
> Please find enclosed your pay for work completed plus 2 hours for Friday."

The letter was signed by Mr Reynolds.

By letter dated the same date, the respondent replied, formal parts omitted, in the following terms (see exhibit W5, page 22 (AB))—

> "Upon receipt of your letter today, I would like to make one thing clear. Under no circumstances did I resign on Friday 25th October or at any time."

At all times before the Commissioner the respondent denied that she resigned and asserted that she was dismissed. What she said was that on the day she was dismissed she passed Mr Reynolds, who was seated at his desk talking to Ms Glossop. She greeted him. He did not lift his head, but she thought that he answered her. As she reached the top of the stairs, Mr Reynolds came up behind her yelling and pointing his finger. There was some difference in the evidence about whether he swore or not, but there was a heated exchange commencing with his saying that if she was going to ignore him she could "Get the "effing" out of the club". He also told her never come past his desk without greeting him. The respondent said in evidence that there was a heated exchange, and that Mr Reynolds told her that she could go. She said that she was frightened and may have said "If you want me to go I will". She said that Mr Reynolds then said "Yes, just go, just go". He then went down the stairs.

As the respondent left through the office, Mr Reynolds reached out for the keys, which she gave him. She then went straight home. Later she rang the appellant to speak to Mr Reynolds to further clarify the matter.

Later, according to the evidence, she claimed that she was contacted by the East Fremantle Yacht Club by Mr Rae. She was invited, in a telephone call to her unlisted number, to consider working at that club. Since she had an unlisted telephone number, she assumed that her number had been given to the East Fremantle Yacht Club by Mr Reynolds. However, that was confirmed by the caller, who told her that Mr Reynolds had highly recommended her for her work. The East Fremantle Yacht Club could not offer her work which fitted in with her obligations as a single parent.

Mr Reynolds gave evidence that she was a casual employee, as were all but two of the staff of the appellant club at the relevant time.

There had been meetings prior to the termination of the respondent's employment, which Mr Reynolds had arranged because of disagreements between the respondent and the bar manager, Ms Glossop. There was one incident in the bar which he described when the respondent said that she had had enough of bitchiness and backstabbing and she was going to leave. He said that he had told her then "If you want to, that is ok". He also said that these comments had remained in his mind and influenced his reaction to what he regarded as rude behaviour on 25 October 1996, which the Commissioner said was two weeks after this incident in the bar.

On 25 October 1996, according to his evidence, Mr Reynolds was having a meeting in his office with Ms Glossop. His evidence was that the respondent entered the room, did not respond to his greeting of "Hi", and went out through the back door. He asked Ms Glossop and Ms Shepney whether they had heard the respondent respond to his greeting. They replied in the negative. Because of the other event, according to Mr Reynolds, her disrespect for him on this occasion made him decide to take the matter of her attitude up with the respondent. He admitted going up the stairs two at a time, but said that was not unusual for him. He did admit raising his voice, pointing his finger, and saying something to the effect "I am the manager. I demand you give me respect". He did say that the respondent said "I did say hello to you". He disputed that and accused her of lying. She denied this and reiterated that she had greeted him. Because he was satisfied that he got his message across to her, on his evidence, he turned around, walked back to the top of the stairs, and said "If you do not like it here you do not have to stay, you can leave". His evidence was that the respondent replied that she would leave. Mr Reynolds said that he said then "You can leave now if you like", and asked for her keys. He then went down the stairs. The respondent came down later and gave him her keys.

Mr Reynolds admitted that he yelled at the respondent. This was because of her apparent lack of respect for him. He recalled that her facial expressions were normal, that her voice was calm, and that she said "I'll leave", in response to his saying "If you do not like it here you can leave". Mr Reynolds said that Mr Sutcliffe was a witness to the discussion.

Mr Rae, food and beverage manager of the East Fremantle Yacht Club, made an offer of employment to the respondent after Mr Reynolds advised him of her availability for employment. The respondent wrote to Mr Rae (see exhibit W6, page 23 (AB)). That letter is dated 10 November 1996. He provided a copy of that letter to Mr Reynolds.

Mr Sutcliffe also gave evidence of the conversation of 25 October 1996 upstairs at the appellant club between Mr Reynolds and the respondent. According to his evidence, Mr Reynolds did run up the stairs, he did call out to the respondent in a loud voice, he did shake his finger at the respondent, but did not swear. Mr Reynolds, according to Mr Sutcliffe's evidence, did say "Don't ignore me like that again, I am the manager and I expect to be treated with respect". Mr Sutcliffe heard Mr Reynolds say, as Mr Reynolds said himself, that there were two other people who said that the respondent had ignored him. Mr Sutcliffe said that he did not hear Mr Reynolds dismiss the respondent. He did hear him say words to the effect that "If you do not like it here you can leave if you want to", and that the respondent then said "I will leave". He then said that Mr Reynolds had said "All right you can go now". Mr Sutcliffe's evidence was that he heard, at no time, any form of bad language from Mr Reynolds.

Ms Shepney gave evidence that the respondent offered no greeting as she came into the premises on the day of her dismissal. However, Ms Shepney had made a note soon after the incident in which she noted that the respondent had said "Hi" to her on that occasion, and was not able to say that the note was inaccurate.

There was evidence, too, from Ms Glossop. She said that she had difficulties with the respondent and that there was friction between them.

FINDINGS OF THECOMMISSIONER

The Commissioner made a number of findings of importance.

The first group of findings related to the credibility of the witnesses, whom the Commissioner, of course, had the advantage of seeing and hearing. I summarise those findings hereunder.

THE RESPONDENT

The Commissioner observed that the respondent's admission that her memory might not have been absolutely accurate because of the fear she felt during her altercation with Mr Reynolds was an honest admission and explained minor differences in the evidence which she gave. He found that he had no reason to conclude that she was not being truthful and found that she "relayed the events as they transpired in the best way she could, given the passage of time and the circumstances in which she found herself".

MR REYNOLDS

As to Mr Reynolds, the Commissioner found that he had no reason to discount his evidence as untruthful. He found correctly that the respondent's version of events varied from that of Mr Reynolds in crucial areas, but that those differences could be attributed to faulty recall or a genuine difference of view.

MS SHEPNEY

The Commissioner found in relation to the evidence of Ms Shepney that the record which she made after the event was more likely to be the truth than her evidence was, and found that the respondent did greet Ms Shepney and Mr Reynolds on 25 October 1996.

MS GLOSSOP

The Commissioner accepted the evidence of Ms Glossop, subject to the fact that there was friction between the respondent and herself.

MR SUTCLIFFE

As to Mr Sutcliffe's evidence, the Commissioner found that his evidence was evidence which he viewed with some caution on the basis that it was self-serving, although he did not disbelieve it.

OTHER FINDINGS

I now move to actual findings and summarise them as follows—

(1) That the work of the respondent was regular, continuous and had the nature of a permanent position and was not casual.

(2) That the respondent could therefore be reinstated to the position which she was in.

(3) (a) That there was conflict between the respondent and Ms Glossop.
(b) That Mr Reynolds tried to resolve the conflict.
(c) That Mr Reynolds believed that on two occasions the respondent had made comments which led him to believe that she did not wish to continue her employment with the appellant.
(d) That his reaction to her comments was too sensitive.
(e) That her comments in the bar were not indicative of her wish to leave her employment, which were made in the course of a casual conversation.
(f) That her work was extremely important to her as a working mother and there was no reason at all why she would leave.

(4) (a) That Mr Reynolds overreacted when he thought that his greeting was not returned.
(b) That it was open to find that the respondent did give some form of greeting.
(c) That he ran up the stairs vigorously pursuing the respondent, swore at her on his own admission, and pointed his finger at her.
(d) That he was angry.
(e) That Mr Reynolds, "a man of imposing physical presence", shouted at a female employee and she gained the impression that he wanted her to leave. This was clear because he demanded the keys from her.

(5) That she removed herself from the situation and after reflection at home rang to try and clarify the situation.

(6) That she was unsuccessful in doing so.

(7) That she later received a letter purporting to be an acceptance of her resignation.

(8) That the Commissioner was unable to find that she had resigned.

(9) That even if that were wrong, "the termination" was at the initiative of the employer.

(10) (a) That there were words spoken "and actions expressed" in temper or in the heat of the moment and under extreme pressure.
(b) That Mr Reynolds, if he was entitled, as he claims, to assume that the words he thought were a resignation, should have taken action to ensure that the resignation was really intended, particularly after the respondent's letter denying that she had resigned.

(11) That the respondent was unfairly dismissed.

(12) That reinstatement was impracticable.

(13) (a) That the respondent had suffered loss or injury by reason of her dismissal.
(b) That the amount to be paid by way of compensation should be $2500.00 less the amount of any income received by the respondent.
(c) That it was appropriate to take into account the amount of social security payments received by the respondent.
(d) That the respondent would have been entitled to continue to "earn" $222.00 per fortnight in addition to her sole parent benefit.

(14) That compensation should therefore be calculated as follows—
(a) The respondent would have been entitled to continue to "earn" $222.00 per fortnight.
(b) She would also be entitled to her sole parent benefit of $351.00 per fortnight.
(c) The amount of compensation is the amount which she received per fortnight, which is $420.00 less $129.00, so that the compensation for three months would be $291.00 per fortnight equalling in total $1746.00.

(15) The Commissioner held that there was no fixed rule of law which would compel the Commission to take into account the payments made to a person who is to be awarded compensation under the Act, merely because that person is in receipt of social security benefits. However the practice clearly is, and rightly so, in the Commissioner's opinion, that such payments ought to be taken into account where it is appropriate.

(16) In the circumstances, the Commissioner concluded that where the Department of Social Security has no ability to reverse a payment that has previously been made, for the Commission not to take into account at least part of the payment would result in a windfall to recipients of social security benefits.

ISSUES AND CONCLUSIONS

The decision appealed against in this appeal was a discretionary decision, as that sort of decision is defined by the High Court in Norbis v Norbis 65 ALR 12 (HC).

It is for the appellant to establish that the exercise of the Commissioner's discretion miscarried upon the principles set out in House v The King [1936] 55 CLR 499 (HC) (see also Gronow v Gronow [1979] 144 CLR 513 (HC)).

Unless the appellant establishes that the exercise of the discretion by the Commissioner miscarried, then the Full Bench cannot substitute the exercise of its discretion for the exercise of discretion at first instance.

The Commissioner relied on his advantage in seeing and hearing the witnesses at first instance in making findings as to credibility. That is, the Commissioner relied on its advantage in seeing and hearing the witnesses at first instance in making

findings as to their credibility, and many of the findings depended, to a substantial degree, on the credibility of the witnesses.

A finding of fact by a trial judge based on the credibility of a witness is not to be set aside because an appellate court thinks that the probabilities of the case are against or even strongly against that finding. If the finding depends to any substantial degree on the credibility of the witnesses, the finding must stand, unless it can be shown that the judge has failed to use or has palpably misused her/his advantage, or has acted on evidence which is inconsistent with the facts incontrovertibly established by the evidence, or which was glaringly improbable (see Devries and Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC)).

However, the Full Bench is entitled to draw its own inferences from the primary facts (see Warren v Coombes and Another [1978-1979] 142 CLR 531 (HC)).

Attention is also drawn to the case of Abalos v Australian Postal Commission [1990] 171 CLR 167 (HC) which is authority, inter alia, for the proposition that—

"Where a trial judge has made a finding of fact contrary to the evidence of a witness but has made no reference to that evidence, an appellate court cannot act on that evidence to reverse the finding unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusions".

All of those principles will be applied if and where necessary by the Full Bench in deciding this matter.

WAS THE CONTRACT ONE OF CASUAL EMPLOYMENT?

There were submissions made on appeal that the employment was casual, and that therefore it was not possible to reinstate the respondent if there were an unfair dismissal. As I understand it, the submission might have gone so far as to say that it was not possible to dismiss the respondent.

Casual employment at common law, as distinct from casual employment defined in an award, is generally taken to connote an employee who works under a series of separate and distinct contracts of employment entered into for a fixed period, rather than a single and on-going contract of indefinite duration. Whether a person is a casual employee depends upon the facts and circumstances of each case. The parties cannot by the use of a label render the nature of a contract something which it is not. Certainly, there may be indicia which are indicative of the nature of the contract, but, taken alone, they are not necessarily determinative of the nature of the contract. However, the indicia may include the classifying name given to an employee and initially accepted by the parties, the provisions of the relevant award (if an award applies), the number of hours worked per week, whether the employment was regular, whether the employee worked in accordance with a roster published in advance, whether there was reasonable mutual expectation of continuity of employment, whether notice is required by an employee prior to the employee being absent on leave, whether the employer reasonably expected that work would be available, and whether the employee had a consistent starting time and finishing time.

In this case, there was a roster. The respondent was in regular employment, on her evidence, over a period of months. The employment was continuous, and it was open to find that it was so. The employment also, for that reason, had the nature of a permanent position, as the Commissioner found and it was open to find. The respondent was on a fortnightly roster with definite and regular hours fixed for her in advance to work. The arrangement might readily be found to be indefinite. The respondent worked a mixture of nights and days to fit her circumstances as a single parent with regular hours and shifts every week.

As to the Club Workers' Award 1976, the Commissioner said "That title may well be attributed to them by the respondent and it may well fit a definition under the Club Workers' Award", but the Commissioner made no finding as to that, there being no evidence led concerning the matter, as he observed (see page 40 (AB)).

In any event, on the authorities, reinstatement can be made even if the position were a casual position, it being possible to find that a person is unfairly dismissed whether that person is casually employed or not (see Ryde-Eastwood Leagues Club Ltd v Taylor (1994) 56 IR 385 (IRC NSW (FC))).

It is possible to find that a person is unfairly dismissed whether that person is casually employed or not, because the definition of "dismissal" is broad in concept and wide enough to cover a dispensing with services, as I say in a little more detail later in these reasons. In this case, however, based on the law as it was applied in Serco (Australia) Pty Ltd v Moreno 76 WAIG 937 at 939-940 (FB) and the cases cited therein, and also Ryde-Eastwood Leagues Club Ltd v Taylor (IRC NSW (FC)) (op cit), the Commissioner was not in error in finding that the respondent was not casually employed. As a result, it was open to find that the respondent was unfairly dismissed. In any event, no order for reinstatement was made.

WAS THERE A RESIGNATION OR A DISMISSAL?

Another substantial head of the grounds of appeal was directed to the allegation that the respondent resigned and was not dismissed. In MTT v Gersdorf 61 WAIG 611 (IAC), the Industrial Appeal Court defined "dismissal" as follows—

> "The word "dismissal" may be used in the sense of peremptory or arbitrary dismissal or a dismissal after due notice or payment under the terms of a contract of employment."

The word "dismissal" is perhaps a broader concept than that. In the absence of a definition of "dismissal" in the Act (and there is none), the concept of "dismissal" is broad and general in concept "and wide enough to cover a dispensing with services". A casual employee may well have been said to have had her services dispensed with and this would constitute a dismissal (see Ryde-Eastwood Leagues Club Ltd v Taylor (IRC NSW (FC)) (op cit)). A casual employee can be dismissed. However, the respondent was not a casual employee, as the Commissioner correctly found.

The submission by Mr Crossley, for the appellant, was that the termination was not at the initiative of the employer, as that principle is expressed in Mohazab v Dick Smith Electronics (No 2) (1995) 62 IR 200 (IRC of Aust (FC)). It was submitted that the letter (exhibit W4, page 21 (AB)) was a contradiction of those principles.

It was also submitted that the Commissioner misapplied the law "based upon the weight of the evidence" when he considered the principles of an employee changing his/her mind upon reflection after a heated argument with the employer. It was submitted that the employee, by her actions later in the day, had attempted to reverse her earlier decision to resign.

It was submitted, too, that there was a level of dissatisfaction on the part of both parties towards the end of the employment relationship.

Further, it was submitted by Mr Crossley, on behalf of the appellant, that, based on the evidence of Mr Sutcliffe, Mr Reynolds and Ms Glossop, the respondent was her usual self and did not appear scared during the events of 25 October 1996.

Mr Reynolds' evidence was not challenged in cross-examination and should have been given more weight. Further, more weight should have been given to Mr Sutcliffe's evidence when the Commissioner "allowed a lapse of memory" of the respondent, so the submission went.

It was also submitted that the Commissioner, in finding that the managing secretary had overreacted to the lack of greeting by the respondent, had erred, because the documents shown to Ms Shepney, and upon which she was cross-examined (see page 138 of the transcript at first instance), was never tendered as an exhibit. Further, the document did not "discredit" the evidence given by Mr Reynolds that the respondent failed to greet him.

Further, it was submitted that the Commissioner failed to place sufficient weight upon the evidence of Ms Glossop and Ms Shepney who were present at the time.

Further, the Commissioner failed to find, if I might paraphrase the submission, that the termination of employment followed shortly after comments by the respondent that she was thinking of leaving her employment and the meetings as to the difficulties between the respondent and the bar manager.

On the evidence, there is some dispute over main events, but much is agreed.

First of all, the Commissioner found that it was likely that a greeting was given by the respondent to Mr Reynolds and Ms Glossop. It was open to him, on the evidence, to have so found, given that he accepted the evidence of the respondent and that Ms Shepney recorded on 30 October 1996 that greetings were exchanged, and she admitted that she had no reason to think her notes were inaccurate (see pages 138-139 of the transcript at first instance). The Commissioner obviously and correctly, in my opinion, on a reading of the evidence, placed weight on that evidence. It matters not in that respect that the notes were not tendered in evidence.

Further, it was even the evidence of Mr Reynolds that the respondent had denied not greeting him on 25 October 1996. There was evidence of a denial of lack of greeting given by Mr Reynolds himself who said that the respondent, when she was confronted with this allegation, denied that she had failed to greet him. Further, on all of the evidence, it was clear that Mr Reynolds took exception to the fact that he was not responded to, in greeting, by the respondent. That is what, on all of the evidence, Mr Reynolds remonstrated with the respondent about. He was also angry, and, according to the respondent, whose evidence was accepted, or at least not said to be untruthful, he swore. There is no doubt that the Commissioner was entitled to find, on the evidence, having accepted the respondent as truthful, that she was scared of Mr Reynolds, whether she appeared to be externally or not. On his own evidence, Mr Reynolds was sufficiently angry or upset to raise his voice, to point his finger and to demand respect. On his own evidence, when the respondent denied his accusation, he accused her of lying. The respondent and Mr Reynolds differ to some extent about what was said. However, even Mr Reynolds' version of events contains a reference to his saying after he accused her of lying that he was not going to stand for that behaviour, and that he followed such a statement by immediately saying "If you do not like it here you do not have to stay, you can leave". Mr Sutcliffe corroborated this version substantially.

That comment was very much open to the interpretation that the respondent was being dismissed. The comment followed upon an incident where Mr Reynolds had criticised the respondent with some vehemence, at least, and accused her of lying, and followed up further by his taking her keys back. That is the case whether she said "If you want me to go I will" or not. If she said that, the comment was open to the inference that it was a mere recognition of what occurred; that is that she was told to go. Further, there was no evidence that Mr Reynolds said that he did not then intend her to leave. If, as he said, the respondent said that she would leave, that is not, of course, inconsistent with someone acquiescing out of fear with what was a fait accompli, namely her dismissal. Clearly, of course, the respondent attempted to clarify this situation later by her telephone call. The termination was then characterised as a summary one by Mr Reynolds telling the respondent to leave now and taking her keys. However, if the respondent's version were accepted, it was that she was told to "Get the "effing" out of the club", to which she responded by saying "If you want me to go I will", and Mr Reynolds replying "Yes, just go, just go", and taking her keys. That was an even more unequivocal dismissal of her, an expression of the unilateral termination of her contract of employment, summarily.

In either version, it is clear that the respondent was being told to go; she was being told that her employment was terminated. If I am wrong about that, then it was open, on all of the evidence, to find that the respondent involuntarily resigned in circumstances where the employer's request for a resignation was implicitly offered as an alternative to a dismissal (see Attorney General of WA v WA Prison Officers' Union of Workers 75 WAIG 3166 (IAC) and Blaikie v SA Superannuation Board (1996) 64 IR 145 at 163-165).

Each case turns on its own facts. However, in my opinion, it is fair to say that, where the employee does not fairly consent to the termination of employment, then the termination is a dismissal (see Re Michaelis Bayley Trading Co and Another Re Dismissal [1979] AR (NSW) 392 at 393 and Smith v Director-General of School Education (1993) 31 NSWLR 349 at 366 (IRC NSW (FC)). This was such a case.

Much of the argument turned upon an invitation to the Full Bench to consider the relevant provisions of the Workplace Relations Act 1996 (Cth), s.170CD(1), which requires that, in order for an employee to succeed in a claim of unfair dismissal, it must be established that the termination was a termination at the initiative of the employer (see Mohazab v Dick Smith Electronics (No 2) (IRC of Aust (FC)) (op cit) at page 205). We were taken to the authorities in which the sections have been construed. The Full Court of the Industrial Relations Court of Australia said in that case that that phrase involved a termination in which the action of the employer was the principal contributing factor leading to the termination of the employment relationship. In other words, if the employer had not taken the action which it did, would the employee have remained in the relationship. There is no doubt that a resignation by an employee involuntarily may in reality be a dismissal by the employer (see Attorney General of WA v WA Prison Officers' Union of Workers (IAC) (op cit) and Hiser v Hardex Co-Operative Ltd (unreported) (delivered 14 December 1994) (Supreme Court of NSW) per Santow J). Another way of putting it is that the employee is terminated if she/he is given no option but to leave.

In this case, the act of the employer terminated the contract. On the respondent's evidence, it was open to find that there was a straight and unequivocal summary dismissal. On either version of events, the respondent was given no option. Alternatively, the respondent was forced into an involuntary resignation. Alternatively, further, as was accepted by the Commissioner, no valid or effective notice was given and it was open to find that any resignation was given under stress, was therefore not given voluntarily and was invalid. The Commissioner so found, and correctly so found, for the reasons expressed at page 41 (AB), where the Commissioner said—

> "However, be that as it may, Mr Reynolds ran up the stairs vigorously pursuing the applicant. On his own admission he swore at her, pointed his finger and was angry. One wonders why the perception of the failure to give a greeting, if that indeed is what happened or what Mr Reynolds thought happened created such a reaction. The reaction was certainly an over reaction and led to a situation where Mr Reynolds, a man of imposing physical presence was shouting at a female employee and they became involved in a conversation where the employee gathered the impression that Mr Reynolds wanted her to leave. This was clear to her because he demanded the keys from her. She removed herself from the situation and after reflection at home, she rang to speak to Mr Reynolds to try and clarify the situation. She was unsuccessful in doing so and later she received a letter purporting to be an acceptance of her resignation."

As the Commissioner correctly observed, he was unable, on the evidence of the matter, to find that the respondent resigned at all, but if he was wrong about that it was certainly at the initiative of the employer. If the resignation were then withdrawn the employee was entitled to withdraw it. In fact, there was ample evidence before and after the event, including the respondent's letter of 28 October 1996, to confirm that there was no resignation, or, at the very least, that it was an "involuntary resignation" which was, in fact, brought about by the appellant and that that act constituted a termination or dismissal.

I would also add that nothing in the submissions of the appellant or in the evidence leads me to the conclusion that the Commissioner, in accepting the evidence of the respondent, misused the advantage which he enjoyed by seeing and hearing the witnesses at first instance.

The Commissioner was correct in finding that there was a dismissal. There was ample evidence to support such a finding. The finding that such a dismissal was unfair was not, as I understand it, challenged. The Commissioner did not find in error in those respects and the appeal on that ground fails.

THE AMOUNT OF COMPENSATION

This ground of appeal is that the whole, not part of the social security payments received by the respondent, should have been deducted from the amount which the Commissioner ordered for compensation.

Firstly, and correctly, the Commissioner calculated the whole of the loss (as was prescribed in May v Lilyvale Hotel Pty Ltd (1995) 68 IR 112 (IRC of Aust), and which principle was applied and explained in Gilmore and Another v Cecil Bros and Others 76 WAIG 4434 (FB) and applied and explained

further in Capewell v Cadbury Schweppes Australia Ltd (Appeal No 1364 of 1997) (delivered 12 December 1997) (unreported) (FB)). (Both cases set out other applicable principles also). The question is whether the whole or any of the social security payments should be taken into account in calculating the loss in relation to which the amount of compensation ordered to be paid was assessed.

Mr Crossley submitted that the Commissioner was bound to deduct the total amount of the payments of unemployment benefits received and that the principle to that effect, which he submitted was laid down in Shan Marie Walker v Phoenix Holden Pty Ltd 77 WAIG 2041, should have been followed. In not following the same, the Commissioner erred, so the submission went. Mr Edwards (of Counsel), for the respondent, submitted that it was not open to the Commissioner to so act.

I should, however, say that there was no cross-appeal. In damages claimed in respect of tortiously inflicted loss or damage collateral benefits are those benefits received from sources other than the defendant which, but for the tortiously inflicted loss or injury, the plaintiff would not have received. These may be either financial or in the form of services. Benefits include insurance policy, proceeds, pensions, social security benefits, etc. In the area of awards of damages for tortious injury victims of accidents often become entitled to sickness, invalid or unemployment benefits under the Social Security Act (Cth).

In Redding and Another v Lee and Another [1982-1983] 151 CLR 117 (HC), the High Court decided that invalid pensions should not be taken into account in assessing the plaintiff's caring capacity and four to three in favour of setting off receipt of unemployment benefits in assessing future economic loss.

It is different where there are workers' compensation payments because it cannot be permitted that the employee make a double recovery from the employer, firstly, in a negligence action, and, secondly, in a workers' compensation claim (see Motor Vehicle Insurance Trust v Forbes and Others [1985] WAR 50 (SC of WA (FC)). I say that merely by way of illustration of the point which I make.

The same principle applies here. There is no warrant in the Act to reduce the amount of compensation to be awarded for loss, by the amount of a payment akin to a collateral benefit which is irrelevant in calculating the loss (see Redding and Another v Lee and Another (HC) (op cit) which I apply.) The Commissioner erred in calculating the loss by reference to and the deduction of any social security payments received, and the appeal, on that ground, since there was no cross-appeal, is not made out. Since there was no cross-appeal, there has been no variation of the decision of the Commission and no remedy which the Full Bench has been asked to or can provide.

For all of those reasons, having considered all of the evidence, all of the relevant material, and all of the reasons for decision and submissions, I find that the appeal is not made out, and I would dismiss it.

CHIEF COMMISSIONER COLEMAN: I have had the opportunity to read the Reasons for Decision of the Hon. President and Scott C. I agree that the appeal should be dismissed.

The Appellant has failed to establish that the Commissioner in the first instance erred in his assessment of the facts or in some way misused his advantage in determining the credibility of witnesses. Quite the contrary; his Reasons for Decision disclose the care that was taken in analysing the evidence for him to conclude that the Respondent's services were unfairly terminated on the Appellant's initiative on 27th October, 1996. It was also open to him to find that given the circumstances under which the Respondent's duties were performed, including the regularity of shifts, that her employment was not of a casual nature.

Finally, while I question whether or not social security payments may be taken into account at all when compensation is being assessed, insufficient was put in submissions to the Full Bench in this matter to warrant interfering with the assessment of loss or injury made by the Commissioner. If social security payments made in the wake of a termination of employment which attracts compensation under an order of this Commission, takes into account the former employee's dependants and those payments attract consideration for the purpose of reducing the amount which would otherwise have been determined, then that would seem to necessitate a wider inquiry into the circumstances of the employee (and the members of his or her family) for the purpose of assessing the amount of compensation. Loss or injury caused by the dismissal which impacts upon family may not be too remote if allowance must be made to reduce the level of compensation for social security payments made in respect to dependants.

COMMISSIONER SCOTT: By this appeal, the Appellant has challenged the decision of the learned Commissioner on three grounds. They are, in essence, that the learned Commissioner erred in his assessment of and the conclusions drawn from the evidence before him, that he erred in his conclusion that the Respondent's employment was not of a casual nature, and that, in determining the amount of compensation to be awarded to the Respondent, the learned Commissioner erred in not deducting Social Security payments received by the Respondent.

I have considered all of the submissions made during the hearing of the appeal and noted the evidence, submissions and reasons for decision at first instance. As to the first ground of appeal, the learned Commissioner at first instance had the advantage of observing at first hand the witnesses giving evidence before him, of making an assessment as to their credibility, and upon that assessment, making findings.

The decision of the Commission in the first instance was one within the Commissioner's discretion and the principles for dealing with an appeal against such a discretionary decision are set out in *House v The King (1936) 55 CLR 499* and *Gronow v. Gronow (1979) 144 CLR 513* and other cases. The Full Bench, in dealing with such an appeal has a limited authority to deal with matters which arise from the findings made by the Commissioner at first instance based upon the Commission having the advantage of observing the witnesses at first hand. It is only where the Commissioner has misused that advantaged, or has acted on evidence which is inconsistent with the facts incontrovertibly established by the evidence, or which was glaringly improbable that the Full Bench can interfere with those findings. *(Devries and Another v Australian National Railways Commission and Another (1992—1993) 177 CLR 472)*.

Nothing was put to the Full Bench which demonstrates that the advantage enjoyed by the learned Commissioner at first instance in his observation of witnesses was misused or that he has erred in the findings made as a result of his observation of the witnesses and the assessment of their evidence. Were there any such errors, it is not been demonstrated that these affected his conclusions or the outcome in any way. The findings made were open on the evidence, albeit that other findings may also have been open. It is for the Commission at first instance in exercising discretion to make the appropriate assessment and findings.

It was certainly open for the Commission at first instance to find that Mr Reynolds had over reacted to his own belief that the Respondent had failed to return his greeting, and that the termination was at the initiative of the Appellant based on the conduct of Mr Reynolds. Nothing put on appeal has demonstrated that these findings, which are the essence of the matter were in error.

As to the question of casual employment, the evidence was that the Respondent's employment was regular, for set shifts each week, in accordance with a roster published in advance, and that she was employed indefinitely. The mere description of the Respondent's status of casual does not necessarily make it so (*Moreno v Serco (Australia) Pty Ltd (76 WAIG 937*)). Further, although the Appellant's employment may have been subject to an award which provided no limit to the duration of casual employment, one must go beyond the definition in the award and consider the contract of employment between the parties. In this case, it would seem to have been an ongoing contract, and not of a true casual nature. In this particular case, no error in the finding by the learned Commissioner that the employment was not casual has been demonstrated.

The ground of appeal in respect of the deduction made from the amount of compensation ordered is a complaint that the whole of the Social Security payments ought to have been deducted, not part of it.

Although the Respondent submitted that there ought to have be no deduction, the ground of appeal before the Full Bench

relates to the issue of there being insufficient deduction, and that the whole of Social Security payment ought to have been deducted. I note that this is a matter for the discretion of the Commission at first instance. The Industrial Relations Act 1979 gives no guidance as to this matter. There is nothing in the case law relating to matters of unfair dismissal and the calculation of compensation which provides guidance of an authoritative nature. The Commission is obliged to consider the matter according to equity, good conscience and the substantial merits of the case. There is nothing demonstrated in this ground of appeal which would show the Commission has erred in the manner of calculation.

For these reasons, I find that no ground of appeal is made out and I would dismiss the appeal.

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

Order accordingly

Appearances: Mr T C Crossley, as agent, on behalf of the appellant.

Mr K J Edwards (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Swan Yacht Club (Inc)
Appellant

and

Leanne Bramwell
Respondent.

No 1485 of 1997.

BEFORE THE FULL BENCH.

18 December 1997.

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

Order.

This matter having come on for hearing before the Full Bench on the 5th day of November 1997, and having heard Mr T C Crossley, as agent, on behalf of the appellant and Mr K J Edwards (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 18th day of December 1997 wherein it was found that the appeal should be dismissed, it is this day, the 18th day of December 1997, ordered that appeal No 1485 of 1997 be and is hereby dismissed.

By the Full Bench

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

FULL BENCH—
Appeals against decision of Industrial Magistrate—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

G Parri & M Parri trading as
G & M Parri
Appellant

and

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

No 2041 of 1997.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER C B PARKS
COMMISSIONER P E SCOTT.

5 February 1998.

Reasons for Decision.

THE PRESIDENT: This is an appeal brought by the appellant against the decision of an Industrial Magistrate pursuant to s.84 of the Industrial Relations Act 1979 (as amended)(hereinafter called "the Act").

The respondent organisation brought complaint No 112 of 1997 alleging 42 breaches of award No 14 of 1978, against the appellant hereto as defendant.

The Industrial Magistrate sitting in the Industrial Court at Perth heard these proceedings on 13 August 1997. The defendants defended the complaint.

At the end of the proceedings on that day, the Industrial Magistrate reserved his decision.

His Reasons for Decision were delivered on 24 September 1997. The upshot was that the Industrial Magistrate found "each of the charges have been proved on the balance of probabilities".

He then observed "I will hear further from the parties as to the specific orders to be sought in the light of these reasons".

On 19 December 1997, he heard further submissions on behalf of the parties, and made orders as follows—

(a) He imposed a penalty in the sum of $4,200 on the defendant.

(b) He ordered that the amount of wages underpaid in the sum of $2,139.72 be paid by the defendant and ordered the defendant to pay costs of $222.30.

This was endorsed on the complaint by the Industrial Magistrate, who did not endorse the date. However, the Clerk of the Industrial Magistrate advised the advocate on 30 December 1997 of the terms of the order, which appear on the file, and in addition, the transcript of proceedings on 19 December 1997 evidence that these orders were made.

The appellant filed a Notice of Appeal on 4 November 1997 which was after the Reasons for Decision were delivered and before submissions were heard as to what orders ought to be made.

When the Full Bench was convened, it raised the question with both advocates as to whether there was jurisdiction in the Full Bench, that it might be said that, since the appeal was expressed in the Notice to be "against the decision of the Industrial Magistrates Court constituted by P G Malone, Industrial Magistrate, given on the twenty-fourth (24th) day of September 1997 in Complaint numbered 112 of 1997", the question arose whether what the Magistrate did on 24 September 1997 constituted a decision.

It was submitted by both advocates that this constituted a decision. However, s.84(1) of the Act defines a decision as follows—

> "In this section "**decision"** includes a penalty, order, order of dismissal, and any other determination of an industrial magistrate's court, but does not include a decision made by such a court in the exercise of the jurisdiction conferred on it by..."

Appeals lie to the Full Bench in the manner prescribed from any decision of an Industrial Magistrate's Court subject to the section (see s.84(2)).

Thus, an appeal which does not lie against "a decision", as defined, does not lie.

Insofar as Ms Harrison might have been said to have made a concession that there was jurisdiction, the appeal lying against a decision, then the Full Bench is not bound by such concession, if it is contrary to legal principle (see Thomson Australian Holdings Pty Ltd v The Trade Practices Commission and Others 1980-1981] 148 CLR 150).

In order for the appeal to be valid, it must have been made against a decision as that is defined in s.84.

A decision must be determined, having regard to the exercise of the particular powers conferred on the Magistrate in s.83(1).

A decision as defined does not refer to a finding or ruling or other expression of opinion or direction given in the course of proceedings which falls short of a final determination of the application (see Anderson and Others v Pope 66 WAIG (IAC) 1563 at 1565 per Olney J, see also per Rowland J at 1566 with Franklin J at 1567 agreeing with both Olney J and Rowland J). Thus, for a decision to fall within the definition, it must be one which constitutes a final determination of the application. Otherwise, no appeal lies.

A final decision is only made by the Industrial Magistrate if he or she makes under s.83 any of the orders which that section empowers the Industrial Magistrate to make by s.83(2) and (4).

Until the Industrial Magistrate has made one of those orders, then the matter has not been finally disposed of and a decision has not been made.

At the time this appeal was lodged, all that the Magistrate had done was to have found that the complaint was proven. No order had been made under s.83(2) and (4), and the matter was specifically adjourned so that the Industrial Magistrate could receive submissions as to what his final decision ought to be. The Industrial Magistrate did not make a decision finally disposing of the application until 19 December 1997, when he made orders under s.83(2) and (4).

At the time the Notice of Appeal was lodged, there was no decision against which to appeal, within the meaning of s.84. The appeal was incompetent, as well the applications to extend time, etc, which depended on the appeal being competent. For those reasons, the Full Bench unanimously dismissed the applications to extend time and the appeal.

COMMISSIONER PARKS: I have read the reasons for decision of His Honour the President. I agree with those reasons and have nothing to add.

COMMISSIONER SCOTT: I have had the benefit of reading the reasons for decision of His Honour, the President. I agree with those reasons and have nothing to add.

THE PRESIDENT: For those reasons the applications for extension of time and the appeal are dismissed.

APPEARANCES: Mr O C Moon, as agent, on behalf of the appellant

Ms J Harrison on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

G Parri and M Parri trading as
G & M Parri
Appellant

and

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

No 2041 of 1997.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER C B PARKS
COMMISSIONER P E SCOTT.

21 January 1998.

Order.

This matter having come on for hearing before the Full Bench on the 21st day of January 1998, and having heard Mr O C Moon, as agent, on behalf of the appellant and Ms J Harrison on behalf of the respondent, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 21st day of January 1998, ordered as follows—

(1) THAT the applications filed herein to extend time to file appeal No 2041 of 1997 be and are hereby dismissed.

(2) THAT appeal No 2041 of 1997 be and is hereby dismissed.

By the Full Bench

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

FULL BENCH—
Proceedings for enforcement of Act—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
Applicant

and

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

Nos 1312 and 1313 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
CHIEF COMMISSIONER W S COLEMAN
COMMISSIONER R N GEORGE.

29 January, 1998.

Order.

THESE matters having been remitted to the Full Bench by order of the Industrial Appeal Court on the 14th day of November 1997, and having come on for hearing before the Full Bench on the 28th day of January 1998, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant, and there being no appearance by or on behalf of the abovenamed respondent organisations, and the applicant herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended) and the applicant

having sought leave to discontinue the applications herein, and the Full Bench having determined therefor, pursuant to s.27(1)(a)(ii) and (iv) of the Act that it should refrain from hearing the applications upon the filing of notices of discontinuance of action by the applicant on the 22nd day of December 1997, it is this day, the 29th day of January 1998, ordered and declared that the Full Bench refrain from further hearing and determining the said applications herein upon the applicant having discontinued the applications herein.

By the Full Bench

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

PRESIDENT—
Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

G Parri and M Parri trading as G & M Parri
Applicant

and

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

No 136 of 1998.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

4 February 1998.

Order.

This matter having come on for hearing before me on the 4th day of February 1998, and having heard Mr O Moon, as agent, on behalf of the applicant and Ms J Harrison on behalf of the respondent organisation, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended)("the Act"), and the applicant having sought leave to withdraw the application, and there being no objection by the respondent organisation herein, and I having determined therefore, pursuant to s.27(1)(a)(ii) and (iv) of the Act, that I should refrain from further hearing and determining the matter, it is this day, the 4th day of February 1998, ordered and declared that I refrain from further hearing and determining application No 136 of 1998 having given leave to the applicant herein to withdraw the said application.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division WA Branch and The Plumbers and Gasfitters Employees' Union of Australia, Western Australian Branch, Industrial Union of Workers

(Respondents).

Nos. 2194 and 2197 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

15 December 1997.

Order.

These matters having come on for a directions hearing before me on the 15th day of December 1997, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young, on behalf of The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division WA Branch and as agent on behalf of The Plumbers and Gasfitters Employees' Union of Australia, Western Australian Branch, Industrial Union of Workers, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), and the parties herein having consented to the order herein, it is this day, the 15th day of December 1997, ordered and directed, by consent, that application Nos 2194 and 2197 of 1997 be and are hereby adjourned to 9.00 am on Friday, the 30th day of January 1998 for a further directions hearing.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Royal International (WA)
Applicant

and

William Thomas John Valli
Respondent.

No 2217 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

10 December 1997.

Order.

This matter having come on for hearing before me on the 10th day of December 1997 and having heard Mr G Droppert (of Counsel), by leave, on behalf of the applicant and Mr M Bloch (of Counsel), by leave, on behalf of the respondent, and the respondent having sought leave to have the hearing and determination of application No. 2217 of 1997 adjourned, and there being no objection by the applicant, and whereas the respondent through Counsel gave an undertaking that the respondent would not seek to enforce the order of the Commission in application No. 450 of 1997 made on the 17th day of November 1997 until the determination of application No. 2217 of 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 10th day of December 1997, ordered and directed by consent, that the hearing and

determination of application No 2217 of 1997 be and is hereby adjourned to 9.00 am on Thursday, the 18th day of December 1997.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Royal International (WA)
Applicant

and

William Thomas John Valli
Respondent.

No 2217 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

18 December 1997.

Order.

This matter having come on for hearing before me on the 18th day of December 1997, and having heard Mr B Oakley (of Counsel), by leave, on behalf of the applicant and Mr R W Clohessy, as agent, on behalf of the respondent, and the respondent having applied for an order that the hearing and determination of application No 2217 of 1997 herein be adjourned, and whereas the respondent, through his agent, renewed an undertaking that the respondent would not seek to enforce the order of the Commission in application No 450 of 1997 made on the 17th day of November 1997 until the determination of application No 2217 of 1997 or until further order, and the Commission having determined that it is just and expedient to do so, it is this day, the 18th day of December 1997, ordered and directed, by consent, as follows—

(1) THAT the hearing and determination of the application herein be and is hereby adjourned to Thursday, the 29th day of January 1998 at 9.00 am.

(2) THAT there be leave for the respondent to file any affidavit in reply to the affidavits, filed on behalf of the applicant, within 5 days of the 18th day of December 1997.

(3) THAT any deponent of any affidavit filed herein shall attend upon the hearing and determination of this application to be cross-examined if written notice is given to the other party or his or its agent or solicitor 7 days before the 29th day of January 1998, that it is intended to cross-examine that deponent.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Royal International (WA)
Applicant

and

William Thomas John Valli
Respondent.

No 2217 of 1997.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

29 January 1998.

Order.

This matter having come on for hearing before me on the 29th day of January 1998, and having heard Mr G Droppert (of Counsel), by leave, on behalf of the applicant and Mr R W Clohessy, as agent, on behalf of the respondent, and the applicant having applied for an order that the hearing and determination of application No 2217 of 1997 herein be adjourned sine die and whereas the respondent, through his agent, gave an undertaking that the respondent would not seek to enforce the order of the Commission in application No 450 of 1997 made on the 17th day of November 1997 until the hearing and determination of appeal No 2206 of 1997, and the Commission having determined that it is just and expedient to do so, 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 29th day of January 1998, ordered by consent, that the hearing and determination of application No 2217 of 1997 be and is hereby adjourned side die.

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

PRESIDENT—
Unions—Matters dealt with under Section 66—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers

(Respondent).

No. 2197 of 1997.

BEFORE HIS HONOUR THE PRESIDENT

P J SHARKEY.

30 January 1998.

Order.

This matter having come on for hearing before me on the 30th day of January 1998, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 30th day of January 1998, ordered and directed, by consent, as follows—

(1) THAT I declare that rule 31(b) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.97P(4) of the Act.

(2) THAT rule 31(b) of the rules of the abovenamed respondent organisation be and is hereby disallowed as and from the 30th day of January 1998.

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

AWARDS/AGREEMENTS—Application for—

AIRDUCTOR INDUSTRIAL AGREEMENT.

No. AG 301 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Vernon Shane Plane and Julie Ann Plane trading as Airductor.

No. AG 301 of 1997.

Airductor Industrial Agreement

COMMISSIONER P.E. SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Airductor Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Airductor Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Vernon Shane Plane and Julie Ann Plane trading as Airductor (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 3 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

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

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

course fees

course books and materials

payment of ordinary time earnings for such absence.

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions: **BLPPU** Signed **Common Seal**
Date: 21/10/97
Signed
WITNESS

CMETU Signed **Common Seal**
Date: 21/10/97
Signed
WITNESS

The Company: Air Ductor **Company Seal** Signed
Date: 15/10/97
VERNON SHANE PLANE
PRINT NAME
Signed
WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plaster, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	Date of Signing Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), (1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), (2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), (3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

ART GALLERY OF WESTERN AUSTRALIA ENTERPRISE BARGAINING AGREEMENT 1997.

No. AG 330 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Art Gallery of Western Australia

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

No. AG 330 of 1997.

Art Gallery of Western Australia Enterprise Bargaining Agreement 1997.

7 January 1998.

Order.

HAVING heard Mr G Palmer and with him Mr J Bass on behalf of the applicant and Mr K Maher on behalf of the respondent, now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 and by consent, do hereby order —

THAT this agreement, to be known as the "Art Gallery of Western Australia Enterprise Bargaining Agreement 1997" shall be and is hereby registered with effect on the 12th day of December 1997.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "Art Gallery of Western Australia Enterprise Bargaining Agreement 1997".

2.—ARRANGEMENT

16. Parental Leave
17. Family Carers Leave
18. Ceremonial/Cultural Leave
19. Emergency Service Leave
20. Blood Donors Leave
21. Return to Work During Periods of Approved Absences
22. Long Service Leave
23. Flexi-Time
24. Meal Allowance
25. Union Facilities, Access
26. Consultative Process
27. Employees Covered by This Agreement

3.—SCOPE OF THE AGREEMENT

This enterprise bargaining agreement shall apply to employees of the Ministry for Culture & The Arts who are eligible to be members of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and who are located at the Art Gallery of Western Australia in Perth and Geraldton.

4.—PARTIES TO THE AGREEMENT

(1) Employer

Director General of the Ministry for Culture & The Arts.

(2) Union

The Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

5.—DEFINITIONS

"Agreement": Art Gallery of Western Australia Enterprise Bargaining Agreement 1997.

"Award": Cultural Centre Award 1987.

"Business Unit": a discrete group within the Gallery which provides defined services and products

for internal customers on a "user choice" and/or "user pays" basis, and for external customers, only on the basis of full costs based on accrual accounting.

"Gallery": Art Gallery of Western Australia.

"Employee": for the purpose of this Agreement, someone who is referred to at Clause 3—

Scope of the Agreement.

"Employer": Ministry for Culture and The Arts.

"Government": State Government of Western Australia.

"Minister": Minister for the Arts.

"Union": The Australian Liquor Hospitality and Miscellaneous Workers

Union, Miscellaneous Workers Division, Western Australian Branch.

"WAIRC": Western Australian Industrial Relations Commission.

"Annual or

Short-Term Leave": Annual and short-term leave means any period of annual or other leave not exceeding 20 days.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) Except as herein provided, this Agreement shall have effect as from (date of registration) for a period of 24 months.

(2) The parties will review this Agreement three months prior to the expiration of this Agreement to commence negotiations for a new Agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this Agreement.

(4) The pay quantum achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement, except where the award rate is higher in which case the award shall apply.

(5) The Agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the Agreement by notification in writing to the other party and to the WAIRC.

(6) This Agreement may be, with consent of the parties, varied, renewed or cancelled as appropriate.

(7) The parties agree that the benefits derived from the initiatives introduced during the term of this Agreement will form the basis of further discussions in accordance with subclause (2) of this clause, and improvements to the terms and conditions of future Agreements.

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.

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

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This Agreement shall be read in conjunction with the Cultural Centre Award 1987 which applies to the parties bound to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of the inconsistencies.

9.—SINGLE BARGAINING UNIT

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

(2) The SBU comprises representatives from the Gallery and the Union.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are—

(1) To achieve the Gallery's mission and increase productivity and efficiency through continuous improvement.

(2) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(3) To promote the development of trust and motivation and to continue to foster enhanced employee relations.

(4) To facilitate greater flexibility in decision making and allocation of human and other resources.

(5) To promote increased satisfaction from jobs and secure employment opportunities.

(6) To develop and pursue changes on a co-operative continuing basis by using participative practices.

(7) To promote health, safety, welfare and equal opportunity for all employees.

12.—PRODUCTIVITY IMPROVEMENT

(1) Objectives of Performance Improvement

(a) Gallery Mission

The mission of the Gallery is to develop and present the best public art collection in the State and the pre-eminent collection of Western Australian art, and to increase the knowledge and appreciation of the art of the world for the enjoyment and cultural enrichment of the people of Western Australia.

(b) Gallery Objectives

(i) Collection

- develop and present the best public art collection in the State.
- acquire, preserve, display and promote the visual arts from the past and the present.

- emphasise the heritage of Western Australian art and Aboriginal art.

(ii) Exhibitions

- broaden the knowledge of Western Australians by providing opportunities to the public to view works which would otherwise not be available.
- provide a program of significant exhibitions and initiate and manage exhibitions of national and international stature.
- achieve national and international recognition for the Gallery's exhibitions and public programs.
- inform the local arts community and the general public about contemporary developments elsewhere through the Gallery's collection and exhibitions programs.

(iii) Access

- maximise community access to the visual arts.
- stimulate local visual arts practice and increase public interest in the visual arts through information, education and public programs.

(iv) Outreach

- provide opportunities for the people throughout the State to participate in art-related activities.

(v) Resources

- achieve the means to deliver the Gallery's program through effective planning, management and development of internal resources.

(2) Strategies and Initiatives Developed to Achieve Objectives

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase efficiency and effectiveness of program and service delivery of the Gallery.

The parties agree to develop and implement productivity improvements by way of—

(a) Customer Service;

(b) Establishment of effective team working through multiskilling and flexible work practices;

(c) Quality Improvement/Continuous Improvement;

The parties agree that increased productivity be achieved through the implementation of agreed quality management concepts, including team based approaches to improve productivity.

(3) The strategies and initiatives introduced over the life of the Agreement will impact significantly on the work practices, customer service and employee satisfaction.

(a) Introduction of Team Working—General Principles

(i) Benefits of Team Working

Teams provide significantly greater operational efficiencies through the breaking down of sectional and divisional boundaries.

Teams facilitate—

- increased morale of workforce through empowerment, spreading of responsibilities (involving people end to end on process and process outcomes);
- increased employee identification with the organisation as employees become more aware of, and involved in, organisational strategy issues and outcomes.

Teams allow for a reduction of the number of discrete steps, and number of separate person interfaces, in any process leading to lower error rates and minimisation of work.

Teams foster much improved vertical and lateral communication flows.

Teams promote a more democratic management style.

Teams provide for a stronger focus, enabling more effective delivery of planned outcomes via better utilisation of resources.

(ii) Team Working Philosophy

The following statements represent the beliefs which establish the parameters and principles for this Enterprise Bargaining Agreement.

- Team based structures represent the most efficient and effective way of working within the Gallery. Teams focus attention on outputs and outcomes. The Gallery's team development will be encouraged.
- Flexibility in the way work is organised and undertaken is paramount to achieving high quality service delivery and outcomes. Work practices will be continually reviewed in the light of program outcomes in consultation with all participants.
- Job training and skills development, quality of work life and a culture of innovation and continuous improvement will be supported by the Gallery and continually addressed by staff. Emphasis will be given to work flexibility through multiskilling and multifunctionality, supported by appropriate training and professional development.
- Teams need to be able to plan within an overall program to provide a consistent basis for delivery of team outcomes and the whole of Gallery programs. Changing priorities and programs must be supported by both a reasonable level of team flexibility and a considered and timely approach by management to reordering of priorities.

(iii) Team Structure

In pursuit of the objectives outlined in this Agreement, the Gallery is committed to the development of a team based structure. The Gallery expects and will facilitate the involvement of all its employees in the development of work teams with a focus on quality client service and continuous improvement processes which contribute to the achievement of mandate and mission through program and organisational objectives.

For employees, this means becoming involved in the implementation of the Gallery's operational plan, developing open communication with team leaders and team members, and accepting personal responsibility for their own and their team's performance. Team leaders will have a particular accountability for achievement of team objectives, supported by team performance Agreements.

(iv) Team Characteristics

An effective team has the following characteristics—

- The team is committed to achieving the highest standard of service delivery to clients, be they internal or external clients.
- Outcome focused.

Team members will treat each other with courtesy, consideration and respect, and will strive to practice the following work behaviours—

- act with honesty and integrity;

- maintain a flexible, achievement focussed outlook;
- make consultative decisions;
- strive to be the best through continuous improvement;
- encourage innovation and creativity;
- accept shared accountability for achievement of objectives;
- exhibit team pride;
- deal with official information responsibly and appropriately;
- take responsibility for skills and professional development and maintenance which contribute to operational needs.
- Take responsibility for effective communication.

Communication is open within the team and across teams. Information is shared and decisions can be challenged and explained in a non-threatening environment.

(v) Production of Work Team Plans

Each team shall be organised to achieve clear objectives and outcomes which contribute to the achievement of program objectives and Gallery's client service goals.

Work teams shall prepare written plans, the major elements of which shall be the work teams' agreed service outputs. Work team plans shall also document—

- identified changes to work practices;
- skill development required by team members and;
- methods for ensuring effective communication both within the work team and with other work teams, and with internal and external clients.

Work team plans will be formally reviewed and outcomes reported as and when required to ensure consistent standards and performance evaluation and outcomes.

(vi) Pilot Programs

- The purpose of this Pilot Program is to reduce the requirement for supervision while maintaining the agreed staffing levels.
- The parties commit to more effective current and future work practices through multiskilling by—
  - providing skilled and semi-skilled carpentry services to allow for the construction of crates, frames, backing boards, exhibition furniture, etc.
  - allowing for routine condition reporting to a standard checklist at the time of receipt and unpacking of crates;
  - routinely ordering and maintaining stock;
  - routinely rostering staff resources to meet operational needs and program delivery requirements.

(b) Introduction of Multifunctionality

The parties commit to undertake training in order to broaden skills, providing greater mobility of staff within the Gallery.

(c) Centenary Galleries Planning and Liaison

The parties commit to service 25% more public display and access space, realising efficiencies to the equivalent of 1 FTE.

(d) Part-Time Flexibility

(i) For the purpose of meeting exhibition schedules, part-time employees may work an aggregate of their part-time hours over an eight week period. For example, a part-time employee normally working 48 hours per fortnight, may work and be paid for 76 hours per fortnight and proportionately reduce his/her normal hours for the remainder of the eight week period.

(ii) Unless extra hours are worked, part-time employees will continue to receive their normal part-time salary on a fortnightly basis.

(iii) By agreement within the Team process, and in order to meet schedules, part-time employees may extend their hours within the range of normal full-time hours without incurring overtime, up to a maximum of 8 hours per day in any day. However, any hours worked in excess of 8 hours per day will attract overtime penatlies.

(iv) In order to meet schedules, and subject to subclause (v) hereof, full-time employees commit to accruing RDOs which will be taken during off-peak periods.

(v) No more than five RDOs can be accrued.

(4) Future Issues For Negotiations

During the life of this Agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity. The parties agree that these issues will form the basis of future Agreements.

Full value of initiatives will be recorded and may form the basis for negotiations of future wage increases.

13—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Gallery to management, employees and other relevant stakeholders.

(2) The parties agree to assess organisational performance according to the extent to which the objectives of the Gallery are achieved. The parties agree that performance indicators have a primary role to assist in the attainment of corporate goals in the interests of clients, employees, the Gallery and the government on behalf of the community;

(3) A performance measurement system will be developed to measure the initiatives contained in Clause 12.—Productivity Improvement of this Agreement.

(4) The Gallery's levels of performance shall be measured against key performance indicators, to be developed in consultation with staff within three months of registration of this Agreement.

(5) It is agreed that the employees' understanding of productivity measurement concepts is vital to for performance monitoring arrangements to be successful on an ongoing basis.

(6) The performance measurement system will be used to calculate the value of productivity improvements in the Gallery listed in Clause 12.—Productivity Improvement of this Agreement for salary increases outlined in Clause 14.—Salary Increases of this Agreement.

14.—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation and continued co-operation of those improvements in productivity and/or work practice changes outlined in Clause 12.—Productivity Improvement of this Agreement.

(2) The following increases will be payable during the life of this Agreement—

(a) an increase of 5% from pay period on or after (date of registration) and in accordance with sublause (1) of this clause.

(b) a further increase of 2% twelve (12) months from the payment at paragraph (a) of this subclause and in accordance with sublause (1) of this clause.

15.—DISPUTE SETTLEMENT PROCEDURE

This dispute settlement procedure will apply to any question, dispute or difficulty that arises under this Agreement.

(1) The Union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a Union representative.

(2) If the matter is not resolved within 5 working days following the discussion in accordance with subclause (1) hereof the matter shall be referred by the Union representative or employee to the Gallery Chief Executive Officer or his/her nominee for resolution.

(3) If the matter is not resolved within 5 working days of the Union representative's or employee's notification of the dispute to the Gallery CEO, it may be referred by either party to the WAIRC.

16.—PARENTAL LEAVE

(1) Definition

(a) "Employee" includes full time, part time, permanent and fixed term contract employees.

(b) "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

(2) Eligibility for unpaid 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/partner.

(b) Where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

(c) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks from the date of adoption.

(d) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examinations 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.

(e) Subject to subclause (b) of this clause where both partners are employed by the Gallery the leave shall not be taken concurrently except under special circumstances and with the approval of the Chief Executive Officer.

(3) 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 part of the period of parental leave or extend the period of parental leave with such leave.

(b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the Chief Executive Officer's approval.

(c) An employee on parental leave is not entitled to paid sick leave and other paid award absences.

(d) 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.

(e) 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.

(f) Accrual of all leave entitlements shall be suspended during periods of Parental Leave.

(4) Notice and Variation

(a) The employee shall give not less than ten week's notice in writing to the Gallery of the date the employee proposes to commence maternity leave stating the period of leave to be taken.

(b) An employee proceeding on parental leave may, subject to CEO approval, elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(5) Transfer to 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 of the same classification until the commencement of maternity leave

(b) Where the employer is unable to provide a safe job with the organisation, or modify work to the extent required to provide safe employment, with the consent of the employee, and where practicable, the employee may be transferred to another agency until the commencement of parental leave.

(c) Where an external transfer is arranged, the work undertaken by the employee shall be at the same classification and within the employee's competence.

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

(6) Replacement Employee

Prior to engaging a replacement employee the Gallery 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.

(7) Return to Work

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

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

(c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant award and subject to CEO's approval.

(d) Where the position occupied by the employee no longer exists or is unavailable the employee shall be entitled to a position of the same classification level within the officer's skills and competence.

(e) For the purposes of paragraph (d) of this subclause, the employer shall act in accord with the Public Sector Management Act, regulations and standards and shall notify the employee and the Union of an impending decision to transfer another employee into a position where the substantive occupant is on a period of parental leave.

(8) Effect of Leave on Employment Contract

(a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken

into account in calculating the period of service for leave accrual purpose under the relevant award or this Agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

17.—FAMILY CARERS LEAVE

(1) Employees covered by this Agreement may with management approval use a maximum of five (5) days sick leave entitlement in any calendar year in accordance with this clause to provide care for another person subject to—

(a) the employee maintaining a minimum of ten (10) days accrued or pro rata sick leave for their own use during the calendar year;

(b) The employee being responsible for the care of the person concerned; and

(c) The person concerned being either—

(i) a member of the employee's immediate family; or

(ii) a person residing at the employee's residence for a period of no less than six months.

(d) The term "immediate family" includes ;

(i) a spouse or a de facto spouse of the employee. A de facto spouse, in relation to a person, means a 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

(ii) 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.

(e) Production of satisfactory evidence of illness of the other person.

(2) 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 as soon as possible on the first day of absence.

(3) Leave taken under this provision is deemed to be Sick Leave.

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

18.—CEREMONIAL/CULTURAL LEAVE

(1) Subject to organisational requirements, an employee covered by this Agreement is entitled to apply for leave for tribal/ ceremonial/ cultural purposes.

(2) Such leave shall include leave to meet the employee's customs, traditional law and to participate in ceremonial/cultural activities.

(3) Each day or part thereof, taken in accordance with subclause (1) of this clause may be deducted from short leave, annual leave or flexi-leave entitlements.

(4) Time off without pay may be granted by Agreement between the employer and the employee for tribal/ceremonial/ cultural purposes.

(5) Ceremonial/cultural leave shall be available, but not limited to Aboriginals and Torres Strait Islanders.

19.—EMERGENCY SERVICE LEAVE

Emergency Service Leave of absence shall be granted by the employer to an officer who is an active volunteer member of either the Western Australian State Emergency Service, Western Australian Volunteer Bush Fire Brigade or St John Ambulance Brigade, in order to allow for attendances at emergencies as declared by the recognised authority.

(1) The employer shall be advised as soon as possible by the employee, the emergency service, or such other person as to the absence and, where possible, the expected duration of the absence.

(2) The employee must complete a leave of absence form immediately upon return to work.

(3) The application form must be accompanied by a certificate from the emergency organisation certifying that the officer was required for the specified period.

(4) An employee, who during the course of an emergency, volunteers their services to an emergency organisation, shall comply with subclauses (1), (2) and (3) of this clause.

20.—BLOOD DONORS LEAVE

(1) New and Regular Donors

(a) Employees shall be entitled to two (2) hours per quarter year of paid leave for the purpose of donating blood to the Red Cross Blood Centre where—

(i) prior arrangement with the Supervisor has been made, and

(ii) at least two (2) days' notice has been provided.

(2) Plasma Donors

(a) Employees who are plasma donors shall be entitled to two (2) hours per month of paid leave for the purpose of donating blood product where—

(i) prior arrangement with the Supervisor has been made, by giving at least two (2) days' notice, or

(ii) the employee is called upon by the Blood Centre.

(b) The notification period shall be waived or reduced where the Supervisor is satisfied that operations would not be unduly affected by the employee's absence.

(3) The employee shall be required to provide proof of attendance at the Blood Centre upon return to work.

(4) Other Donor Requirements

(a) The employer may grant an employee access to sick leave for the purpose of donating other tissue, such as bone marrow or a kidney. Each application for leave of this type shall be with compassion and in the strictest confidence.

(b) Access to leave under this subclause shall be in accordance with the normal provision of sick leave.

21 . -RETURN TO WORK DURING PERIODS OF APPROVED ABSENCES

(1) Employees who are or have been absent from the workplace other than on secondment for a period in excess of three (3) months, whether on leave without pay or parental leave, may by mutual Agreement return to work in order to meet organisational needs.

(2) Subject to Agreement between the parties regarding return to work, the employee shall be paid at casual rates for the period of recall.

22.—LONG SERVICE LEAVE

An employee covered by this Agreement is entitled to apply for long service leave in periods of not less than one week, providing that a minimum of four concutive weeks is preserved and taken during the clearance of this leave.

23.—FLEXI-TIME

The parties commit to the implementation of a feasibility study to examine the potential for full introduction of flexi-time, with a view to inclusion either before or during the development of the next Enterprise Bargaining Agreement. Any administrative efficiencies arising from the successful implementation of flexi-leave prior to the developemnt of the next Agreement will be captured for the purpose of the next Enterprise Bargaining Agreement.

24.—MEAL ALLOWANCE

Where an officer has completed a period of approved overtime and has qualified for the payment of a meal allowance, such allowance shall be paid through the normal payroll processing procedures of the Gallery.

Any such payments shall be identified through appropriate payroll codes.

25.—UNION FACILITIES, ACCESS

The Gallery will provide access and access to facilities for union business as provided for by the Circular to Departments and Agencies No.13 of 1992, titled Facilities Agreement For Union Workplace Representatives, for the duration of the Agreement.

26.—CONSULTATIVE PROCESS

The parties are committed to working together to improve the business performance and working environment of the Gallery.

Consultation in the context of this Agreement is defined as information sharing and discussion on significant matters relevant to organisational change processes of the Gallery and conditions of service, and shall be conducted in such a way as to enable the parties to contribute to the decision-making process.

It is agreed that consultation with employees and the union party to this Agreement on proposed significant changes to work organisation shall occur prior to change being made or implemented.

Where the Gallery proposes to make any changes likely to affect existing work practices, working conditions or employment prospects of employees, the union and the staff affected shall be notified by the Gallery as early as possible.

It is acknowledged by the parties to this Agreement that decisions will continue to be made by the Gallery, which is responsible and accountable to government through statute for the efficient and effective operation of its business.

As part of this Agreement, the Gallery agrees to establish processes which will facilitate employee involvement.

The process will be at two levels—

- At the workplace level employees will be involved in contributing to improve the efficiency and effectiveness of their work teams within set policies and guidelines.
- At the strategic and corporate level, the parties agree to establish a peak consultative forum to monitor, review and have input into the progress of the implementation of this Enterprise Bargaining Agreement and to actively share information and consult on corporate issues affecting the Gallery's business operations.

The parties to the peak consultative forum will consist of, but not be limited to, senior management, a union official and an employee representative from the Union.

27.—EMPLOYEES COVERED BY THIS AGREEMENT

As at the date of registration the approximate number of employees bound by this Agreement is eight (8).

BERRIVALE ORCHARDS LTD ENTERPRISE AGREEMENT 1997.

No. AG 274 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Berrivale Orchards Ltd

and

The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, WA Branch.

No. AG 274 of 1997.

Berrivale Orchards Ltd Enterprise Agreement 1997

CHIEF COMMISSIONER W.S. COLEMAN.

13 January 1998.

Order.

HAVING heard Mr M. Beros of the Applicant and Mr T. Kucera 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 Berrivale Orchards Ltd Enterprise Agreement 1997 be registered in accordance with the following Schedule and such variation shall have effect from the beginning of the first pay period commencing on or after the 2nd day of June 1997.

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

Schedule.

1.—TITLE

This Agreement shall be known as the 'Berrivale Orchards Ltd Enterprise Agreement 1997'.

2.—ARRANGEMENT

3.—APPLICATION

This Agreement shall apply to approximately 50 employees of Berrivale Orchards Ltd ("the employer") at 7 Ledgar Road, Balcatta, Western Australia engaged in classifications contained in Clause 7.—Classification.

4.—PARTIES BOUND

The parties to this Agreement are—

(1) Berrivale Orchards Ltd, 7 Ledgar Road, Balcatta, Western Australia, 6021.

(2) The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, WA Branch, 61 Thomas Street, Subiaco, Western Australia, 6008.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the beginning of the first pay period commencing on or after 2 June 1997 and shall remain in force until 1 June 1998.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the *Aerated Water and Cordial Manufacturing Industry Award, 1975* provided that where there is inconsistency this Agreement shall prevail.

7.—CLASSIFICATION

(1) There will be a four (4) level classification career path applying to employees covered by this Agreement. This is detailed in Schedule A.

(2) Employees shall be required to perform all duties in which they have been trained and are competent including, where applicable those of lower level classifications.

(3) Employees shall be given every available option to progress through the career structure, subject to the following conditions—

(a) The rate of pay for a particular employee while performing higher duties as part of training equates to his/her lower substantive classification.

(b) Higher duties shall be paid where an employee relieves a higher classification.

8.—PRODUCTIVITY IMPROVEMENT

(1) The key aim of all Berrivale Orchards Ltd employees is to continuously improve the standard line rate available within the existing technology.

(2) Employees agree to participate in work groups to assist in developing and implementing measures designed to improve productivity.

9.—PAY IN LIEU OF TAKING ROSTERED DAYS OFF

(1) Employees may chose to receive pay in lieu of RDO's.

(2) Employees may only "bank" up to 10 rostered days.

10.—PUBLIC HOLIDAY PAY DAY

Where a public holiday coincides with the day on which pays are processed, then the pay day for that week shall be delayed by one day.

11.—FLEXIBLE WORKING HOURS

Employees commit to keeping the lines running as efficiently as possible at all times.

To assist this, the hours of work including start/finish times and breaks may be varied by mutual agreement between the supervisor and the employee, which may be at short notice.

As per existing practice, the Ordinary Hours for non shift workers vary by department and are as follows—

- mixing area/laboratory/despatch—5.00am to 6.00pm
- all other production areas—6.00am to 6.00pm

12.—WEARING OF COMPANY CLOTHING

All clothing provided to employees by the company as part of a uniform or for health and safety reasons, including hair nets, shall be worn at all times.

13.—DISPUTES RESOLUTION

(1) 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.

(2) The terms of any agreed settlement should be jointly recorded.

(3) Any settlement reached which is contrary to the terms of this 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 the Australian Liquor, Hospitality & Miscellaneous Workers' Union from representing its members.

(5) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission. Provided that with effect from 22 November 1997 it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

14.—RATES OF PAY

(1) Subject to ratification of this Agreement by the Western Australian Industrial Relations Commission, employees shall receive a four (4) percent pay increase.

(2) The rates of pay shall be as follows—

	Current	Upon Ratification
	$	$
Level I	10.9803/hour	11.4195/hour
	417.25/week	433.94/week
Level II	11.4466/hour	11.9045/hour
	434.97/week	452.37/week
Level III	11.7229/hour	12.1918/hour
	445.47/week	463.29/week
Level IV	11.8653/hour	12.3399/hour
	450.88/week	468.92/week

(3) In addition to the above rates, an employee who has been designated by the company as a—

(a) charge hand shall receive an additional fifteen (15) per cent of the highest level paid with in their department (excluding leading hand allowances).

(b) leading hands shall receive level IV plus leading hand allowance, as per the Award.

15.—NO EXTRA CLAIMS

There shall be no extra claims for the life of this agreement.

SCHEDULE A

SKILL LEVEL DESCRIPTIONS

Level I

Performing at least one of the following functions—

- stacking cartons;
- feed bottles;
- cleaner.

Level II

- forklift driving;
- order picking;
- portion pack filler operator;
- cask filler operator.

Level III

- filler operator;
- labeller operator (carb line);
- receiving staff.

Level IV

- mixers;
- despatch clerk;
- filler operator (carb line).

SCHEDULE B

SIGNATORIES

signed

..... 6/10/97

For and on behalf of: Date

Berrivale Orchards Limited

This common seal of the Australia Liquor, Hospitality & Miscellaneous Workers' Union, Miscellaneous Workers Division, WA Branch.

signed

..... 6/10/97

Date

BHP IRON ORE ENTERPRISE BARGAINING AGREEMENT 1997.
No. AG 333 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

BHP Iron Ore Pty Ltd

and

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and Others.

No. AG 333 of 1997.

BHP Iron Ore Enterprise Bargaining Agreement 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

13 January 1998.

Order.

HAVING heard Mr Wheeler and with him Mr Miller on behalf of the Applicant and Ms R. McGinty on behalf of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch, Mr R. Keilty on behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch, Mr D. Bartlam on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr C. McCulloch on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, and Engineering and Electrical Division, WA Branch and Mr J. Mossenton on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australia Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the BHP Iron Ore Enterprise Bargaining Agreement 1997 be registered in accordance with the following Schedule and shall have effect from the beginning of the first pay period commencing on or after the 4th day of December 1997.

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

Schedule.

1.—SUMMARY OF AGREEMENT

On 15 September 1997, the parties to this Agreement began negotiations that have concluded with this Agreement. As with previous agreements three objectives guided discussions. These three objectives were—

- Cost Efficiency.
- Reliability.
- Flexibility.

This Agreement, with a term of two years incorporates the following—

- A commitment to the Industrial Relations Agreement (Revised 1997) and the Programme to Maintain Good Industrial Relations (Revised 1997) to maintain Continuity of Operations.
- Changes to the Ongoing Change Agreement.
- A commitment to Continuous Improvement.
- Improvements in the employment benefits available to employees.

The union parties to this Agreement have formed a Single Bargaining Unit. The Single Bargaining Unit has concluded negotiations with the Company. Combined mass meetings have occurred at each site. The majority of employees across the three sites have agreed to the proposed changes. This document details the agreed changes.

This Agreement covers approximately 800 employees at Newman, 600 employees at Nelson Point and 200 employees at Finucane Island.

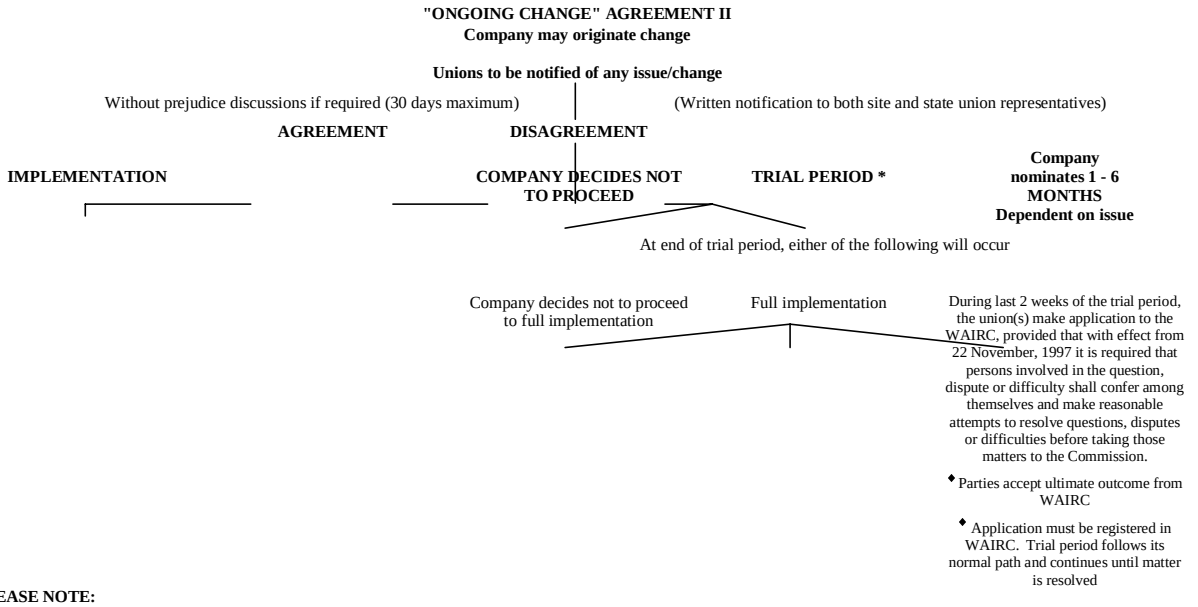
2.—CONTINUITY OF OPERATIONS

The parties acknowledge the need for BHP Iron Ore Pty Ltd (BHP Iron Ore) to be a reliable producer and supplier of quality iron ore.

Further to this the parties acknowledge that market pressures from direct competitors in the area of reliability means that industrial action diminishes BHP Iron Ore's credibility in the world market.

To address this issue the parties have renewed their commitment in the form of the Industrial Relations Agreement (Revised 1997) and the Programme to Maintain Good Industrial Relations (Revised 1997).

It is a condition of employment for every employee of BHP Iron Ore employed at the Mount Newman Joint Venture will comply with the terms of the Industrial Relations Agreement (Revised 1997).



PLEASE NOTE:

1. Does not allow contracting out of the award
2. Not used for:
   a) Manning changes that involve forced redundancies
   b) Individual performance/discipline
   c) Role of convenors, industrial time, union meetings
   d) Transfers from 12 hour shiftwork to 8 hour days #

***** Employees displaced during a trial period will be found other duties.

The parties acknowledge the ability for transfers from shiftwork to daywork exist under the award.

It is a condition of employment for every employee of BHP Iron Ore employed at the Mount Goldsworthy Mining Associates Joint Venture will comply with the Programme to Maintain Good Industrial Relations (Revised 1997).

3.—ONGOING CHANGE AGREEMENT II

The parties to this Agreement agree that ongoing change to improve business efficiencies has to be implemented for BHP Iron Ore to remain competitive in the Iron Ore Industry. The procedure set out over the page is an improved version of the original Ongoing Change Agreement contained within Enterprise Bargaining Agreement II.

The procedure is designed to ensure timely introduction of change to allow BHP Iron Ore the ability to compete on an equal basis.

4.—CONTINUOUS IMPROVEMENT

The parties to this Agreement recognise and accept the need for every employee to contribute to BHP Iron Ore by continuously improving its processes and methods of working to remain competitive.

This means that the parties will continue with improvements and commitments made under previous agreements such as Stage I and II Restructuring and also Enterprise Agreements I and II.

It also means that the parties are committed to recognising, adapting and implementing best practice wherever practical to ensure that BHP Iron Ore can compete in the areas of

a) Reliability.
b) Quality Performance.
c) Cost Competitiveness.

One of the ways that BHP Iron Ore will achieve these objectives is to institute processes, systems or structures at a workgroup level to allow discussion and resolution of business issues. This focus may take into account the following—

a) Exploration of opportunities to improve efficiency within the workgroup.
b) Identification of performance levels against Key Performance Indicators.
c) Examination of means of achieving and monitoring these performance levels.
d) Implementing changes in accordance with the SELL (**S**afe **E**fficient **L**egal **L**ogical) principle.

BHP Iron Ore will benefit from improved performance due to employee involvement in continuous improvement (eg reducing costs, improving reliability and enhancing quality).

This will allow employees to benefit from greater involvement in determining workplace practices, increased job satisfaction and increased employment security.

5.—SPECIAL LEAVE

The following shall apply in place of clauses 27 (2) and 27 (3) of the Iron Ore Production and Processing (Mt Newman Mining Co Pty Limited) Award No A 29 of 1984 ("the Award") and subclause 2.3 of the BHP Iron Ore Enterprise Bargaining Agreement of 1995.

"(2) An employee is entitled to special leave without loss of pay for not more than 40 hours in any anniversary year of employment in the following circumstances—

(a) Where an employee's spouse or child leaves the site
  (i) on the recommendation of a medical practitioner or the sister in charge of medical services,
  (ii) for the purpose of obtaining specialist medical treatment
  (iii) and the employee is, as a consequence, unable to attend work,
(b) Where,
  (i) in the event of the illness of or accident to an employee's spouse or a single parent employee's child
  (ii) it is necessary for the employee to be absent from work for the purpose of caring for the employee's spouse or child on site,

the employee is entitled to a maximum of two days or two shifts special leave without loss of pay. In addition an employee is entitled to use any accrued sick leave up to a total of 24 hours for day workers and 16 hours for shift workers.

(c) In any event the amount of special leave and sick leave in (a) and (b) shall not exceed a combined total of 40 hours in any anniversary year.
(d) If additional leave is required, the employee should apply for either annual leave or unpaid special leave (subject to the usual conditions for approval).

(3) Before becoming entitled to payment under subclause (2) the employee shall produce proof satisfactory to his/her employer of the necessity for his/her absence from work."

6.—ANNUAL LEAVE

Employees may take up to 10 days of annual leave as single days or in periods of less than one week. This shall be subject to the following —

6.1 The employee has requested the leave in advance by a minimum of 48 hours.
6.2 Approval shall be at the supervisors discretion based on operational requirements.
6.3 This leave will be taken into account in determining the maximum number of employees allowed on leave at any one time.

7.—ANNUAL LEAVE TRAVEL ASSISTANCE

An employee's spouse and children may claim travel assistance independently of the employee. The employee's spouse and children's travel must be taken together. For single parent's, children's travel must be taken together but can be independent from the employee.

Existing requirements for Annual Leave travel assistance declarations still apply when an employee's spouse or children travel independently.

The entitlement to annual leave travel assistance is non-cumulative and employee or dependent travel assistance not taken in any year of service will be forfeited.

8.—SUPERANNUATION

8.1 It is agreed that the preferred in house superannuation fund for BHP Iron Ore employees will be the BHP Iron Ore Employees' Provident Fund.

8.2 Company contributions to the BHP Iron Ore Employees' Provident Fund will increase by 1% (to 9%) from the first pay period on or after 25 November 1998.

8.3 Notwithstanding subclause 8.2, the parties agree that prior to 25 November 1998 a review of Company operational performance will occur and provided that the Company is satisfied with the outcome of that review the parties will determine whether this increase will be paid as

8.3.1 An increase of 1% in Company contributions to the BHP Iron Ore Employees' Provident Fund; or
8.3.2 An increase of 1% to the aggregate wage rates in clause 9.—Salary Arrangements.

9.—SALARY ARRANGEMENTS

Part I—FIRST 5 % INCREASE

	Days	4 Panel	0.25 4 Panel	0.5 4 Panel	2 Panel (42) Newman
AWU					
1	39,192	51,749	53,316	54,885	51,100
2	43,491	57,414	59,186	60,959	56,767
3	44,269	58,439	60,247	62,058	57,803
4	46,417	61,271	63,182	65,094	60,625
TWU					
S1	38,598			54,045	50,318
S2	41,472			58,105	54,104
S3	43,346			60,755	56,576
LVS1	41,159			57,663	53,693
PROD WORKER					
1	39,192			54,885	51,100
2	43,491			60,959	56,767
3	44,269			62,058	57,803
4	46,417			65,094	60,625

	Days	4 Panel	0.25 4 Panel	0.5 4 Panel	2 Panel (42) Newman
CMETU CRANES					
1	43,681		59,446	61,229	57,017
2	44,238		60,206	62,014	57,752
3	44,984		61,227	63,069	58,736
4	46,654		63,506	65,428	60,936

CMETU

LOCOMOTIVE ENGINEPERSONS

	Hedland	Newman	Finucane
Level 1	28,386		35,575
Level 2	53,096		48,965
Level 3	65,158		59,993
Level 4	77,363	76,245	71,806
Level 5	93,541	92,423	86,773

Part I—FIRST 5 % INCREASE

	Days	4 Panel	0.25 4 Panel	0.5 4 Panel	2 Panel (42) Newman
AFMEU					
1	39,192		53,316	54,885	51,100
2	43,491		59,186	60,959	56,767
3	44,269		60,247	62,058	57,803
4	45,395		61,784	63,649	59,275
5	47,147		64,178	66,125	61,585
6	48,908		66,583	68,612	63,905
7	50,660		68,977	71,090	66,216
8	52,421		71,380	73,579	68,536
CEPU					
1	37,630		51,183	52,676	49,042
2	39,391		53,587	55,164	51,363
3	42,907		58,388	60,134	55,997
4	45,395		61,784	63,649	59,275
5	47,147		64,178	66,125	61,585
6	48,908		66,583	68,612	63,905
7	50,660		68,977	71,090	66,216
8	52,421		71,380	73,579	68,536
9	54,181		73,785	76,065	70,856
Building Maint Tradespersons					
4	45,395				
5	47,147				
6	48,908				
Apprentices					
1	21,070		30,666	31,707	28,971
2	26,334		37,799	39,102	35,837
3	33,351		47,305	48,964	44,989
4	39,872		55,070	56,906	52,577

For Payment purposes fortnightly figures will be to two decimal places.

The aggregate wage will be paid in equal fortnightly payments and will only be varied on a fortnightly basis by —

a) payment of overtime at the rate applicable to each level.

b) payment of allowances not included within the aggregate wage.

c) deduction of unauthorised absences or unpaid leave at the rate applicable to each level for the period of such absences.

Part I—FIRST 5 % INCREASE

Award Allowances

(Not Included in Aggregate Wage)

Allowance	Amount	
Meal Provisions	8.20	or voucher
NACA—Mine	0.18	per hour
NACA Loadout tunnels	0.11	per hour
SMR	0.40	per hour
House Drains—septics	4.60	per day
EPCO sewerage tank	4.60	per day
HIAB certificate	3.80	per week
HIAB Motor Vehicle	10.00	per week
Plumbers registration	17.70	per week
Electrical SECWA “B” licence	16.30	per week
Electrical Dual Licence	16.30	per week
Electrical Restricted Licence	7.60	per week
Concentrator	0.34	per hour
Shift Tradesperson	15.30	per week
Unsupervised tradesperson	11.40	per week
Construction Allowance	4.90	per week
Rigger / Scaffolder	7.10	per week
Rigger / Certified Scaffolder	13.40	per week
Height Money	1.90	per day
Leading Hand 2—5	33.00	per week
Leading Hand > 5	40.80	per week
Driver Coordinator	4,247.90	per annum
Jimblebar Junction	2,792.50	per annum

Part II—SECOND 4% INCREASE

	Days	4 Panel	0.25 4 Panel	0.5 4 Panel	2 Panel (42) Newman
AWU					
1	40,760	53,819	55,449	57,080	53,144
2	45,231	59,711	61,553	63,397	59,038
3	46,040	60,777	62,657	64,540	60,115
4	48,274	63,722	65,709	67,698	63,050
TWU					
S1	40,142			56,207	52,331
S2	43,131			60,429	56,268
S3	45,080			63,185	58,839
LVS1	42,805			59,970	55,841
PROD WORKER					
1	40,760			57,080	53,144
2	45,231			63,397	59,038
3	46,040			64,540	60,115
4	48,274			67,698	63,050
CMETU CRANES					
1	45,428		61,824	63,678	59,298
2	46,008		62,614	64,495	60,062
3	46,783		63,676	65,592	61,085
4	48,520		66,046	68,045	63,373

CMETU

LOCOMOTIVE ENGINEPERSONS

	Hedland	Newman	Finucane
Level 1	29,521		36,998
Level 2	55,220		50,924
Level 3	67,764		62,393
Level 4	80,458	79,295	74,678
Level 5	97,283	96,120	90,244

Part II—SECOND 4% INCREASE

	Days	4 Panel	0.25 4 Panel	0.5 4 Panel	2 Panel (42) Newman
AFMEU					
1	40,760		55,449	57,080	53,144
2	45,231		61,553	63,397	59,038
3	46,040		62,657	64,540	60,115
4	47,211		64,255	66,195	61,646
5	49,033		66,745	68,770	64,048
6	50,864		69,246	71,356	66,461
7	52,686		71,736	73,934	68,865
8	54,518		74,235	76,522	71,277
CEPU					
1	39,135		53,230	54,783	51,004
2	40,967		55,730	57,371	53,418
3	44,623		60,724	62,539	58,237
4	47,211		64,255	66,195	61,646
5	49,033		66,745	68,770	64,048
6	50,864		69,246	71,356	66,461
7	52,686		71,736	73,934	68,865
8	54,518		74,235	76,522	71,277
9	56,348		76,736	79,108	73,690
Building Maint Tradespersons					
4	47,211				
5	49,033				
6	50,864				
Apprentices					
1	21,913		31,893	32,975	30,130
2	27,387		39,311	40,666	37,270
3	34,685		49,197	50,923	46,789
4	41,467		57,273	59,182	54,680

For Payment purposes fortnightly figures will be to two decimal places.

The aggregate wage will be paid in equal fortnightly payments and will only be varied on a fortnightly basis by —

a) payment of overtime at the rate applicable to each level.

b) payment of allowances not included within the aggregate wage.

c) deduction of unauthorised absences or unpaid leave at the rate applicable to each level for the period of such absences.

Part II—SECOND 4% INCREASE

Award Allowances

(Not Included in Aggregate Wage)

Allowance	Amount	
Meal Provisions	8.50	or voucher
NACA—Mine	0.19	per hour
NACA Loadout tunnels	0.11	per hour
SMR	0.42	per hour
House Drains—septics	4.80	per day
EPCO sewerage tank	4.80	per day
HIAB certificate	4.00	per week
HIAB Motor Vehicle	10.40	per week
Plumbers registration	18.40	per week
Electrical SECWA "B" licence	17.00	per week
Electrical Dual Licence	17.00	per week
Electrical Restricted Licence	7.90	per week
Concentrator	0.35	per hour
Shift Tradesperson	15.90	per week
Unsupervised tradesperson	11.90	per week
Construction Allowance	5.10	per week
Rigger / Scaffolder	7.40	per week
Rigger / Certified Scaffolder	13.90	per week
Height Money	2.00	per day
Leading Hand 2—5	34.30	per week
Leading Hand > 5	42.40	per week
Driver Coordinator	4,417.80	per annum
Jimblebar Junction	2,904.20	per annum

10.—TERM, SCOPE AND OPERATION OF AGREEMENT

10.1.—TITLE AND RELATIONSHIP TO AWARD AND ENTERPRISE BARGAINING AGREEMENT

10.1.1 This Agreement shall be known as the BHP Iron Ore Enterprise Bargaining Agreement 1997.

10.1.2 The terms of this Agreement shall, to the extent of any inconsistency, supersede, replace and prevail over the provisions of the Iron Ore Production and Processing (Mt Newman Mining Co Pty Limited) Award No A29 of 1984 (the "Award").

10.1.3 Subject to subclause 10.1.4 below, the terms of—

- the BHP Iron Ore Enterprise Bargaining Agreement of 1995 (No C339/1995);
- the BHP Iron Ore Enterprise Bargaining Agreement of 1993 (No C314/1993); and
- the BHP Iron Ore (Goldsworthy) Enterprise Bargaining Agreement of 1994 (No C228/1994)

shall be binding upon all employees of BHP Iron Ore employed at the Mount Newman Joint Venture and the Mount Goldsworthy Mining Associates Joint Venture as the case may be.

10.1.4 The terms of this Agreement shall, to the extent of any inconsistency, supersede, replace and prevail over the provisions of—

- the BHP Iron Ore Enterprise Bargaining Agreement of 1995 (No C339/1995);
- the BHP Iron Ore Enterprise Bargaining Agreement of 1993 (No C314/1993); and
- the BHP Iron Ore (Goldsworthy) Enterprise Bargaining Agreement of 1994 (No C228/1994)

10.2.—SCOPE AND PARTIES BOUND

This Agreement shall be binding upon all employees employed by BHP Iron Ore Pty Ltd.

10.3.—AGGREGATED WAGES

10.3.1 The wage rates contained in clause 9.—Salary Arrangements, Part I shall be paid from the first pay period on or after 25 November 1997.

10.3.2 The wage rates contained in clause 9.—Salary Arrangements, Part II shall be paid from the first pay period on or after 25 November 1998.

10.4.—MATTERS NOT COVERED BY AGREEMENT

The employees of BHP Iron Ore and the parties to this Agreement accept they are bound by the terms of this Agreement for its duration but acknowledge that changes may be made to the terms to promote the implementation of efficiency measures. Any such efficiency changes will be processed under current arrangements.

10.5.—PROCEDURAL MATTERS

If this Agreement is silent on procedural matters relating to implementing the efficiency measures referred to in this Agreement, then the relevant procedural provisions of the Award shall apply.

10.6.—NO FURTHER CLAIMS

This Agreement incorporates increases up to and including the October 1997 State Wage Case. In accordance with the October 1997 State Wage Case decision there shall be no further wage increases for the life of this Agreement except when consistent with a State Wage Case decision.

10.7.—TERM

This Agreement shall operate from 25 November 1997 for a period of two years.

11.—SIGNATORIES

BHP IRON ORE PTY LTD 200 St Georges Terrace PERTH WA 6000	*signed*
The Australian Workers Union West Australian Branch, Wellington Fair Cnr Moore and Lord Street EAST PERTH WA 6004	*signed*
The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch 1111 Hay Street WEST PERTH WA 6005	*signed* Common Seal Affixed.
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (WA Branch) 102 Beaufort Street PERTH WA 6000	*signed*
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia Engineering and Electrical Division WA Branch 401 Oxford Street MOUNT HAWTHORN WA	*signed*
Transport Workers Union of Australia Suite 302 82 Beaufort Street PERTH WA 6000	*signed*

BUTYNOL FIXERS WA INDUSTRIAL AGREEMENT.
No. AG 296 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Butynol Fixers (WA) Pty Ltd.

No. AG 296 of 1997.

Butynol Fixers WA Industrial Agreement.

COMMISSIONER P. E. SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Butynol Fixers WA Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

WATERPROOFING AND SEALANT AGREEMENT

SCHEDULE.

1.—TITLE

This Agreement will be known as the Butynol Fixers WA Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers (hereinafter referred to as the "Union") and Butynol Fixers (WA) Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be members of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 3 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates. Employees will be paid as Group 1 Builders Labourers.

In addition to the rates prescribed in Appendix A—Wage Rates, employees will be paid an all purpose allowance of $2.50 per hour.

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

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

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Union: **BLPPU**
Signed **Common Seal**
.....
Date: 13/8/97

Signed
.....
WITNESS

The Company **Common Seal**
Butynol Fixers WA
293 Hale Road
WATTLE GROVE WA 6107

Signed
.....
Date: 13/8/97

PAUL CROSSLEY
.....
PRINT NAME

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

— Disputes Procedures
— Occupational Health and Safety Procedures
— Demarcation Procedures
— First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

CPS PAINTING CONTRACTORS INDUSTRIAL AGREEMENT.
No. AG 297 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Anne Leonie Dyer and Frederick Clements Dyer trading as CPS Painting Contractors.

No. AG 297 of 1997.

CPS Painting Contractors Industrial Agreement.

COMMISSIONER P. E. SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 CPS Painting Contractors Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

WAGE AGREEMENT

SCHEDULE

1.—TITLE

This Agreement will be known as the CPS Painting Contractors Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers (hereinafter referred to as the "Union") and Anne Leonie Dyer and Frederick Clements Dyer trading as CPS Painting Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 8 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

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

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C - Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than six tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

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

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—PAYMENT OF WAGES

All wages, allowances and other monies shall be paid in cash or by electronic Funds Transfer. An employee paid by other than cash shall be allowed reasonable time to attend the branch of his or her bank nearest the workplace to draw upon the accounts during working hours.

- Payments shall be made available to the employee not later than the cessation of ordinary hours of work on Thursday of each working week.
- Provided that in any week in which a holiday falls on a Friday wages accrued shall be paid on the previous Wednesday, and provided further that when a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing shall prevent any alternative mutual arrangement between an employer and an employee.
- Where notice is given on termination of employment all monies due to the employee shall be paid at the time of termination..

20.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—
The Unions: **BLPPU**
Signed **Common Seal**
.....
Date: 15/10/97
Signed
.....
WITNESS
The Company:
Signed
.....
Date: 9/10/97
ANNE DYER
.....
PRINT NAME

APPENDIX A—WAGE RATES

	Date of Signing	1 February 1998	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	$	$	$	$	$
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), (1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), (2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), (3.5/3.5)	13.92	14.32	14.73	15.13	15.33

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

NOTE: THE RATES PRESCRIBED IN THIS AGREEMENT APPLY TO PROJECTS COMMENCED ON OR AFTER 1 NOVEMBER 1997 AND WILL NOT BE FURTHER REVIEWED UNTIL 1 NOVEMBER 1997.

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula:

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O.

but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each

year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following:

— Disputes Procedures
— Occupational Health and Safety Procedures
— Demarcation Procedures
— First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

CSR GYPROCK AND BRADFORD WA ENTERPRISE AGREEMENT 1997.
No. AG 285 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CSR Building Materials

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

No. AG 285 of 1997.

CSR Gyprock and Bradford WA Enterprise Agreement 1997.

COMMISSIONER P E SCOTT.

21 January 1998.

Order.

HAVING heard Ms C Natta on behalf of the Applicant and Ms S Ellery on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Ms R McGinty on behalf of the Transport Workers' Union of Australia, Industrial 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 CSR Gyprock and Bradford WA Enterprise Agreement 1997 in the terms of the following schedule be registered on the 2nd day of December 1997.

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

Schedule.

CSR GYPROCK AND BRADFORD WA ENTERPRISE AGREEMENT

1.—TITLE

This Agreement shall be known as the 'CSR Gyprock and Bradford WA Enterprise Agreement, 1997'.

2.—ARRANGEMENT

This Agreement is arranged as follows—

3.—APPLICATION

This Agreement shall apply at the CSR Building Materials WA site, 21 Sheffield Road, Welshpool, WA, in respect of the employees bound by the Building Materials Manufacturers (CSR Limited Welshpool Works) Award 1982 and Transport Workers (General) Award Nº 10 of 1961.

4.—PARTIES BOUND

4.1 The parties to this Agreement are—

- CSR Building Materials, Welshpool, WA (CSR Building Materials WA);
- the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (ALHMWU);
- the Transport Workers Union of Australia, Industrial Union of Workers, Western Australian Branch (TWU); and
- all persons employed by CSR Building Materials WA in its Gyprock and Bradford operations who are members of, or who are eligible to be members of, the ALHMWU and TWU.

4.2 Upon registration of this agreement, it shall cover the employment of 37 persons.

5.—DATE OF OPERATION—REVIEW AND RENEWAL

5.1 This Agreement shall operate from the beginning of the first pay period to commence on or after the 23 July 1997 and shall remain in force until the 23 July 1999. The period being two (2) years.

5.2 The parties will review this Agreement six months prior to the date of expiration as to the renewal or replacement of the Agreement.

5.3 The parties will monitor the progress of the Agreement during the term of the Agreement with the view of improving future Agreements.

5.4 Pay quantums achieved as a result of this Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement.

6.—RELATIONSHIP TO PARENT AWARD

6.1 This Agreement shall be read and interpreted wholly in conjunction with the following Awards—

The Building Materials Manufacture (CSR Ltd—Welshpool Works) Award, 1982. Award No 10 of 1982; and

the Transport Workers (General) Award No. 10 of 1961.

6.2 Where there is any inconsistency between the provisions of this agreement, and the above mentioned awards, the provisions of this agreement shall prevail to the extent of any inconsistency.

7.—DEFINITIONS

"Unions" shall mean the Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and the Transport Workers Union of Australia, industrial Union of Workers, Western Australian Branch.

8.—WAGE FIXING PRINCIPLES

8.1 It is a condition of this Agreement that there shall be no further wage increase for its life except where consistent with a State Wage Case decision.

8.2 The parties to the Agreement shall be bound by the terms of the Agreement for its duration.

8.3 No provisions in this Agreement shall operate to cause any employee a reduction in ordinary time earnings or to cause a departure from the standards of the Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

8.4 The parties to this Agreement shall oppose any applications by other parties to be joined to this Enterprise Agreement.

9.—SINGLE BARGAINING UNIT

9.1 The Organisations of employees covered by this Agreement have, together with CSR Building Materials WA and nominated employee representatives formed a Single Bargaining Unit (SBU).

9.2 The SBU has negotiated and agreed on the terms of this Agreement.

9.3 This Agreement has been presented to employees of CSR Building Materials WA who have endorsed it.

10.—COMMUNICATION AND CONSULTATION

10.1 CSR Building Materials WA and its employees will continue striving to achieve open, effective and regular communication at the workplace.

10.2 To achieve this, the following procedures will apply generally.

Changes at the workplace likely to have significant effects

i. Where CSR Building Materials WA has made a definite decision to introduce major changes in production, organisation, structure, or technology that are likely to have a significant effect upon employees, CSR Building Materials WA shall notify the employees who may be effected by the proposed changes, their union and the Single Bargaining Unit.

ii. Significant effects include termination of employment, major changes in the composition, operation or size of CSR Building Materials WA's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

iii. CSR Building Materials WA shall discuss with the employees affected, their union and the Single Bargaining Unit, the introduction of changes referred to in subclauses (i) and (ii), among other things, the effects the changes are likely to have upon employees, measures to avoid or minimise any adverse effects upon employees and shall give prompt consideration to matters raised by the employees, their union and or the Single Bargaining Unit in relation to the changes.

iv. The discussion shall commence as soon as reasonably practicable after a definite decision has been made by CSR Building Materials WA to make changes referred to in subclauses (i) and (ii).

v. To enable full and frank discussion, CSR Building Materials WA shall provide in writing to the employee/s concerned, their union and the Single Bargaining Unit, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes upon employees and other matters likely to affect employees provided that CSR Building Materials WA shall not be required to disclose confidential information the disclosure of which would be inimical to CSR Building Materials WA's interests.

Communication and Consultation—Generally

10.3 The Single Bargaining Unit shall be responsible for implementing measures appropriate to the workplace to enable information to be shared on a regular basis between management and employees.

10.4 Without limiting the scope of consultation and communication, issues which might be discussed in this context are—

i. CSR Building Materials WA's ongoing vision, objectives and plans;

ii. progress toward meeting corporate and enterprise objectives;

iii. issues affecting performance;

iv. issues affecting employees;

v. achievement of KPI's contained within this agreement;

vi. issues important to the application of this agreement.

10.5 Without limiting the choices of the Single Bargaining Unit, the sorts of communication, consultation strategies which might be appropriate are (for example)—

i. shift toolbox meetings

ii. meetings with supervisors and shift leaders

11.—OBJECTIVES

The parties agree that the CSR Building Materials WA site must continue to achieve real and sustained performance improvement by embracing continuous improvement.

The parties recognise that—

- our aim is to become a strongly competitive manufacturing and distribution operation with continually improving levels of customer service, product quality, plant efficiency and employee satisfaction.
- KPI's will be used to measure, monitor and display progress in selected areas of improvement that will enable us to become the strongly competitive operation that we seek to be.

The parties also recognise that dedicated effort and strong commitment from all concerned is required to achieve the above stated aims.

12.—WAREHOUSE RATIONALISATION

CSR Building Materials will continue to develop the single warehouse concept for Gyprock and Bradford products, thus providing single point of pick up for customers and realising efficiencies in assets and administrative processes.

13.—OCCUPATIONAL HEALTH AND SAFETY

In a climate of strong community emphasis on hazard reduction in the workplace, CSR Building Materials WA is determined to reduce risks or hazards where ever practicable.

This will require the full support of all employees.

This support will require employee involvement in the following activities—

- Safe behaviour Involvement.
- Assist Safety Committee with Safety Audits.
- Participation in the writing and review of Safe Work Practices.
- Reporting of all hazards and incidents via appropriate documentation.
- Support all Site Safety Committee activities.
- Reintroduction and participation in Shift/Communication meetings.
- Providing positive reinforcement.
- Identifying solutions.

14.—EQUAL EMPLOYMENT OPPORTUNITY

The parties to this Agreement are committed to the principles of equal employment opportunity for all employees at CSR Building Materials WA.

15.—CONSULTATIVE MECHANISM FOR THE IMPLEMENTATION OF INITIATIVES

The parties are committed to working together to improve business performance and the working environment at CSR Building Materials WA. Consultation in the context of this Agreement is about sharing and exchanging information to achieve the objectives of this Agreement. Employee involvement is critical to the success at CSR Building Materials WA.

16.—KEY PERFORMANCE INDICATORS (KPI'S)

16.1 The parties agree that the KPI's listed in 16.3 will be monitored and evaluated by the employees with the main focus being on improving performance through measurement and learning.

16.2 It is recognised that appropriate training must be provided to employees in order to achieve the agreed targets. All parties are committed to supporting this process by providing the necessary resources.

16.3 Key Performance Indicator Targets

Key Performance Indicator	Unit of Measure	Year to Date June 1997	Target
Gyprock			
Line speed (1200 x 10 RE)	metres/min	14.5	16
Planned delays	%	5.8	4.5
Unplanned delays	%	4.0	3.5
First grade production	%	97.4	98
Gas usage	MJ/m^2	15.8	15
Evaporable water	kg/m^2	3.5	3.3
Plaster			
Plaster production rate	Tonnes/hr	6.1	6.4
Unplanned delays	%	2.2	1.5
Gas usage - calcining	MJ/Tonne	1110	1100
- drying	MJ/Tonne	200	150
Cornice			
Line speed - 4200	metres/min	15	17
- 4500	metres/min	16	18
- 7200	metres/min	21	23
First grade production	%	96.9	97.5
Lost time injuries (last 12 months)		4	0
Gyprock Warehouse -after hours manning -product verification	Number of people	4	3

17.—RIGHT OF ACCESS, NOTICES

17.1 Material approved by the Unions will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

17.2 Every employee shall be entitled to have access to a copy of this agreement. Sufficient copies shall be made available by CSR Building Materials WA for this purpose.

17.3 The Secretaries of the Unions or authorised representative will, on prior notification to CSR Building Materials WA, have the right to enter CSR Building Materials WA's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by the agreement, the legitimate business of the Unions or for the purpose of investigating complaints concerning the application of this agreement but shall in no way unduly interfere with the work of the employees.

17.4 Any material likely to cause concern, will be referred to the SBU for discussion.

18.—DISPUTE RESOLUTION PROCESS

The following dispute resolution process shall be used for settling all disputes, questions of difficulties including disputes or difficulties arising from this agreement.

Stage One

The Employee should contact their team leader and attempt to settle the matter at that level.

Stage Two

If the matter is not resolved at Stage One, the matter will be further discussed between the affected employee, the union delegate and the team leader and/or manager of the relevant section or department.

Stage Three

If the matter is not resolved at Stage Two, the union organiser and union delegate shall discuss the matter with the manager and may refer the matter to the Single Bargaining Unit.

Stage Four

If the matter is not settled at Stage Three, the state secretary of the union will be advised. If he or she considers it necessary additional assistance will be provided to settle the matter. CSR Building Materials WA may notify and/or involve its Industrial Relations Department at this stage.

Stage Five

If Stage Four is unsuccessful it is agreed the matter will be referred to the Western Australian Industrial Relations Commission for conciliation or arbitration.

a) The process contained in Stage 1,2,3 and 4 above shall be completed within seven working days to prevent escalation of the dispute,

b) There shall be the opportunity for any party to raise the issue to a higher stage at any time.

c) Without prejudice to either party and except where a bona fide health and safety issue is involved work shall continue while matters in dispute are being dealt with in accordance with these procedures.

d) Both parties, subject to their right of appeal, agree to abide by the Western Australian Industrial Relations Commission decision.

19.—TIMETABLE FOR PAYMENTS

19.1 The base payment for this Agreement will be 8%, paid incrementally over the term of the Agreement.

19.2 It is agreed that wage rates of all employees shall be increased by 4% after the agreement is endorsed by members, that is 29 July 1997. A further 4% increase in wage rates will be paid from 11 April 1998.

20.—IMPLEMENTATION OF THE ENTERPRISE AGREEMENT

Implementation of this Agreement will be monitored by the Single Bargaining Unit. The parties commit to ensure that the intent of this Enterprise Agreement is realised in the life of the Agreement.

Signed for and on behalf of—

(signed) _____

CSR Building Materials (WA)

Kevin Tan—Operation Manager

Name And Title/Position

14/10/97

Date

(signed) _____

WITNESS SIGNATURE

Richard Halbert

WITNESS NAME

14/10/97

DATE

(signed) COMMON SEAL

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

Helen Creed—Secretary

Name And Title/Position

16/10/97

Date

(signed)

WITNESS SIGNATURE

Gordon Thomson

WITNESS NAME

16/10/97

DATE

(signed) COMMON SEAL

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

Jim McGivron—Secretary

Name And Title/Position

20/10/97

Date

(signed)

WITNESS SIGNATURE

Rebecca McGinty

WITNESS NAME

20/10/97

DATE

SCHEDULE OF WAGE RATES

CSR GYPROCK AND BRADFORD WA ENTERPRISE AGREEMENT 1997

EMPLOYEES COVERED BY BUILDING MATERIALS MANUFACTURERS (CSR LIMITED) AWARD No. 10 OF 1982

Wage Group	Current	4% Increase 29 July 1997	4% Increase 11 April 1998
Shift Boss	595.20	619.00	643.76
1	494.35	514.12	534.68
2	483.90	503.25	523.38
3	473.60	492.54	512.24
4	468.20	486.92	506.40
5	460.55	478.97	498.13
6	457.50	475.80	494.83
7	449.62	467.60	486.30
8	445.10	462.90	481.42

EMPLOYEES COVERED BY TRANSPORT WORKERS (GENERAL) AWARD No. 10 OF 1961

Grade	Current	4% Increase 29 July 1997	4% Increase 11 April 1998
1	416.00	432.64	449.94
2	433.80	451.15	469.19
3	442.70	460.40	478.82
4	457.50	475.80	494.83
5	464.80	483.39	502.72
6	473.70	492.64	512.35
7	482.60	501.90	521.98
8	504.70	524.88	545.88
9	518.00	538.72	560.26
10	540.10	561.70	584.17

E.D. OATES PTY LTD BRUSHWARE MANUFACTURING ENTERPRISE AGREEMENT 1997.
No. AG 294 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

E D Oates Brushware Manufacturing.

No. AG 294 of 1997.

E.D. Oates Pty Ltd Brushware Manufacturing Enterprise Agreement 1997.

8 January 1997.

Order.

HAVING heard Ms S Ellery on behalf of the applicant and Mr A Berry on behalf of the respondent, now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 and by consent, do hereby order —

THAT the agreement to be known as the "E.D. Oates Pty Ltd Brushware Manufacturing Enterprise Agreement 1997" be and is hereby registered in accordance with the following Schedule with effect from the 3rd day of December 1997.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the "E.D. Oates Pty Ltd Brushware Manufacturing Enterprise Agreement 1997".

2.—ARRANGEMENT

3.—APPLICATION

(1) This agreement shall apply to—

E.D. Oates Pty Ltd Brushware Manufacturing in respect of its operations at Lionel Street, Naval Base, and all employees engaged there under the terms and conditions of the following awards.

* The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977
* Brushmakers' Award No 30 of 1959
* Plastic Manufacturing Award 1977

(2) The estimated number of employees affected as at July 1997 was 35.

4.—PARTIES BOUND

(1) Employer Party

E.D. Oates Pty Ltd Brushware Manufacturing.

(2) Union Party

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

5.—STATEMENT OF INTENTION

There are two principal objectives associated with this agreement. These are—

(1) The continuation and extension of plant efficiencies and flexibility's intended to enhance international competitiveness.

(2) The delivery of an 8% Award increase or $35.00 on an adult wage, whichever is the greater in recognition of (1) above.

6.—PERIOD OF OPERATION

This agreement shall operate from l July 1997 to 30 June 1999, and negotiations for a new agreement shall commence no later than 1 May 1999.

7.—RELATIONSHIP TO PARENT AWARDS

(1) This agreement is to be read in conjunction with

* The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977.
* Brushmakers' Award No 30 of 1959.
* Plastic Manufacturing Award 1977.

(2) Where there is any inconsistency between this agreement and the Awards, this agreement shall take precedence to the extent of the inconsistency.

8.—EFFICIENCY AND FLEXIBILITY

The following measures are to be maintained and enhanced where indicated for the duration of this agreement.

(1) Employees' Responsibility for Product Quality and Quantity

(a) Each individual will assume responsibility for the product quality and quantity associated with his/her job function. This approach recognises that factors such as quality and quantity are every employees responsibility rather than the responsibility of a third party such as a quality department.

(b) With appropriate training in the requirements to be met, individuals will be empowered to take control of their respective processes to ensure that the stated standards are being achieved and ultimately the performance requirements associated with the maintenance of the AS/NZS ISO 9002 quality standards and procedures are being met.

(2) Outside Work

It is recognised by the parties that circumstances can and do arise which require componentry to be sourced from outside suppliers and for items of work to be assigned to outside contractors, providing no employee will suffer loss of normal earnings.

(3) Standards Review and Operations Measurement

(a) Performance measures currently in place requires that the standards designated for the work functions and processes within the organisation are accurate and appropriate

(b) The reliability of these standards underwrites the validity of the performance standards which are to be continually reviewed for each process. Therefore, it is considered appropriate by the parties that the standards presently in place are reviewed as part of the process of developing the overall performance measures. Ultimately, verification of the standards will ensure the capacity of employees to achieve the requirements defined by the performance measures.

(c) An integral part of Standards review aimed at improved factory throughput is the requirement for wider measurement of factory activities including issues from raw material, cycle counts, finished goods transfers, direct and indirect labour application and the like. It is understood that all employees will cooperate with the management in this regard.

(4) Direct/Indirect Shop Floor Labour Multi Skilling and Flexibility

Complementary to the objectives of reviewing job designs and functions, it is considered appropriate to ensure effective utilisation of the workforce. Greater flexibility is required with respect to the use of direct and indirect shop floor employees. The implementation of this requires that employees, either direct or indirect, can be requested to carry out job functions which they have the appropriate skill and competency to perform.

(5) Occupational Health and Safety

(a) In compliance with Legislative requirements and Codes of Practice, employees will be required to conform with the Occupational Health and Safety policies and procedures applicable to their workplace and job function, including use of safety equipment. Whilst it is acknowledged that the enforcement of the discipline associated with the wearing of appropriate safety equipment is a management task, this agreement seeks to share that responsibility and promote self regulation.

(b) The parties recognise that compliance by the employees with these requirements will not only achieve a safer and healthier work place, it will also be accident free which will result in a reduction of costs associated with the Workers Compensation Insurance, medical treatment, Common Law claims and lost time. It is a condition of this agreement that employees acknowledge and support all efforts of management in the rehabilitation process to expedite resumption of work by an injured worker.

(6) Protective Clothing

In conjunction with the provision of safe working conditions the company proposes to issue a maximum of two sets of protective clothing per employee per year. Boots or shoes will be supplied as required or a $35.00 subsidy for the purchase of boots or shoes to the employees individual requirements. This clothing must be worn at all times on the job. Items in excess of this issue will be to the employees account.

(7) Flexible Employment Arrangements

(a) The use of additional non—permanent labour resources to cover peaks in product demand occasioned by the business cycle is required. Such employees will be paid at a rate of no less than that paid to permanent or casual employees performing the same tasks where such employees are drawn from labour hire firms.

(b) Consistent with the change in the business cycle any reduction in labour resources would be facilitated by the run down in the numbers of temporary employees who may be employed on the site. This action would therefore act as a safeguard to the employment of the permanent workforce. This clause shall not be construed to mean permanent positions to be filled by casual employees in the event that vacancies occur.

(8) New Production Techniques and Work Methods

This agreement envisages a continuation and extension to employee involvement in improved workplace layouts and work methods changes. Greater organisational flexibility may be called on to improve customer service. An adoption of the Total Quality philosophy commensurate with the attainment of AS/NZS ISO 9002 will be progressively expanded. Greater employee involvement in product design will be introduced to reduce costs and improve ease of manufacture. Where practicable employee expertise will be used to reduce costs.

(9) Rotating Relief

(a) Rotating Relief requires employees involved in various processes taking their relief breaks at varying times so as to facilitate the continuation of work without disruption.

(b) This approach maximises machine utilisation and work flow through the production processes. The parties recognise the gains achieved through this process and will support its application in all appropriate areas.

(10) Hours of Operation

The ordinary hours of work may be worked on any or all days of the week Monday to Friday inclusive and, except in the case of shift employees, shall be worked between the hours of 6.00am and 6.00pm. Hours of work shall be worked in accordance with a roster agreed by a majority of affected employees and approved by the union. No less than a weeks notice will be provided or by mutual agreement.

(11) Long Service Leave

Consistent with the objective upon which Long Service Leave was included within the award it is considered appropriate that individual employees take leave upon an entitlement failing due. This action ensures the individual takes the prescribed period away from the work place at the due time and reduces the company leave liability.

(12) Absenteeism Management

(a) Reducing the level of absenteeism is consistent with the objectives of improving efficiency and productivity levels. This approach takes account of the following factors—

* Performance measures and operational measures.
* Employee responsibility for quality and quantities produced.
* Multi skilling of employees.
* On and off the job training requirements.

(b) All the above factors contribute to the nominated objectives and in this context employee attendance is an essential element. The current rate of absenteeism is 5.7% and a target has been set for the agreement period of 3.00% where the following will apply.

(c) Employees shall wherever practical telephone before 10.00am to advise of absence. This prompt advice of absence and possible length of absence allows management to plan accordingly.

(d) Except where an employee is dismissed for proven gross misconduct all employees will be paid on termination for sick leave accumulated from the date of ratification of this agreement.

(13) Identifying and Providing Training

Consistent with the need for multi skilling and with the advent of new processes and procedures, it is understood that employees will avail themselves of shop floor and conference room training, VAM group sessions and the like as a need is identified. The parties agree to work together to identify all areas of training required within the life of this agreement. Employees will be encouraged to take training on a voluntary basis. All training will be as required and approved, and in paid time.

(14) Cost Reduction

It is understood that all employees recognise the continuous need for cost reduction in all aspects of the operations. The co-operation with the management in this regards to ensure a competitive, productive operation is considered vital.

(15) Punctuality

Employees acknowledge that punctuality regarding set working time is a critical element in meeting the efficiency and flexibility clauses contained in this agreement.

9.—NO FURTHER CLAIMS

There shall be no extra wage claims during the life of the agreement relating to any issue contained in the agreement, except where consistent with decisions of Western Australian Industrial Relations Commission.

10.—WAGE INCREASES

(1) The company shall increase the ordinary rates of pay described in the appropriate awards as follows—

(a) An increase of 4% or $17.50 on an adult wage shall be payable from 1 July 1997.

(b) A further increase of 4% or $17.50 on an adult wage shall be payable from 1 July 1998.

(2) Present over award payments shall be retained in full for the term of this agreement.

11.—DISPUTES SETTLEMENT PROCEDURE

Any dispute or claims shall be dealt with in the following manner—

(1) The employee will in the first instance direct the matter to their foreperson should a problem arise.

(2) If this approach fails to resolve the matter, the member should involve the shop steward and the manager for further consideration.

(3) If the matter continues unresolved the union officials will be contacted to enable negotiations to be effected involving the company union representative and the Consultative committee.

(4) Whilst the matter remains under discussion/negotiation as per (3) above the parties will avoid any disruption to the ongoing operation of the Organisation and the status quo will prevail,

(5) If despite the efforts of the parties, the above process fails to bring about a resolution of the issue, the matter may be referred without prejudice to the Western Australian Industrial Relations Commission.

SCHEDULE A—WAGE STRUCTURE

SHOP AND WAREHOUSE

Description	Award June 97	Oates June 97	4% July 97	$17.50 July 97	4% July 98	$17.60 July 98
Storeman	434.30	446.32	464.17	463.82	482.73	481.32
Storeman Gde 1	445.60	459.31	477.68	476.81	496.78	494.31
Storeman Gde 2	450.40	464.88	483.47	482.38	502.80	499.88
Leading Hand (3+)	27.92	28.79	29.94	29.94	31.13	31.13

BRUSHMAKERS

Description	Award June 97	Oates June 97	4% July 97	$17.50 July 97	4% July 98	$17.60 July 98
Mill Hand (a)	381.10	413.97	430.52	431.47	447.74	448.97
Factory Hand (b)	369.40	400.41	416.42	417.91	433.07	435.41
Factory Hand (c)	365.50	395.89	411.72	413.39	428.18	430.89
Factory Hand (d)	356.00	384.89	400.28	402.39	416.29	419.89
Leading Hand(2-4)	19.40	22.49	23.38	23.38	24.31	24.31
Leading Hand(5+)	24.00	27.82	28.93	28.93	30.08	30.08

(a) Operating mill machines
(b) Able to operate 9 machines & over.
(c) Able to operate 1-8 machines.
(d) Casual—up to 8 weeks.

PLASTIC

Description	Award June 97	Oates June 97	4% July 97	$17.60 July 97	4% July 98	$17.50 July 98
Grade 1	349.40	377.24	392.32	394.74	408.01	412.24
Grade 2	357.70	386.86	402.33	404.36	418.42	421.86
Grade 3	366.10	396.59	412.45	414.09	428.94	431.59
Grade 4	388.60	422.68	439.58	440.18	457.16	457.68
Grade 5	409.50	446.90	464.77	464.40	483.36	481.90
Controller	441.20	483.66	503.00	501.16	523.12	518.66
Leading Hand	17.50	19.24	20.00	20.00	20.80	20.80

SCHEDULE B—ALLOWANCES

**Forklift Allowance	
Class 1	1 -1 0 hours weekly—$5@ 00 weekly -paid as part of their hourly rate.
Class 2	10-1 5 hours weekly—$7.50 weekly - paid as part of their hourly rate.
Class 3	1 5 plus hours weekly—$1 0. 00 weekly - paid as part of their hourly rate.
***Truck Driver Allowance	$7.50 per week - paid as part of their hourly rate.
**Trainer Operator Allowance	$9.50 per week - paid as part of their hourly rate.
**First Aid Allowance	$250.00 per annum - paid as $4.81 per week. - not paid as part of their hourly rate.
**VKS Allowance	$20.00 per week (approx 19hrs weekly) only paid while machine is operating.
**VKS/122 Relief Allowance	$1.35 per hour paid while relieving on either machine.
**Machine 122 Allowance	$20.00 per week (approx 19 hours weekly) - not paid as part of their hourly rate.
**Operator Skills Allowance	$10. 00 per week (38 hours a week) or pro rata on the amount of normal hours paid. not to be paid on leave without pay.

Any individual will be entitled to one of the VKS or 122 allowance during

any pay week (ordinary hours) and will not be entitled to both.

** Applicable to Brushmakers & Plastic Award only

*** Applicable to Brushmakers, Plastics & Shop/Warehouse Awards only.

FIRE RATED SYSTEMS INDUSTRIAL AGREEMENT.
No. AG 228 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Fire Rated Systems Pty Limited.

No. AG 228 of 1997.

Fire Rated Systems Industrial Agreement.

COMMISSIONER P E SCOTT.

5 February 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Fire Rated Systems Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

———

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Fire Rated Systems Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Fire Rated Systems Pty Limited (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 1 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

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

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

course fees

course books and materials

payment of ordinary time earnings for such absence.

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

19.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions:	BLPPU	Signed Common Seal ..... Date: 3/9/97 Signed ..... WITNESS
	CMETU	Signed Common Seal ..... Date: 3/9/97 Signed ..... WITNESS
The Company	Common Seal	Signed. ..... Date: 3/9/97 HENRY VAN ES ..... PRINT NAME Signed ..... WITNESS

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3/)	14.23	14.65	15.06	15.48	15.69

APPRENTICE RATES—*continued*

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), 1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), 2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), 3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.80
Above	$2.1 m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.1 m	$1.20
Above	$2.1 m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

HARNISCHFEGER OF AUSTRALIA PTY LTD WESTERN REGION WORKSHOP, REPAIR, MANUFACTURE AND FIELD, ASSEMBLY, REPAIR AND MAINTENANCE AGREEMENT 1997. No. AG 318 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

Harnischfeger of Australia Pty Ltd.

No. AG 318 of 1997.

Harnischfeger of Australia Pty Ltd Western Region Workshop, Repair, Manufacture and Field, Assembly, Repair and Maintenance Agreement 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

4 February 1998.

Order.

HAVING heard Mr G. Sturman and on behalf of the Applicant and Mr S. Foy 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 Harnischfeger of Australia Pty Ltd Western Region Workshop, Repair, Manufacture and Field, Assembly, Repair and Maintenance Agreement 1997 be registered in accordance with the following Schedule and shall replace Harnischfeger of Australia Pty Ltd (Western Region) Enterprise Agreement, No. AG 310 of 1995 and such variation shall have effect from the beginning of the first pay period commencing on or after the 4th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be known as the 'Harnischfeger of Australia Pty Ltd Western Region Workshop, Repair, Manufacture and Field, Assembly, Repair and Maintenance Agreement 1997' (the Agreement**)** and shall replace Harnischfeger of Australia Pty Ltd (Western Region) Enterprise Agreement, No. AG 310 of 1995.

2.—ARRANGEMENT

3.—APPLICATION

3.1 This Agreement shall apply to the Company's employees employed in the classifications set out in Schedule A—Classification and Rates of Pay of this Agreement who are employed either at the Western Region Workshop or who work out of the Western Region Workshop (including field, repair and maintenance employees and those employees engaged on the assembly and/or maintenance of P & H products or other OEM products) (Western Region Employees).

3.2 The parties to this Agreement are—

(a) Harnischfeger of Australia Pty Ltd trading as P & H Minepro Services (Australasia); and

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

3.3 This Agreement presently covers approximately 100 employees.

4.—PERIOD OF OPERATION AND VARIATIONS

4.1 This Agreement shall operate from the beginning of the first pay period following the 1st day of November 1997 and shall remain in force until the 31st day of October 2000.

4.2 The parties agree to review this Agreement with a view to renegotiating its terms no later than three months prior to its expiry date.

4.3 The parties may amend or vary this Agreement at any time throughout its period of operation. Such variation(s) or amendment(s) shall have no effect unless and until;

(a) agreed by a majority of employees and the Company; and

(b) approved by the Western Australian Industrial Relations Commission on application by both parties.

5.—RELATIONSHIP WITH PARENT AWARD

5.1 The provisions of this Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award No. 13 of 1965.

5.2 Where there is any inconsistency, the provisions of the Agreement shall prevail to the extent of such inconsistency.

6.—NO—DISADVANTAGE

No employee covered by this Agreement shall be financially disadvantaged by its implementation.

7.—OBJECTIVES

7.1 The objective of this Agreement is to facilitate the provision of engineering services to the mining industry in terms of time, budget, cost, quality, planning, scheduling, safety and training.

7.2 To promote achievement of that objective the parties will—

(a) increase the Western Region's efficiency, productivity and competitiveness within the industry with a view to achieving the service standards set out in subclause 7.3 of this clause and to maintain international competitiveness;

(b) provide field service and maintenance personnel to clients for periods as required and to surpass client's expectations with the services provided and standard of services;

(c) at all times, without exception for any reason, comply with the Grievance Procedures in Clause 11.—Grievance Procedures of this Agreement;

(d) where appropriate, in accordance with the Company's Training requirements continue to remove demarcation across classifications with a view to enhancing the career opportunities and job security of the Company's employees;

(e) maintain current flexible work practices which include—

(i) trades persons not being restricted to working within their trade areas;

(ii) machinists, fitters, welders, electricians boilermakers and non-trades persons and other relevant metal trades employees performing duties within any areas within their level of competency, skills and training;

(iii) supervisors and staff using tools and doing productive work when required; and

(iv) trades and non-tradespeople filling supervisory positions, temporary or permanent, when required;

(f) structure hours of work according to workload, ability and availability;

(g) maintain the current formation of a committee with both employer and employee representatives whose charter will be to implement this Agreement and provide a forum to discuss workshop issues (the Workplace Consultative Committee); and

(h) maintain the current system of conducting safety meetings.

7.3 Service Standards

Western Region Employees will do all that they can to enable the Company to achieve its commitments to—

(a) responding to calls for parts, service, manufacture and repairs within two hours of being contacted—twenty-four hours a day;

(b) providing an initial product engineering response on relevant issues within thirty-six hours;

(c) upon request, making a minimum of six visits per client, per year;

(d) dispatching 85% of stocking parts off the shelf in Australia within twenty-four hours;

(e) submitting a written field service report to clients within seven days of a site visit;

(f) supplying in a timely manner, product development updates to clients;

(g) exchanging replacement parts, free of charge, if the client is not completely satisfied upon receipt of the original part;

(h) supplying, at the customer's request, a service representative on the first available transport to remote sites; and

(i) provide field service personnel for extended periods of time as required to meet customer needs.

8.—CONDITIONS OF EMPLOYMENT

8.1 Contract of Employment

8.1.1 At the point of engagement, the Company shall specify in writing to the employee—

(a) whether the employee's contract of employment is full-time, part-time or casual; and

(b) the classification and hourly rate of pay which applies.

8.1.2 Probation

(a) Permanent and part-time employees are required to undergo a three month probationary period, at the end of which the Company shall either confirm the employee's appointment or terminate the employee's appointment;

(b) During such probationary period the Company undertakes to discuss with the employee the employee's work performance, conduct and capacity with a view to providing constructive feedback.

8.1.3 Termination

(a) Termination for Prolonged Absence

An employee who is absent from work for a period of three consecutive working days without notification to the Company shall be considered to have terminated his/her employment without notice from the period of absence and the Company shall only be liable to pay wages and other payments up to and including the last day of actual work.

(b) Termination by an Employee

If an employee resigns, he/she must give the Company notice in accordance with the table set out in clause 8.1.4 of this clause. If the employee does not give the required notice, he/she authorises the Company to withhold or deduct from his termination pay the equivalent amount of remuneration in lieu.

(c) Termination by the company

The Company may terminate an employee's employment—

- without notice if the Company has reasonable grounds to suspect that the employee is guilty of Misconduct (as defined in clause 8.1.5 of this subclause).

- by giving the employee notice, or the equivalent amount of remuneration in lieu, in accordance with the table set out in clause 8.1.4 of this subclause.

8.1.4

PERIOD OF SERVICE	PERIOD OF NOTICE
Not more than 1 year (including probationary period)	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
If over 45 years old and the period of service is at least 2 years	1 extra week

8.1.5 Misconduct includes but is not limited to—

(a) drunkenness or intoxication;
(b) dishonesty;
(c) serious neglect of duty or incompetence;
(d) wilful inefficiency;
(e) misrepresentation of qualifications or work history;
(f) misconduct of a kind which may injure the Company's reputation; and
(g) wilful disobedience of lawful directions given by the Company;
(h) fighting on Company premises or at a customer's site (field work) whether during or outside working hours;
(i) repeated abuse of and/or intimidating behaviour towards another company employee(s); and
(j) repeated failure to wear safety clothing and equipment provided by the Company;

8.2 Introduction of Changes, Termination of Employment in Cases of Redundancy

8.2.1 Except as provided for in clause 8.1.3 hereof, the Company and the employees to whom this Agreement applies shall observe the terms and conditions of the Award in relation to redundancy.

8.2.2 The Company reserves the right to select employees for redundancy based on fair and objective criteria. In the event that positions are made redundant the following redundancy payments shall be made (in addition to providing the employee(s) with notice or the equivalent amount of remuneration in lieu);

PERIOD OF SERVICE	REDUNDANCY PAY
Not more than 1 year	1 weeks pay
More than 1 year but not more than 2 years	4 weeks pay
More than 2 years but not more than 3 years	6 weeks pay
More than 3 years but not more than 4 years	7 weeks pay
More than 4 years but not more than 8 years	9 weeks pay
More than 8 years but not more than 12 years	11 weeks pay
12 years and over	13 weeks pay

8.3 Equal Employment Opportunity

8.3.1 The Company is committed to equal opportunity in employment consistent with the principles of equity, fairness and conforms to the spirit of intent of equal opportunity, anti-discrimination and affirmative action legislation.

8.3.2 The Company accepts its responsibility to create a work environment free from discrimination and to ensure that the principle of merit operates.

8.4 Occupational Superannuation

8.4.1 The Company will contribute superannuation sufficient to meet its obligations under superannuation guarantee legislation to the Company's MLC Superannuation Fund. If employees contribute 4% of their wages to that fund, the Company will, on each employees' behalf, contribute an additional 3%. As the statutory minimum contribution increases by 1% the Company's additional contribution will reduce by 0.5%.

8.4.2 The MLC Superannuation Fund provides employees with Insurance cover in respect of salary continuance and total and permanent disability.

8.5 Long Service Leave

Employees party to the Agreement will have the following long service leave entitlements—

8.5.1 (a) Long Serve Leave Accrual

Prior to 1st November, 1994 accrued at a rate of 0.866 Wk/Yr

From 1st November 1994 accrue at a rate of 1.0 Wk/Yr

From 1st November 1995 accrue at a rate of 1.1 Wk/Yr

From 1st November 1996 accrue at a rate of 1.2 Wk/Yr

From 1st November 1997 accrue at a rate f 1.3 Wk/Yr

Thereafter continue to accrue at a rate of 1.3 Wk/Yr.

(b) Right to Long Service Leave

An employee will be entitled to Long Service Leave with pay in respect of continuous service with the Company of at least ten (10) years.

(c) Period of Leave

An employee will be entitled to the amount of long service leave accumulated at the above prescribed rate of accrual after 10 years of continuous employment with the Company.

In respect of each ten years' service completed after the first ten years an employee will be entitled to the long service leave accumulated at the applicable rates of accruals prescribed during those years.

On termination of employment before ten (10) years of continuous service, an employee will not be entitled to long service leave accumulated or payment in lieu thereof.

(d) Taking Long Service Leave

Leave should be taken as soon as reasonably practicable after the completion of each ten (10) years of service at the time mutually agreed between the Company and the Employee.

8.6 Family Leave

The provisions of the Minimum Conditions of Employment Act 1993 (WA) apply to and are deemed to form part of this Agreement.

8.7 Bereavement leave

An employee shall, upon the death within Australia of a wife, husband, father, mother, brother, sister, child or step-child, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days of work. Proof of such death shall be furnished by the employee to the satisfaction of the Company.

8.8 Statutory Holidays

8.8.1 All work done by an employee on Anzac Day, New Years Day, Good Friday, Easter Monday, the birthday of the Sovereign, Christmas Day, Boxing Day, Labour Day, Foundation Day, Australia Day or other day appointed under the Metal Trades (General) Award No. 13 of 1965 shall be paid for at the rate of double time and a half with a minimum of 4 hours.

8.8.2 An employee absent the day before or after a statutory public holiday without management authorisation or a doctor's certificate for illness will not be entitled to payment for that day.

8.8.3 An employee not required to work on a statutory holiday, will, if the statutory holiday falls within an employee's ordinary shift, be paid for that day at the rate of ordinary time for 8 hours if the statutory holiday falls on Monday to Thursday and for 6 hours if the statutory holiday falls on a Friday.

8.9 Annual Leave

8.9.1 Employees are entitled to 20 days paid leave per year after 1 year of continuous employment, plus 17.5% leave loading. Employees may accumulate up to 8 weeks (40 days) annual leave.

8.9.2 Annual leave shall be given and taken at such times by agreement in accordance with the operational requirements of the Company.

8.9.3 Payment for annual leave shall be on the basis of the employee's ordinary wages plus 17½% leave loading for the period of the annual leave.

8.9.4 Where the employment of an employee is terminated before the expiration of a full year of employment, such employee will be entitled to be paid any annual leave balance owing calculated on the a basis of one twelfth of the normal pay for the period of employment.

8.10 Sick Leave

8.10.1 Employees are entitled to 10 days sick leave per year of employment. Employees are entitled to a pro-rata amount of sick days for each partly completed year of service.

8.10.2 Sick leave is only available in circumstances where an employee is unable to attend work because of his/her own incapacity. Paid sick leave will not be available where an employee's absence exceeds two days unless a medical certificate is provided.

8.10.3 After two absences of up to 2 days duration taken without a medical certificate in any one year, subsequent sick days taken must be accompanied with a medical certificate otherwise paid sick leave will not be available.

8.10.4 Unused sick leave may be accumulated from year to year.

8.10.5 Employees covered by this Agreement who were employed before 11 November 1996 shall be entitled to payment for accumulated sick leave on termination as follows—

Resignation	50%
Retirement	50%
Retrenchment/Redundancy	50%
Termination for cause	Nil

8.12 Trade Union training leave

8.12.1 The Company will allow one shop steward to take two days of trade union training leave each year of employment after notification to the Company.

8.12.2 The Company will pay the shop steward for 8 hours at ordinary rates for each of the two days while on approved trade union training leave.

8.12.3 No payment will made if the training is on a Saturday, Sunday or Public Holiday.

8.13 Training and Skills Development

8.13.1 The Company will maintain a training program to provide employees—

(a) with the opportunity to achieve multi-skilling relevant to their function to carry out their tasks with more efficiency; and

(b) with a more rewarding and challenging working environment.

8.13.2 Required Training

Where the Company requires employees to attend a training course—

(a) the Company will pay for the course;

(b) if the training is completed during an employee's normal working hours the Company will pay the employee's normal pay for those hours to a maximum of 8 hours per day;

(c) if the training is completed outside an employee's normal working hours, the Company will pay for the course and will pay the employee's ordinary rate of pay for the duration of the course, excluding overtime or weekend penalties.

8.13.3 Approved Training

Where an employee asks the Company if he/she can attend a training course and the Company agrees, the following conditions shall apply—

(a) the Company will pay for the course;

(b) if the training is completed during an employee's normal working hours the Company will pay the employee's normal pay for those hours to a maximum of 8 hours per day;

(c) if the training is completed outside an employee's normal working hours the Company will pay for the course only.

8.13.4 The employees will, if requested to do so by the Company, perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

8.13.5 Employees will be paid according to the specific work classification that they are performing notwithstanding the fact that they may be trained or qualified in a higher classification.

8.14 Hours of Work and Shifts

8.14.1 The ordinary hours of work shall be 38 hours per week in each four weekly period, worked from Monday to Friday. However should it be required that the 5 day week start on any other day, this will be by agreement by employer and employee.

8.14.2 Ordinary hours of work on Monday to Thursday shall be 8 per day. ordinary hours of work on Fridays shall be 6.

8.14.3 The Company may, in all or part of its business, operate two or three shifts as follows—

(a) Two Shift Operation

- Day shift—5am to 7pm;
- Afternoon shift—2pm to 7am.

Ordinary hours shall be worked between the above spread of hours in accordance with Company requirements. Any change to the ordinary hours of work will be by agreement with the employee/s of the Workshop/s involved.

(b) Three Shift Operation

- Day shift—7am to 3pm;
- Afternoon shift—3pm to 11pm;
- Night Shift—11pm to 7am.

8.14.4 The hours of work for part-time employees shall not be less than twenty in anyone week.

8.14.5 The hours of work for casual employees shall be determined by the Company.

8.14.6 An employee may elect, with the consent of the Company, to work make-up time under which the employee takes time off ordinary hours and works those hours at a later time, during the employee's ordinary hours of work. Employees will be paid for make-up time at the ordinary hourly rate of pay.

8.15 Flexibility of Shift Change

In cases of urgent and unavoidable customer requirements, the Company may require employees to change shifts, subject to the following conditions—

(a) where possible a minimum of 24 hours notice of any change to a shift will be given;

(b) if the notice of shift change is less than 24 hours, the Company will provide a break of at least 10 hours between shift changes;

(c) in cases where the break between shifts is less than 10 hours, each hour worked will be paid at double time the normal rate of pay to a minimum of 4 hours for that shift; and

(d) each shift after the shift described in clause 8.15(c) will be paid at the normal rate of pay provided that there is a break of 10 hours between shifts, unless it falls on a Saturday, Sunday or a public holiday, in which case the appropriate penalty rates will apply for each hour worked.

8.16 Saturday and Sunday Work

8.16.1 All work performed on a Saturday, whether or not part of an employee's ordinary hours of work, shall be paid for at the rate of one and a half times the ordinary rate for the first two hours and double time thereafter.

All work performed on a Sunday shall be paid for at the rate of double time.

8.17 Overtime

8.17.1 Subject to clause 8.16, all work done in excess of 8 hours per day Monday to Thursday and 6 hours on Friday shall be paid at the rate of time and one half for the first two hours and double time thereafter.

8.17.2 In the computation of overtime each day shall stand alone. For the purposes of this clause, a day shall mean 'from

the commencement of one ordinary shift to the commencement of the next ordinary shift'.

Following are examples of how employees will be paid for ordinary hours and overtime;

(a) an employee works 8 hours per day, Monday to Thursday and 6 hours on Friday. He/she will be paid at ordinary time for 38 hours;

(b) an employee works 10 hours per day, Monday to Friday—On Monday to Thursday he/she will be paid ordinary time for the first 8 hours per day, and time and a half for the next 2 hours per day. On Friday he/she will be paid ordinary time for the first 6 hours, time and a half for the next two hours and double time for the last 2 hours.

(c) an employee works 10 hours per day Wednesday to Sunday—On Monday to Thursday he/she will be paid ordinary time for the first 8 hours per day and time and a half for the next 2 hours per day. On Friday he/she will be paid ordinary time for the first 6 hours, time and a half for the next 2 hours and double time for the last 2 hours. On Saturday he/she will be paid time and a half for the first 2 hours and double time thereafter. He/she will be paid double time for all work on Sunday. The employee will not be paid for Monday and Tuesday if those days are not worked;

(d) an employee works 12 hours per day Friday to Sunday has Monday off, then works 14 hours per day on Tuesday and Wednesday of the next week. The employee will be paid as follows—

(i) Friday—first 6 hours at ordinary time, next 2 hours at time and a half and the last 4 hours at double time;

(ii) Saturday—first 2 hours at time and a half and thereafter double time-,

(iii) Sunday—double time;

(iv) Monday—no payment; and

(v) Tuesday and Wednesday—first 8 hours per day at ordinary time, the next 2 hours per day at time and a half and the last 4 hours per day at double time.

8.18 Meal Breaks and Rest Pauses

8.18.1 Two Shift Operation

On each normal working day—

(a) An unpaid meal break of twenty-five minutes shall be taken in each shift in accordance with the Company's operational requirements.

(b) In each shift a paid rest pause of fifteen minutes shall be taken in accordance with the Company's operational requirements.

8.18.2 Three Shift Operation

(a) A paid meal break of 20 minutes shall be taken in each shift in accordance with the Company's operational requirements;

(b) In each shift a paid rest pause of 10 minutes shall be taken at a time in accordance with the Company's operational requirements.

8.19 Remote Site Work

8.19.1 Where employees are performing remote site work the Company will—

(a) pay a remote site allowance of 17% for each hour worked, inclusive of all allowances (site allowance);

(b) where contract provisions between a customer and the Company require the Company to apply the terms and conditions of a particular agreement (site agreement), apply such terms and conditions unless the site consents to employees working under the terms of this agreement. If a site agreement applies, employees will not be entitled to payment of the site allowance.

8.20 Tools

8.20.1 The parties agree that possession of a satisfactory tool kit is a prerequisite for employment under this agreement, for both trades and non-trades employees.

8.20.2 The Company will, three times per year, ask employees if they would like the Company to purchase tools on their behalf. Such tools must be relevant to an employee's trade or qualifications. The individual employee's account shall be paid (as a payroll deduction) as follows—

- 50% upon receipt of purchased tools; and
- 50% in equal instalments over the following month.

8.21 Safety/Clothing

8.21.1 The parties agree to abide by the Company's Safety Policies (as amended from time to time).

8.21.2 Working clothes, protective clothing and safety boots

(a) Each full time employee shall be issued annually with one pair of safety boots and work clothes comprised of three shirts and three pairs of long trousers without charge from the Company.

(b) Each employee will be provided with one hard hat when required to work on site.

(c) Employees are expected to wear at work the clothes which are issued and must wear safety boots and other safety equipment which is supplied for wearing in the designated areas in the Workshop and at mine sites.

(d) All employees engaged in an operating environment shall wear appropriate eye and hearing protection in addition to those safety items otherwise prescribed by the company. All such items should be supplied by the Company.

(e) The Company may decide, at its sole discretion, to replace work clothing and/or safety boots on the basis of fair wear and tear.

8.22 Collective Bargaining

8.22.1 Throughout the life of this agreement the Company will not offer Australian Workplace Agreements or individual contracts to existing employees covered by this Agreement unless agreed by the employee(s).

8.23 Right of Entry

8.23.1 The Company will allow the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch Union organiser to enter the Company's Western Region facility for the purpose of conferring with Union members subject to the following conditions—

(a) the Union organiser must notify the Operations Manager of his intention to visit;

(b) the Union organiser must first report to the main office and sign the visitors book;

(c) the Union organiser must not talk to employees while performing work; and

(d) the Union organiser must only talk to employees outside normal working hours, unless an alternative agreement is reached with the company's Operation Manager.

(e) Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.

8.24 Apprentices

8.24.1 If apprentices are required to attend technical college as part of their apprenticeship, they will be paid their ordinary rate of pay for 8 hours per day, Monday to Thursday and 6 hours on Friday. No such payments will be made for attendance at technical college on Saturdays or Sundays.

8.25 Travel Insurance

The Company will arrange at its expense an accident insurance policy to cover travel to and from work, by the most direct route which provides—

(a) a $100,000 death benefit (reducing for injuries in line with the scale provided in the Policy); and

(b) a weekly benefit of up to $600 for loss of earninings (this benefit being reduced by the value of any other related benefit received).

9.—WAGES

9.1 Single Rate of Pay

Rates of Pay applicable from the day following certification of this agreement and which include all disabilities and allowances associated with the work, with the exception of those penalties and allowances specifically referred to in this agreement, are listed in Schedule A.

9.2 Shift Work

9.2.1 A loading of 17% shall be paid in addition to the rates prescribed in Schedule A for all ordinary time worked on an afternoon or night shift.

9.2.2 If employees work night shift on a 7 day roster for a continuous period of 4 weeks or more, they will be entitled to an additional loading of 15%.

9.3 First Aid Allowance

In addition to the rates of pay contained in Schedule A, an employee appointed to the position of First Aid Attendant by the Company in each Shop shall receive an additional $9.00 per week. There shall be a maximum of three First Aid Attendants appointed at any one time.

9.4 Increase in Wages

Increases in wages throughout the life of the agreement will be partly fixed and partly dependant upon improvement to key performance indicators (KPIs). Fixed increases and increases dependant upon improvement to KPIs will be as follows—

Fixed Increases	KPI Increases	Date of Increases
4%		Date following registration of agreement
3%	1%	Twelve months after registration of agreement
2%	1%	Twenty-four months after registration of agreement

9.5 Wage Increases Linked to Improvement to KPIs

9.5.1 Productivity will be measured in accordance with the Key Performance Indicators (KPI) referred to in clause 9.7.

9.5.2 The KPIs will, prior to and for the first twelve months following certification, be determined by the Company. Thereafter, the KPIs will be reviewed by the Company. Following such review, which will involve input from the Workplace Consultative Committee, a decision will be made by the Company as to the retention of existing KPIs and/or introduction of new or changed KPIs.

9.5.3 The KPIs will be monitored and reviewed monthly by the Workplace Consultative Committee to effect strategies whereby the KPIs can be improved effectively.

9.6 Measuring Productivity

(a) none are referrable to matters outside the control of the Company's employees';

(b) each is readily understandable by employees and the targets for each are made available for employees to review; and

(c) the measures selected have a direct and significant impact on the Western Region's performance.

9.7 Key Performance Indicators

INDICATORS	DEFINITION	WEIGHT
1. Safety Performance	10% reduction of the average of the last two years rolling average readjusted 12 monthly (in respect of all Western Region employees). The percentage will be reapplied to the weighting percentage. Therefore the weight can increase or decrease.	[30%]
2. Equipment/ Tool Replacement Costs	10% reduction of the average of last two years costs readjusted 12 monthly	[10%]
3. Overall Cost Control/ Efficiency of Operations	Costs recovered ÷ actual costs x 100% Y.T.D. at 12 monthly intervals. The percentage will be reapplied to the weighting percentage. Therefore the weight can increase or decrease.	[20%]
4. Rework/ Warranty Costs	Not more than $2,000.00 per month averaged over 12 months and 24 months	[10%]
5. Absenteeism	10% reduction of the average of the last 2 years absenteeism, readjusted 12 monthly	[20%]
6. Operating Profit	After tax profit for the Region vs Budget. The percentage will be reapplied to the weighting percentage. Therefore the weight can increase or decrease/	[10%]
TOTAL		[100%]

9.8 Wage increases which are dependant upon improvement to KPIs will be paid subject to the following—

(a) If the total of the KPIs is 100%, a pay increase of 1% will be paid;

(b) KPIs 1 and 6 will be readjusted 12 monthly to the averages of the previous two years.

(c) If KPIs 1, 3 and 6 are positive, the total percentage will be increased by that rate;

E**xample:** Take KPI 1—Safety Performance. If a 15% reduction of the average of the last two years rolling average is achieved the following shall apply—

15% compared to the target 10% is a 50% improvement. 50% of the 30% weighting given to Safety Performance is an additional 15%. Therefore add 45% (not 30%) to the total of the KPIs.

Therefore if the total of the KPIs is 115%, employees will receive a wage increase of 115% x1%.

(d) If KPIs 1, 3 and 6 are negative, the total percentage will be reduced by that rate.

Example: Take KPI 1—Safety Performance. If a 5% reduction of the average of the last two years rolling average is achieved the following shall apply—

5% compared to the target 10% is a 50% behind the target. 50% of the 30% weighting given to Safety Performance is an additional 15%. Therefore add 15% (not 30%) to the total of the KPIs.

Therefore if the total of the KPIs is 85%, employees will receive a wage increase of 85% x 1%.

(e) KPIs 2, 4 and 5 will affect the total percentage if their result individually or collectively is negative.

Example: Take KPI 4—Rework/Warranty Costs. Say that such costs are $2,500.00 per month averaged over 12 months. Instead of reducing the percentage, a nil percentage shall apply. In other words no penalty shall apply if KPIs 2, 4 and 5 are not met.

(f) If the total of the KPIs is less than 30%, employees will not receive the pay increase.

(g) The total of the KPIs will be capped to a maximum of 150% so that the maximum pay increase at any one time is 1.5%.

9.9 The Company will set out on the Company noticeboard—

(a) the monthly and year to date absenteeism as well as a graphical representation of time lost due to sick leave, injuries/workers' compensation and leave without pay;

(b) the monthly and year to date equipment cost and operating profit for the Workshop and the Western Region; and

(c) an analysis of KPIs set and monitored as an ongoing activity in an effort to identify trends in performance improvements.

9.10 Offset

The parties acknowledge that any increase in rates of pay resulting from a State or Federal wage decision are absorbed by the over award payments made in accordance with this agreement.

9.11 Employees' pay will be deposited weekly by electronic funds transfer.

10.—EVA INCENTIVE BONUS

10.1 In addition to the wage increases referred to in this agreement, employees will be entitled to received a bonus based on the Company's Economic Value Added (EVA) achievement (the 'EVA bonus').

10.2 Each department's EVA performance will be graphed monthly and displayed on Workshop noticeboards but paid in December of the next fiscal year.

10.3 To qualify for the EVA bonus an employee must be in the Company's employ at the end of October and have been in the Company's employ for a minimum of six months during that year.

10.4 Employees who have been terminated for a reason(s) other than retrenchment or redundancy, or who resign during the fiscal year, shall not be eligible for the EVA bonus payment.

10.5 Employees who are retrenched or made redundant are eligible for a pro-rata payment based on the percentage of year completed, provided they have completed six (6) months service.

10.6 The figure arrived at for each employee will be reduced by the total number of days absent where the days absent exceed 5 days per year. The total number of days absent will be divided by the possible days of service to give the pro-rata percent to be deducted for absenteeism for the year from the EVA bonus attained.

10.7 For the purpose of Clause 10.6 the following definitions shall apply—

Days of Service:	Maximum number of possible work days for the period.
Days absent:	Any days absent for Sick leave, Workers Compensation or Absence without reason or approval.

11.—GRIEVANCE PROCEDURES

Effective communication between staff and Management is a prerequisite to good industrial relations and the following procedure is set down in order that any grievances may be resolved quickly to maintain sound working relationships—

(a) In the event of an employee or employees having a question, dispute or difficulties with the Company, the employee/s shall in the first instance attempt to resolve the matter with their relevant Supervisor who shall respond to such request as soon as reasonably practicable under the circumstances.

(b) If the question, dispute or difficulty is still unresolved the matter shall be referred to the Operations Manager and the employee/s nominated industrial representative if desired by the employee/s and at this stage the subject matter of the grievance or dispute shall be recorded in writing.

(c) If, after discussion between the parties, or their nominees in subclause (b), the dispute remains unsolved after the parties have genuinely attempted to achieve a settlement, the parties will adjourn for a 72 hour "cooling" off period, excluding Saturday or Sunday.

(d) After the cooling off period, the parties will reconvene and if after further discussion with the General Manager the matter cannot be resolved, any party may refer the matter in question, dispute or difficulty to the Western Australian Industrial Relations Commission. Provided that it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

(e) Whilst all of the above procedures are being followed, normal work shall continue except where continuance of work would represent a threat to the health and/or safety of employees or the workplace.

(f) All parties shall abide by the outcome of any Industrial Relations Commission proceedings which, subject to the parties' right of appeal under the Act, will be final and binding on all parties.

Both the Company, its employees and the Union commit to following the above procedures expeditiously.

At any of the above stages an employee or employees may seek the assistance of a fellow employee, Shop Steward or Union organiser.

12.—NO EXTRA CLAIMS

In consideration of the benefits conferred under this agreement, the parties agree that—

(a) this document will be closed for its duration; and

(b) the employees undertake that no further claims will be made upon the Company in respect of any matter within the scope of this agreement (including claims relating to changes arising from variations to the Award or decisions of the Commission) during the currency of this agreement and for such period thereafter as the agreement may continue in force.

13.—SIGNATORIES TO AGREEMENT

SIGNED for and on behalf of Harnischfeger of Australia Pty Ltd trading as P. & H. MinePro Services (Australasia) by its Western Region Operations Manager (Bob Worrall)

signed

....21/10/97.....

SIGNED for and on behalf of Harnischfeger of Australia Pty Ltd employees by the Workplace Consultative Committee members—

Kynan Hoffman	signed	
Ricardo Richardson	signed	
Gary Robson	signed	
Charles O'Donnell	signed	21/10/97

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

signed

HARNISCHFEGER OF AUSTRALIA PTY LIMITED WESTERN REGION WORKSHOP, REPAIR, MANUFACTURE AND FIELD ASSEMBLY/REPAIR/ MAINTENANCE AGREEMENT

SCHEDULE A

CLASSIFICATION AND RATES OF PAY

The minimum wage rates specified below refer to the wage rates for a week comprising thirty-eight (38) hours work. Adult employees of a classification specified herein shall be aid at the following minimum rates per week—

Classification		Percentage Rate of Pay	Hourly Rate
C14	Engineering/Production Employee—Level I	78.0% of C10	$12.7856
C13	Engineering/Production Employee—Level Ii	82.0% of C10	$13.4413
C12	Engineering/Production Employee—Level Iii	87.4% of C10	$14.3264
C11	Engineering/Production Employee—Level Iv	92.4% of C10	$15.1460
C10	Engineering Tradesperson—Engineering/Production Employee—Level V	100% of C10	$16.3918
C9	Engineering Trades Person—Level Ii	105% of C10	
C8	Engineering Trades Person Special Class—Level I	110% of C10	
C7	Engineering Trades Person Special Class—Level Ii	115% of C10	
C6	Advanced Engineering Tradesperson—Level I	120% of C10	
C5	Advanced Engineering Tradesperson—Level Ii	125% of C10	
App 1	Apprentice—1st Year	42% of C10 (Award Rate)	
App 2	Apprentice—2nd Year	55% of C10 (Award Rate)	
App 3	Apprentice—3rd Year	75% of C10 (Award Rate)	
App 4	Apprentice—4th Year	88% of C10 (Award Rate)	
App 1ad	Apprentice Adult —1st Year	As Per Award	
App 2ad	Apprentice Adult —2nd Year	As Per Award	
App 3ad	Apprentice Adult —3rd Year	As Per Award	

NOTE: If an employee is offered an adult apprenticeship he/she will not receive less wages than earned before the Apprenticeship.

NOTE: Casual employees shall be paid in addition to the rates specified herein, twenty per cent (20%) of all ordinary time pay.

HARNISCHFEGER OF AUSTRALIA PTY LIMITED WESTERN REGION WORKSHOP, REPAIR, MANUFACTURE AND FIELD ASSEMBLY/REPAIR/ MAINTENANCE AGREEMENT

SCHEDULE B

WORK CLASSIFICATIONS

1. Level C 14—78.0% of C 10

Functions: - Labouring/cleaning
- Directly supervised
- Under training to advance to level C 13

2. Level C 13—82.0% of C 10

Functions:
- Completed 3 months training
- Repetition work an automatic, semi automatic or single purpose machines
- Uses selected hand/power tools
- Basic butt and spot welding
- Cuts scrap with oxyacetylene blow pipe
- Maintains simple records
- Uses hand trolleys and pallet trucks
- Directly supervised
- Assist tradesperson

3. Level C 12—87.4% of C 10

Functions:
- Responsible for quality of own work
- Routinely supervised;
- Non-trade engineering skills
- Basic tracing and sketching
- Receiving, despatching, distributing, packing, documenting and recording of goods, materials and components (storeman)
- Basic keyboard skills
- Basic inventory control
- Operation of forklifts up to 10 tonne, overhead cranes, mobile cranes up to 10 tonne
- Slinging/dogging of jobs and equipment
- Measure accurately
- Welding requiring higher skills than C 13
- Assist tradesperson

4. Level C11—92.4% of C10

Functions:
- Works to complex instructions and procedures
- Co-ordinates work in a team environment
- Works under general supervision
- Responsible for assuring quality
- Uses precision measuring equipment
- Machine setting, loading and operation
- Dogging, heavy lifting, turning and manipulation of large/heavy work and equipment
- Inventory and stock control
- Operates materials, handling equipment, forklifts trucks and mobile cranes above 10 tonne
- Uses tools and equipment to carry out maintenance
- Computer operation at a level higher than C12
- Basic engineering and fault finding
- Basic quality checks on the work of others

5. Level C10—100% of C10

Functions:
- Holds a trade certificate and is able to exercise the skills and knowledge of that trade
- Understands and applies quality control techniques
- Has good interpersonal and communication skills
- Exercises keyboard skills
- Works under limited supervision
- Operates all lifting equipment to his/her work
- Performs non-trade tasks incidental and peripheral to the primary task
- Inspects products/materials for conformity

6. Level C9—105% of C10

Function:
- Exercises skills attained through satisfactory completion of the training prescribed for this classification
- Works under general supervision
- Understands and implements quality control techniques
- Provide trade guidance and assistance as part of a work team
- Exercises Cost Control
- Procures materials and consumable
- Liaise with other departments/supervisions/ customers
- Prepares estimates/quotes/scope of work
- Carries out technical tasks
- Programming of NC/CNC machine tools and profile cutting equipment

---

HOSPITAL SALARIED OFFICERS KELLERBERRIN MEMORIAL HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.

No. PSA AG 32 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kellerberrin Memorial Hospital Board

and

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

No. PSA AG 32 of 1997.

Hospital Salaried Officers Kellerberrin Memorial Hospital Enterprise Bargaining Agreement 1997.

COMMISSIONER P E SCOTT.

23 January 1998.

Order.

HAVING heard Ms T Wilson on behalf of the Applicant and Mr D Hill 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 Hospital Salaried Officers Kellerberrin Memorial Hospital Enterprise Bargaining Agreement 1997 in the terms of the following schedule be registered on the 30th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Kellerberrin Memorial Hospital Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Kellerberrin Memorial Hospital along with allowing the benefits from those improvements to be shared by employees, Kellerberrin Memorial Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Kellerberrin Memorial Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Kellerberrin Memorial 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 Kellerberrin Memorial Hospital, (hereinafter referred to as Kellerberrin Memorial 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 3 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 replaces the Hospital Salaried Officers Kellerberrin Health Service Enterprise Bargaining Agreement No PSA AG52 of 1996.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 31 March 1998, 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 forthwith.

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) (i) 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 1997.

(ii) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Health Service level for productivity improvements which occurred between 1 January 1997 and 1 July 1997 and which have been documented as being identified in justifying wage increases under this Agreement.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

(a) improve the productivity and efficiency of Kellerberrin Memorial Hospital;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Kellerberrin Memorial 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, Kellerberrin Memorial Hospital and its clients and the Government on behalf of the community;

(b) ensuring that Kellerberrin Memorial 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 Kellerberrin Memorial Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Kellerberrin Memorial 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, Kellerberrin Memorial 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 Kellerberrin Memorial Hospital, a representative from Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial Hospital as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Kellerberrin Memorial 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 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 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 Kellerberrin Memorial 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 Kellerberrin Memorial Hospital.

(6) All promotional positions and new staff recruited by Kellerberrin Memorial 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 Kellerberrin Memorial Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Kellerberrin Memorial 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, Kellerberrin Memorial 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

Pursuant to the replacement of agreement no PSA AG52 of 1996, this agreement provides for a 5% salary increase effective from the date of registration of the agreement.

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

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

(2) (a) To assist in meeting these obligations, Kellerberrin Memorial Hospital will assist by providing appropriate resources having regard to the operational requirements of Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial Hospital and shall not unreasonably affect the operation of Kellerberrin Memorial 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 forums.

(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 Kellerberrin Memorial 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 Kellerberrin Memorial Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 27 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 N0. 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 1st April 1996 was employed by Kellerberrin Memorial Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Kellerberrin Memorial Hospital after the 1st 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 Kellerberrin Memorial Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Kellerberrin Memorial Hospital and who;

i) at or before the 1st April 1996 was employed by Kellerberrin Memorial Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Kellerberrin Memorial Hospital after the 1st 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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 Kellerberrin Memorial 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.

(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 date of registration 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 Clause 10 of the Agreement and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,237
17 years of age	13,609	14,289
18 years of age	15,886	16,680
19 years of age	18,387	19,306
20 years of age	20,649	21,681
1st year of full-time equivalent adult service	22,682	23,816
2nd year of full-time equivalent adult service	23,382	24,551
3rd year of full-time equivalent adult service	24,078	25,282
4th year of full-time equivalent adult service	24,772	26,011
LEVEL 2	25,469	26,742
	26,167	27,475
	26,969	28,317
	27,524	28,900
	28,343	29,760
LEVEL 3	29,311	30,777
	30,064	31,567
	30,856	32,399
	32,118	33,724
LEVEL 4	32,779	34,418
	33,770	35,459
	34,788	36,527
	36,235	38,047
LEVEL 5	36,989	38,838
	38,025	39,926
	39,090	41,045
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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 increases in Clause 10 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 + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 3/5	29,311	30,777
	30,856	32,399
	32,779	34,418
	34,788	36,527
	38,025	39,926
	40,187	42,196

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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.

(8) The third arbitrated safety net adjustment has been absorbed.

23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Michael Hartland

Signed (Signature) **Union Seal** 5/12/97 (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

Signed (Signature) **Union Seal** 5/12/97 (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Peter Lisacek

Signed (Signature) 3 Dec 97 (Date)

General Manager, for and on behalf of the Board of Management of Kellerberrin Memorial 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 Kellerberrin Memorial 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

HOSPITAL SALARIED OFFICERS MERREDIN HEALTH SERVICE ENTERPRISE BARGAINING AGREEMENT 1997.
No. PSA AG 34 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Merredin Health Service Board

and

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

No. PSA AG 34 of 1997.

Hospital Salaried Officers Merredin Health Service Enterprise Bargaining Agreement 1997.

COMMISSIONER P E SCOTT.

23 January 1998.

Order.

HAVING heard Ms T Wilson on behalf of the Applicant and Mr D Hill 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 Hospital Salaried Officers Merredin Health Service Enterprise Bargaining Agreement 1997 in the terms of the following schedule be registered on the 30th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Merredin Health Service Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Merredin Health Service along with allowing the benefits from those improvements to be shared by employees, Merredin Health Service and the Government on behalf of the Community.

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

(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 Merredin Health Service, (hereinafter referred to as Merredin Health Service) 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 twenty 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 replaces the Hospital Salaried Officers Merredin Health Service Enterprise Bargaining Agreement No PSA AG66 of 1996

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 31 March 1998, 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 forthwith.

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) (i) 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 1997.

(ii) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Health Service level for productivity improvements which occurred between 1 January 1997 and 1 July 1997 and which have been documented as being identified in justifying wage increases under this Agreement.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

(a) improve the productivity and efficiency of Merredin Health Service;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Merredin Health Service;

(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, Merredin Health Service and its clients and the Government on behalf of the community;

(b) ensuring that Merredin Health Service 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 Merredin Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Merredin Health Service, 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, Merredin Health Service 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 Merredin Health Service, a representative from Merredin Health Service 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 Merredin Health Service.

(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 Merredin Health Service'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 Merredin Health Service 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 Merredin Health Service 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 Merredin Health Service.

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 Merredin Health Service 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 Merredin Health Service 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 Merredin Health Service 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 Merredin Health Service as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Merredin Health Service 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 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 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 Merredin Health Service 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 Merredin Health Service.

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

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Merredin Health Service 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, Merredin Health Service 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

Pursuant to the replacement of agreement no PSA AG66 of 1996, this agreement provides for a 5% salary increase effective from the date of registration of the agreement.

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Merredin Health Service.

(2) (a) To assist in meeting these obligations, Merredin Health Service will assist by providing appropriate resources having regard to the operational requirements of Merredin Health Service 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 Merredin Health Service 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 Merredin Health Service and shall not unreasonably affect the operation of Merredin Health Service;

(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 forums.

(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 Merredin Health Service 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 Merredin Health Service representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Merredin Health Service 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 Merredin Health Service (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 Merredin Health Service (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 27 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 N0. 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;

1. at or before the 1st April 1996 was employed by Merredin Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
2. commenced employment with Merredin Health Service after the 1st 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 Merredin Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with Merredin Health Service and who;

1. at or before the 1st April 1996 was employed by Merredin Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
2. commenced employment with Merredin Health Service after the 1st 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 Merredin Health Service 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 Merredin Health Service immediately prior to dismissal shall, in addition to any accrued long service leave be paid pro-rata long service leave.

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 Merredin Health Service, 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 Merredin Health Service.

(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.

(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 date of registration 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 Clause 10 of the Agreement and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,237
17 years of age	13,609	14,289
18 years of age	15,886	16,680
19 years of age	18,387	19,306
20 years of age	20,649	21,681
1st year of full-time equivalent adult service	22,682	23,816
2nd year of full-time equivalent adult service	23,382	24,551
3rd year of full-time equivalent adult service	24,078	25,282
4th year of full-time equivalent adult service	24,772	26,011
LEVEL 2	25,469	26,742
	26,167	27,475
	26,969	28,317
	27,524	28,900
	28,343	29,760
LEVEL 3	29,311	30,777
	30,064	31,567
	30,856	32,399
	32,118	33,724
LEVEL 4	32,779	34,418
	33,770	35,459
	34,788	36,527
	36,235	38,047
LEVEL 5	36,989	38,838
	38,025	39,926
	39,090	41,045
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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 increases in Clause 10 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 + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 3/5	29,311	30,777
	30,856	32,399
	32,779	34,418
	34,788	36,527
	38,025	39,926
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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.

The first and second arbitrated safety net increases have, for the purposes of this agreement been offered against past productivity improvements.

The third arbitrated safety net adjustment has been absorbed.

23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Michael Hartland

Signed **Union Seal** 5/12/97

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

Signed **Union Seal** 5/12/97

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Peter Lisacek

Signed 3 Dec 97

(Signature) (Date)

General Manager for an on behalf of the Board of Management of Merredin Health Service.

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 Merredin Health Service 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

HOSPITAL SALARIED OFFICERS MUKINBUDIN HEALTH SERVICE ENTERPRISE BARGAINING AGREEMENT 1997.
No. PSA AG 30 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mukinbudin Health Service

and

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

No. PSA AG 30 of 1997.

Hospital Salaried Officers Mukinbudin Health Service Enterprise Bargaining Agreement 1997.

COMMISSIONER P E SCOTT.

23 January 1998.

Order.

HAVING heard Ms T Wilson on behalf of the Applicant and Mr D Hill 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 Hospital Salaried Officers Mukinbudin Health Service Enterprise Bargaining Agreement 1997 in the terms of the following schedule be registered on the 30th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Mukinbudin Health Service Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Mukinbudin Health Service along with allowing the benefits from those improvements to be shared by employees, Mukinbudin District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Mukinbudin Health Service taking responsibility for their own

labour relations affairs and reaching agreement on issues appropriate to Mukinbudin Health Service.

(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 Mukinbudin Health Service, (hereinafter referred to as Mukinbudin Health Service) 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 nil 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 replaces the Hospital Salaried Officers Mukinbudin District Hospital Enterprise Bargaining Agreement No PSA AG71 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 forthwith.

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) (i) 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 1997.

(ii) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Health Service level for productivity improvements which occurred between 1 January 1997 and 1 July 1997 and which have been documented as being identified in justifying wage increases under this Agreement.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

(a) improve the productivity and efficiency of Mukinbudin Health Service;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Mukinbudin Health Service;

(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, Mukinbudin Health Service and its clients and the Government on behalf of the community;

(b) ensuring that Mukinbudin Health Service 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 Mukinbudin Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Mukinbudin Health Service, 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, Mukinbudin Health Service 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 Mukinbudin Health Service, a representative from Mukinbudin Health Service 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 Mukinbudin Health Service.

(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 Mukinbudin Health Service'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 Mukinbudin Health Service 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 Mukinbudin Health Service 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 Mukinbudin Health Service.

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 Mukinbudin Health Service 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 Mukinbudin Health Service 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 Mukinbudin Health Service 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 Mukinbudin Health Service as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Mukinbudin Health Service 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 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 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 Mukinbudin Health Service 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 Mukinbudin Health Service.

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

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Mukinbudin Health Service 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, Mukinbudin Health Service 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

Pursuant to the replacement of agreement no PSA AG71 of 1996, this agreement provides for a 5% salary increase effective from the date of registration of the agreement.

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Mukinbudin Health Service.

(2) (a) To assist in meeting these obligations, Mukinbudin Health Service will assist by providing appropriate resources having regard to the operational requirements of Mukinbudin Health Service 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 Mukinbudin Health Service 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 Mukinbudin Health Service and shall not unreasonably affect the operation of Mukinbudin Health Service;

(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 forums.

(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 Mukinbudin Health Service 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 Mukinbudin Health Service representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Mukinbudin Health Service 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 Mukinbudin Health Service (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 Mukinbudin Health Service (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 27 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 N0. 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 1st April 1996 was employed by Mukinbudin Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Mukinbudin Health Service after the 1st 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 Mukinbudin Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with Mukinbudin Health Service and who;

i) at or before the 1st April 1996 was employed by Mukinbudin Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Mukinbudin Health Service after the 1st 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 Mukinbudin Health Service 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 Mukinbudin Health Service 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 Mukinbudin Health Service, 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 Mukinbudin Health Service.

(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.

(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 date of registration 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 Clause 10 of the Agreement and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,237
17 years of age	13,609	14,289
18 years of age	15,886	16,680
19 years of age	18,387	19,306
20 years of age	20,649	21,681
1st year of full-time equivalent adult service	22,682	23,816
2nd year of full-time equivalent adult service	23,382	24,551
3rd year of full-time equivalent adult service	24,078	25,282
4th year of full-time equivalent adult service	24,772	26,011
LEVEL 2	25,469	26,742
	26,167	27,475
	26,969	28,317
	27,524	28,900
	28,343	29,760
LEVEL 3	29,311	30,777
	30,064	31,567
	30,856	32,399
	32,118	33,724
LEVEL 4	32,779	34,418
	33,770	35,459
	34,788	36,527
	36,235	38,047
LEVEL 5	36,989	38,838
	38,025	39,926
	39,090	41,045
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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 increases in Clause 10 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 + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 3/5	29,311	30,777
	30,856	32,399
	32,779	34,418
	34,788	36,527
	38,025	39,926
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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.

(8) The third arbitrated safety net adjustment has been absorbed.

23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Michael Hartland

Signed **Union Seal**

.....

(Signature)

12/12/97

.....

(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

Signed **Union Seal**

.....

(Signature)

11/12/97

.....

(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Peter Lisacek

Signed

.....

(Signature)

10 Dec 97

.....

(Date)

General Manager for and on behalf of the Board of Management of Mukinbudin Health Service Board.

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 Mukinbudin Health Service 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

HOSPITAL SALARIED OFFICERS NAREMBEEN HEALTH SERVICES BOARD ENTERPRISE BARGAINING AGREEMENT 1997.

No. PSA AG 33 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Narembeen Health Services Board

and

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

No. PSA AG 33 of 1997.

Hospital Salaried Officers Narembeen Health Services Board Enterprise Bargaining Agreement 1997.

COMMISSIONER P E SCOTT.

23 January 1998.

Order.

HAVING heard Ms T Wilson on behalf of the Applicant and Mr D Hill 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 Hospital Salaried Officers Narembeen Health Services Board Enterprise Bargaining Agreement 1997 in the terms of the following schedule be registered on the 30th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Narembeen Health Services Board Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Narembeen Health Services Board along with allowing the benefits from those improvements to be shared by employees, Narembeen Health Services Board and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Narembeen Health Services Board taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Narembeen Health Services Board.

(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 Narembeen Health Services Board, (hereinafter referred to as Narembeen Health Services Board) 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 3 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 replaces the Hospital Salaried Officers Narembeen District Memorial Hospital Board Enterprise Bargaining Agreement No PSA AG75 of 1996.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 31 March 1998, 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 forthwith.

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) (i) 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 1997.

(ii) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Health Service level for productivity improvements which occurred between 1 January 1997 and 1 July 1997 and which have been documented as being identified in justifying wage increases under this Agreement.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

(a) improve the productivity and efficiency of Narembeen Health Services Board;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Narembeen Health Services Board;

(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, Narembeen Health Services Board and its clients and the Government on behalf of the community;

(b) ensuring that Narembeen Health Services Board 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 Narembeen Health Services Board operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Narembeen Health Services Board, 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, Narembeen Health Services Board 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 Narembeen Health Services Board, a representative from Narembeen Health Services Board 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 Narembeen Health Services Board.

(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 Narembeen Health Services Board'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 Narembeen Health Services Board 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 Narembeen Health Services Board 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 Narembeen Health Services Board.

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 Narembeen Health Services Board 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 Narembeen Health Services Board 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 Narembeen Health Services Board 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 Narembeen Health Services Board as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Narembeen Health Services Board 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 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 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 Narembeen Health Services Board 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 Narembeen Health Services Board.

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

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Narembeen Health Services Board 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, Narembeen Health Services Board 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

Pursuant to the replacement of agreement no PSA AG75 of 1996, this agreement provides for a 5% salary increase effective from the date of registration of the agreement.

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Narembeen Health Services Board.

(2) (a) To assist in meeting these obligations, Narembeen Health Services Board will assist by providing appropriate

resources having regard to the operational requirements of Narembeen Health Services Board 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 Narembeen Health Services Board 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 Narembeen Health Services Board and shall not unreasonably affect the operation of Narembeen Health Services Board;

(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 forums.

(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 Narembeen Health Services Board 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 Narembeen Health Services Board representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Narembeen Health Services Board 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 Narembeen Health Services Board (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 Narembeen Health Services Board (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 27 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 N0. 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 1st April 1996 was employed by Narembeen Health Services Board, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Narembeen Health Services Board after the 1st 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 Narembeen Health Services Board immediately prior to taking this leave.

(b) An employee who resigns from their employment with Narembeen Health Services Board and who;

i) at or before the 1st April 1996 was employed by Narembeen Health Services Board, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Narembeen Health Services Board after the 1st 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 Narembeen Health Services Board 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 Narembeen Health Services Board 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 Narembeen Health Services Board, 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 Narembeen Health Services Board.

(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.

(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 date of registration 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 Clause 10 of

the Agreement and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,237
17 years of age	13,609	14,289
18 years of age	15,886	16,680
19 years of age	18,387	19,306
20 years of age	20,649	21,681
1st year of full-time equivalent adult service	22,682	23,816
2nd year of full-time equivalent adult service	23,382	24,551
3rd year of full-time equivalent adult service	24,078	25,282
4th year of full-time equivalent adult service	24,772	26,011
LEVEL 2	25,469	26,742
	26,167	27,475
	26,969	28,317
	27,524	28,900
	28,343	29,760
LEVEL 3	29,311	30,777
	30,064	31,567
	30,856	32,399
	32,118	33,724
LEVEL 4	32,779	34,418
	33,770	35,459
	34,788	36,527
	36,235	38,047
LEVEL 5	36,989	38,838
	38,025	39,926
	39,090	41,045
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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 increases in Clause 10 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 + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 3/5	29,311	30,777
	30,856	32,399
	32,779	34,418
	34,788	36,527
	38,025	39,926
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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.

(8) The third arbitrated safety net adjustment has been absorbed.

23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Michael Hartland

Signed (Signature) **Union Seal** 12/12/97 (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

Signed (Signature) **Union Seal** 11/12/97 (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Peter Lisacek

Signed (Signature) 10 Dec 97 (Date)

General Manager for and on behalf of the Board of Management of Narembeen Health Service Board.

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 Narembeen Health Services Board 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

HOSPITAL SALARIED OFFICERS SOUTHERN CROSS DISTRICT HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.
No. PSA AG 35 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Southern Cross District Hospital Board

and

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

No. PSA AG 35 of 1997.

Hospital Salaried Officers Southern Cross District Hospital Enterprise Bargaining Agreement 1997.

COMMISSIONER P E SCOTT.

23 January 1998.

Order.

HAVING heard Ms T Wilson on behalf of the Applicant and Mr D Hill 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 Hospital Salaried Officers Southern Cross District Hospital Enterprise Bargaining Agreement 1997 in the terms of the following schedule be registered on the 30th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Southern Cross District Hospital Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Southern Cross District Hospital along with allowing the benefits from those improvements to be shared by employees, Southern Cross District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Southern Cross District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Southern Cross District 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 Southern Cross District Hospital, (hereinafter referred to as Southern Cross District 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 2 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 replaces the Hospital Salaried Officers Southern Cross District Hospital Enterprise Bargaining Agreement PSA AG97 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 forthwith.

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) (i) 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 1997.

(ii) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Health Service level for productivity improvements which occurred between 1 January 1997 and 1 July 1997 and which have been documented as being identified in justifying wage increases under this Agreement.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

(a) improve the productivity and efficiency of Southern Cross District Hospital;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Southern Cross District 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, Southern Cross District Hospital and its clients and the Government on behalf of the community;

(b) ensuring that Southern Cross District 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 Southern Cross District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Southern Cross District 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, Southern Cross District 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 Southern Cross District Hospital, a representative from Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District Hospital as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Southern Cross District 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 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 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 Southern Cross District 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 Southern Cross District Hospital.

(6) All promotional positions and new staff recruited by Southern Cross District 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 Southern Cross District Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Southern Cross District 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, Southern Cross District 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

Pursuant to the replacement of agreement no PSA AG97 of 1996, this agreement provides for a 5% salary increase effective from the date of registration of the agreement.

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Southern Cross District Hospital.

(2) (a) To assist in meeting these obligations, Southern Cross District Hospital will assist by providing appropriate resources having regard to the operational requirements of Southern Cross District 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 Southern Cross District 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 Southern Cross District Hospital and shall not unreasonably affect the operation of Southern Cross District 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 forums.

(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 Southern Cross District 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 Southern Cross District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 27 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 N0. 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 1st April 1996 was employed by Southern Cross District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Southern Cross District Hospital after the 1st 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 Southern Cross District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Southern Cross District Hospital and who;

i) at or before the 1st April 1996 was employed by Southern Cross District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Southern Cross District Hospital after the 1st 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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 Southern Cross District 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.

(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 date of registration 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 Clause 10 of the Agreement and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,237
17 years of age	13,609	14,289
18 years of age	15,886	16,680
19 years of age	18,387	19,306
20 years of age	20,649	21,681
1st year of full-time equivalent adult service	22,682	23,816
2nd year of full-time equivalent adult service	23,382	24,551
3rd year of full-time equivalent adult service	24,078	25,282
4th year of full-time equivalent adult service	24,772	26,011
LEVEL 2	25,469	26,742
	26,167	27,475
	26,969	28,317
	27,524	28,900
	28,343	29,760
LEVEL 3	29,311	30,777
	30,064	31,567
	30,856	32,399
	32,118	33,724
LEVEL 4	32,779	34,418
	33,770	35,459
	34,788	36,527
	36,235	38,047
LEVEL 5	36,989	38,838
	38,025	39,926
	39,090	41,045
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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 increases in Clause 10 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 + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 3/5	29,311	30,777
	30,856	32,399
	32,779	34,418
	34,788	36,527
	38,025	39,926
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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.

(8) The third arbitrated safety net adjustment has been absorbed.

23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Michael Hartland

Signed _____ **Union Seal** 5/12/97

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

Signed _____ **Union Seal** 5/12/97

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Peter Lisacek

Signed _____ 3 Dec 97

(Signature) (Date)

General Manager for and on behalf of the Board of Management of Southern Cross District 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 Southern Cross District 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

HOSPITAL SALARIED OFFICERS WYALKATCHEM-KOORDA AND DISTRICTS HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.
No. PSA AG 36 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wyalkatchem-Koorda and Districts Hospital Board

and

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

No. PSA AG 36 of 1997.

Hospital Salaried Officers Wyalkatchem-Koorda & Districts Hospital Enterprise Bargaining Agreement 1997.

COMMISSIONER P. E. SCOTT.

23 January 1998.

Order.

HAVING heard Ms T Wilson on behalf of the Applicant and Mr D Hill 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 Hospital Salaried Officers Wyalkatchem-Koorda & Districts Hospital Enterprise Bargaining Agreement 1997 in the terms of the following schedule be registered on the 30th day of December 1997.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Wyalkatchem-Koorda & Districts Hospital Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Wyalkatchem-Koorda & Districts Hospital along with allowing the benefits from those improvements to be shared by employees, Wyalkatchem-Koorda & Districts Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Wyalkatchem-Koorda & Districts Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital, (hereinafter referred to as Wyalkatchem-Koorda & Districts 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 3 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 replaces the Hospital Salaried Officers Wyalkatchem-Koorda and District Hospital Enterprise Bargaining Agreement PSA AG112 of 1996.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 31 March 1998, 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 forthwith.

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) (i) 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 1997.

(ii) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims at Health Service level for productivity improvements which occurred between 1 January 1997 and 1 July 1997 and which have been documented as being identified in justifying wage increases under this Agreement.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

(a) improve the productivity and efficiency of Wyalkatchem-Koorda & Districts Hospital;

(b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work

arrangements at Wyalkatchem-Koorda & Districts 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, Wyalkatchem-Koorda & Districts Hospital and its clients and the Government on behalf of the community;

(b) ensuring that Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Wyalkatchem-Koorda & Districts 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, Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital, a representative from Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Wyalkatchem-Koorda & Districts 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 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 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital.

(6) All promotional positions and new staff recruited by Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Wyalkatchem-Koorda & Districts 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, Wyalkatchem-Koorda & Districts 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

Pursuant to the replacement of agreement no PSA AG112 of 1996, this agreement provides for a 5% salary increase effective from the date of registration of the agreement.

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Wyalkatchem-Koorda & Districts Hospital.

(2) (a) To assist in meeting these obligations, Wyalkatchem-Koorda & Districts Hospital will assist by providing appropriate resources having regard to the operational requirements of Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital and shall not unreasonably affect the operation of Wyalkatchem-Koorda & Districts 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 forums.

(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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 27 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 N0. 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 1st April 1996 was employed by Wyalkatchem-Koorda & Districts Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Wyalkatchem-Koorda & Districts Hospital after the 1st 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 Wyalkatchem-Koorda & Districts Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Wyalkatchem-Koorda & Districts Hospital and who;

i) at or before the 1st April 1996 was employed by Wyalkatchem-Koorda & Districts Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

ii) commenced employment with Wyalkatchem-Koorda & Districts Hospital after the 1st 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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.

(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 date of registration 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 Clause 10 of the Agreement and represent full and final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,237
17 years of age	13,609	14,289
18 years of age	15,886	16,680
19 years of age	18,387	19,306
20 years of age	20,649	21,681
1st year of full-time equivalent adult service	22,682	23,816
2nd year of full-time equivalent adult service	23,382	24,551

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration Salary P/Annum
3rd year of full-time equivalent adult service	24,078	25,282
4th year of full-time equivalent adult service	24,772	26,011
LEVEL 2	25,469	26,742
	26,167	27,475
	26,969	28,317
	27,524	28,900
	28,343	29,760
LEVEL 3	29,311	30,777
	30,064	31,567
	30,856	32,399
	32,118	33,724
LEVEL 4	32,779	34,418
	33,770	35,459
	34,788	36,527
	36,235	38,047
LEVEL 5	36,989	38,838
	38,025	39,926
	39,090	41,045
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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 increases in Clause 10 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 + 2 ASNA + 5% + 2% effective prior to date of registration Salary P/Annum	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration Salary P/Annum
LEVEL 3/5	29,311	30,777
	30,856	32,399
	32,779	34,418
	34,788	36,527
	38,025	39,926
	40,187	42,196
LEVEL 6	42,299	44,414
	43,867	46,060
	46,095	48,400
LEVEL 7	47,287	49,651
	48,797	51,237
	50,362	52,880
LEVEL 8	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
LEVEL 10	61,491	64,566
	64,966	68,214
LEVEL 11	67,741	71,128
	70,563	74,091
LEVEL 12	74,432	78,154
	77,047	80,899
	80,028	84,029
CLASS 1	84,537	88,764
CLASS 2	89,046	93,498
CLASS 3	93,553	98,231
CLASS 4	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.

(8) The third arbitrated safety net adjustment has been absorbed.

23.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Michael Hartland

Signed **Union Seal**

.....

(Signature)

5/12/97

.....

(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

Signed **Union Seal**

.....

(Signature)

5/12/97

.....

(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Peter Lisacek

Signed

.....

(Signature)

3 Dec 97

.....

(Date)

General Manager for and on behalf of the Board of Management of Wyalkatchem-Koorda & Districts 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 Wyalkatchem-Koorda & Districts 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

JONES & RICKARD SERVICE (WA) ENTERPRISE BARGAINING AGREEMENT 1997.

No. AG 286 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jones & Rickard Properties Pty Ltd

Trading As Jones & Rickard Service (WA)

and

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

No. AG 286 of 1997.

Jones & Rickard Service (WA)
Enterprise Bargaining Agreement 1997.

28 January 1998.

Order.

HAVING heard Mr A.P. Sommerville as agent for the Applicant and Mr D.J. Hicks as agent for the The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr C.F. Young as agent for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 23rd day of October, 1997 entitled Jones & Rickard Service (WA) Enterprise Bargaining Agreement 1997 be registered as an industrial agreement.

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

PART I — APPLICATION AND OPERATION OF THE AGREEMENT

1. — TITLE

This agreement shall be known as the Jones & Rickard Service (WA) Enterprise Bargaining Agreement 1997.

2. — ARRANGEMENT

3. — TERM OF AGREEMENT

3.1 This Agreement shall operate from the first pay period on or after 01/09/1997 and shall continue for a period of twenty (20) months until 30/04/1999.

3.2 Three months prior to the expiry date the parties to the Agreement will commence negotiations to establish a new Enterprise Bargaining Agreement.

3.3 If a new Agreement is not finalised prior to the nominated expiry date, the same conditions that applied under the expired Agreement will continue to apply.

4. — PARTIES BOUND

The parties to this Agreement shall be—

(a) Jones & Rickard Properties Pty Ltd T/A
Jones & Rickard Service (WA) (hereinafter referred to as the "Employer")
9—11 Bannister Road
CANNING VALE WA 6155

(b) Automotive, Food, Metals, Engineering, Printing and Kindred
Industries Union of Workers (W.A. Branch) (hereinafter referred to as the "Union)
1111 Hay Street
WEST PERTH WA 6005

(c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division (W.A. Branch), (hereinafter referred to as the "Union)
401—403 Oxford Street
MOUNT HAWTHORN WA 6016

(d) This Agreement at the date of commencement has approximately thirty one (31) employees bound under it's terms and conditions.

5. — RELATIONSHIP TO PARENT AWARD

This Agreement shall be read wholly and in conjunction with the Metal Trades (General) Award No 13 of 1965, and shall operate to the exclusion of and shall supersede all other industrial agreements (whether registered or unregistered), which would otherwise operate to regulate the conditions of employment covered by this Agreement. Where there is any inconsistency between this agreement and the Parent Award, then the provisions of this Agreement shall prevail.

6.—NO EXTRA CLAIMS

It is a term of this Agreement that there will be no extra claims made for the life of this Agreement except when consistent with a State Wage Case Decision of the Western Australian Industrial Relations Commission.

PART II — COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

7. — SETTLEMENT OF DISPUTES

7.1 The parties agree that open communication is fundamental to sound employee relations. The disputes procedure has been agreed by the parties to enable potential disputes to be resolved amicably, without loss of wages or production. It is the desire of the parties to make strikes unnecessary and to limit stop work meetings.

In the interest of sound employee relations, the most effective way to resolve problems, including questions, disputes or difficulties arising under this agreement is to communicate and seek solutions at the level at which problems occur.

7.2 It is agreed that no industrial action will occur by both parties whilst the following procedure is being followed in all stages.

The status quo will be maintained whilst the procedure is being followed.

7.3 STAGE 1

Employee/s will discuss the question, dispute or difficulties with their supervisor, who will attempt to resolve the issue expeditiously and within a mutually agreed time frame.

STAGE 2

If the matter is not resolved, the supervisor or employee/s will refer it to their manager, who will attempt to resolve the issue expeditiously and within a mutually agreed time frame.

STAGE 3

If the matter still remains unresolved, then either party will refer the matter to the General Manager, who will endeavour to resolve the issue expeditiously and within a mutually agreed time frame.

STAGE 4

At the conclusion of Stage 3, if the matter still remains unresolved, then either party may refer the matter to the Western Australian Industrial Relations Commission for resolution or determination.

7.4 At any or all stages of the above procedure, the employee/s may request the assistance of a fellow employee, shop committee member or full—time Union Official to represent them.

8. — AIMS AND OBJECTIVES

To contribute towards improving profitability that meets the company investment criteria by—

(i) Providing an employment environment that improves the living standards and provides job satisfaction;

(ii) Implementing workplace reforms so as to improve productivity and profitability;

(iii) Developing Quality Management Systems to enhance performance and service to our customers; and

(iv) Initiating a programme that provides growth and expansion of the business by having the most efficient employees and management systems.

9. — CONSULTATIVE COMMITTEE

9.1 A consultative Committee will be established at Jones & Rickard Service (WA).

The Committee will be made up of equal representation of management and shop floor elected representatives.

It is proposed to have, as a minimum, a representative or proxy from each section within the workshop, together with a sectional manager or proxy.

9.2 The role of the Committee will be to develop strategies and key performance indicators to increase productivity and efficiency of the company.

To discuss what changes are required to achieve the agreed goals.

To be the forum to negotiate, facilitate and deal with issues that may have an impact on the day to day running of the workshop.

9.3 The Committee will work on a consensus basis and will not have any voting rights.

Any dispute that may arise will be dealt with in accordance with Clause 7—Settlement of Disputes.

PART III — EMPLOYER AND EMPLOYEE'S DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

10. — SPECIAL FLEXIBILITY ARRANGEMENTS

10.1 It is the objective of the parties to this Agreement to implement agreed workplace practices which provide for more flexible working arrangements, improve the efficiency and productivity of the enterprise, enhance skills, job motivation and satisfaction and generally focus on customer needs, ensuring Continuous Service Improvement through greater efficiency of operation.

10.2 It is a condition of this Agreement, that all employees party to this Agreement agree to carry out any tasks which may or may not involve the use of tools, plant and equipment, within their skill, competence and training, as directed by the employer.

10.3 Management and supervisory staff shall be able to use tools, plant and equipment when carrying out work as required, which is not ordinarily performed by wages employees, or is required in unusual circumstances.

10.4 Management will provide employees with Maintenance and Duties schedules for all work to be performed in accordance with this clause, of which employees shall not unreasonably object to perform.

11. — CLOTHING & PROTECTIVE EQUIPMENT

The employer shall provide the employee with three (3) pair of overalls per annum, to be exchanged on a fair wear and tear basis.

Employees shall be provided with safety footwear, in accordance with the relevant Australian Standard. Replacement will be on a fair wear and tear basis, on presentation of worn out footwear.

PART IV — WAGES AND RELATED MATTERS

12. — WAGE RATES

The employer and employees are committed to implementing and monitoring ongoing initiatives, in accordance with the parameters set out in this Agreement, and in recognition of this, the following wage increases shall apply—

(i) From the first pay period on or after 1 September 1997, all employees shall receive a $0.75 per hour increase on their all purpose rate of pay;

(ii) At the twelve (12) month anniversary at the date of this Agreement, all employees shall receive a further $0.60 per hour increase on their all purpose rate of pay.

The rate increases shall be paid as a minimum, and in accordance with the following scale—

	Current	Date 01/09/97	Date 01/09/98
Classification			
C13	$12.30/hr	$13.05/hr	$13.65/hr
C10	$15.00/hr	$15.75/hr	$16.35/hr
Leading Hand	$16.00/hr	$16.75/hr	$17.35/hr

13.—DISTANT WORK

13.1 Where an Employee is directed by the Employer to proceed to work at such a distance that the Employee cannot return home each night and the Employee does so, the Employer shall provide the Employee with suitable board and lodging.

(i) Where an Employee is required, at the direction of the Employer, to stay at the remote site overnight, and where meals are not supplied by the Employer or the Employer's client, then the Employee shall be provided an allowance of $20.00 per day for each day the Employee is on site.

(ii) The Employee shall be paid an allowance of $25.00 per day for each day the Employee is on site, other than any site within the metropolitan area, as an incidental travel component of a travel expense allowance, to cover out of pocket expenses when performing duties in remote areas.

(iii) Provided that where the Employee has been paid in advance for the allowances specified in subclauses (ii) and (iii) above, and the Employee returns home early, the Employee

shall immediately reimburse the Employer for the excess allowances paid. Where the Employee does not reimburse the Employer for the excess allowances, then the Employer shall deduct the amounts owing from the Employee's next pay entitlement.

13.2 The provisions of subclause 13.1 of this clause do not apply with respect to any period during which the Employee is absent from work without reasonable excuse and in such a case, where the board and lodging is supplied by the Employer, the Employer may deduct from moneys owing or which may become owing to the Employee an amount equivalent to the value of that board and lodging for the period of the absence.

13.3 (i) The Employer shall pay all reasonable expenses including fares, transport of tools, meals and, if necessary, suitable overnight accommodation incurred by an Employee who is directed by the Employer to proceed to work pursuant to subclause 13.1 of this clause and who complies with such direction.

(ii) The Employer shall reimburse the Employee for reasonable expenses incurred in the laundering of overalls and work clothes, to a maximum of $10.00 per week.

(iii) The Employer shall only reimburse the Employee for expenses where the Employee provides receipts, or other forms of justification acceptable to the Employer.

(iv) The Employee shall be paid at ordinary rate of pay for the time up to a maximum of eight hours in any one day incurred in travelling pursuant to the Employer's direction.

13.4 An Employee, to whom the provisions of subclause 13.1 of this clause apply, shall be paid an allowance of $23.10 for any weekend the Employee returns home from the job, but only if—

(i) the Employee advises the Employer or the Employer's agent of such intention not later than the Tuesday immediately preceding the weekend in which the Employee so returns;

(ii) the Employee is not required for work during that week-end;

(iii) the Employee returns to the job on the first working day following the week-end; and

(iv) the Employer does not provide, or offer to provide, suitable transport.

13.5 Where Employees are required to perform work on a site where there is a site agreement in place, and that agreement is registered in the Australian or Western Australian Industrial Relations Commission, then the Employer agrees to pay in accordance with such an agreement, insofar as where there is inconsistency between the agreement and the normal conditions of Jones & Rickard employees, then the site agreement shall prevail.

PART V — HOURS OF WORK, BREAKS, OVERTIME, SHIFTWORK ETC.

14. — HOURS OF WORK

14.1 (i) The provisions of this subclause apply to all employees.

(ii) Subject to the provisions of subclause (iii) of this clause the ordinary hours of the work shall be an average of 38 per week to be worked on one of the following bases.

(a) 38 hours within a work cycle not exceeding seven consecutive days; or

(b) 76 hours within a work cycle not exceeding fourteen consecutive days; or

(c) 114 hours within a work cycle not exceeding twenty-one consecutive days; or

(d) 152 hours within a work cycle not exceeding twenty-eight consecutive days; or

(e) where the ordinary hours being worked each day are in accordance with paragraph (d) of this subclause, any other work cycle during which a weekly average of 38 ordinary hours are worked.

(iii) The ordinary hours of work may be worked on any or all days of the week, Monday to Friday inclusive, and except in the case of shift employees, shall be worked between the hours of 6.00 a.m. and 6.00 p.m. All employees shall be at their workstation, ready for work to commence, at the time of commencement of work, and shall cease work only at the time of cessation of work.

(iv) The ordinary hours of work prescribed herein shall not exceed 10 any day. Provided that—

(a) in any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between the Employer and the majority of employees in the plant, section or sections concerned; and

(b) Subject to the provisions of subclause (i) hereof, 10 hour shifts may be worked provided the Employer has given the relevant union or unions concerned notice in writing that such shifts are to be or are being worked.

(c) Provided that where the Employer requests that all or a group of Employees extend the ordinary hours in any one day to ten (10), then the employees concerned shall not unreasonably withhold agreement.

(v) Where there is a requirement for work on a particular contract, or contracts, to fully utilise the spread of hours in subclause (c) above, then the Employer shall notify the employees concerned of any arrangements to introduced staggered shift arrangements within the normal spread of hours. Provided that where there is a requirement to introduce staggered shifts, the Employer shall provide reasonable notice to the employees concerned.

15.—OVERTIME

15.1 (a) The provisions of this subclause apply to all employees.

(b) Subject to the provisions of this subclause, all work done beyond the ordinary working hours on any day shall be paid for at the following rates—

(i) First two (2) hours, Monday to noon Saturday inclusive— time and one half.

(ii) All other hours, Saturday and Sunday—double time.

(iii) Public Holidays—double time and a half.

For the purposes of this subclause, ordinary hours shall mean the hours of work fixed in the establishment in accordance with Clause 14 .—Hours of Work.

(c) In computing overtime each day shall stand alone but when an Employee works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work for the purposes of this subclause.

(d) Time worked in excess of the ordinary working hours shall be paid for at ordinary rates if it is due to private arrangements between the employees themselves.

15.2 (a) The provisions of this subclause apply to all employees.

(b) (i) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that an Employee has at least ten (10) consecutive hours off duty between the work of successive days.

(ii) Where an Employee (other than a casual Employee or an Employee engaged on continuous shift work) is called into work on a Sunday or holiday prescribed under this Agreement preceding an ordinary working day, the Employee shall, wherever reasonably practicable, be given ten consecutive hours off duty before the Employee's usual starting time on the next day.

(c) (i) An Employer may require any Employee to work reasonable overtime at overtime rates and such Employee shall work overtime in accordance with such requirements.

The assignment of overtime by an Employer to an Employee shall be based on specific work requirements and the practice of "one in, all in" overtime shall not apply.

(ii) No union or association party to this Agreement, 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.

PART VI — LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

16. — HOLIDAYS

16.1 (a) The following days or the days observed in lieu shall, subject to this subclause, be allowed as holidays without deduction of pay, namely—

New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or on a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

16.2 On any public holiday not prescribed as a holiday under this Agreement, the employer's establishment or place of business may be closed, in which case an Employee need not present for duty and payment may be deducted, but if work be done, ordinary rates of pay shall apply.

17.—ANNUAL LEAVE

17.1 Except as hereinafter provided a period of four consecutive weeks leave with payment shall be allowed annually to an employee by the Employer after a period of twelve months continuous service with the Employer.

17.2 If any nominated 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.

17.3 (a) An Employee whose employment terminates after the Employee 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 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.

(b) If, after one month's continuous service in any qualifying twelve monthly period an Employee lawfully leaves the employment or the employment is terminated by the Employer through no fault of the Employee, the Employee shall be paid 2.923 hours pay at the rate of wage prescribed by the Agreement, divided by thirty-eight, in respect of each completed week of continuous service.

17.4 Any time in respect of which an Employee is absent from work except time for which the Employee is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining the Employee's right to annual leave.

17.5 In the event of an Employee being employed by the Employer for portion only of a year, the Employee shall only be entitled, subject to subclause (4) of this clause, to such leave on full pay as is proportionate to the Employee's length of service during that period with the Employer, and if such leave is not equal to the leave given to the other Employees the Employee shall not be entitled to work or pay whilst the other employees of the Employer are on leave on full pay.

17.6 Annual leave shall be given and taken in one or two continuous periods. If the annual leave is given in two continuous periods then one of those two periods must be at least three consecutive weeks. Provided that if the Employer and an Employee so agree then the Employee's annual leave entitlement may be given and taken in two separate periods, neither of which is of at least three consecutive weeks, or in three separate periods.

Provided further that an Employee may, with the consent of the employer, take short term annual leave not exceeding five days in any calendar year, at a time or times separate from any of the periods determined in accordance with this subclause.

17.7 Where the Employer closes down the business, or a section or sections thereof, for the purposes of allowing annual leave to all or the bulk of the employees in the business, or section or sections concerned, the following provisions shall apply—

(a) The Employer may by giving not less than one month's notice of the intention so to do, stand off for the duration of the close down all employees in the business or section or sections concerned.

(b) The employer may close down the business for one or two separate periods for the purpose of granting annual leave in accordance with this subclause. If the Employer closes down the business in two separate periods one of those periods shall be for a period of at least three consecutive weeks. Provided that where the majority of the employees in the business or section or sections concerned agree, the Employer may close down the business in accordance with this subclause in two separate periods neither of which is of at least three consecutive weeks, or in three separate periods. In such cases the Employer shall advise the employees concerned of the proposed date of each close down before asking them for their agreement.

17.8 Annual leave must be rostered and taken in the year after it accrues. Where the Employee has not taken the full entitlement of the Employee's annual leave in the year after it accrues, then the Employer may direct the Employee to take such leave.

17.9 Annual Leave Loading

(i) As of the date of commencement of this Agreement, annual leave loading will cease to accrue and be paid when the Employee takes annual leave. An amount in lieu of annual leave loading has been added to the hourly rate.

(ii) The employee's existing annual leave loading shall be frozen and recorded as the Employee's annual leave loading, which shall include—

(a) the amount of leave loading that the Employee has accrued; and

(b) the rate of pay applicable to that loading immediately before the commencement of this agreement.

(iii) Each time the Employee takes a period of annual leave, part of the Employee's preserved entitlement in subclause (ii) above, applicable to the amount of annual leave the employee is taking, shall be paid to the Employee until such time as the Employee's accrued entitlement has been exhausted.

17.9 The provisions of this clause shall not apply to casual employees.

18. — BEREAVEMENT LEAVE

18.1 The Employee shall be entitled to a maximum of two (2) days without loss of pay and on production of satisfactory evidence of the death of the Employee's spouse, father, mother, sister, brother, child, stepchild, grandparents or parents-in-law. For the purpose of this clause the word "spouse" shall include de facto spouse and the words "father" and "mother" shall include foster father or mother and stepfather or mother.

18.2 Payment in respect of compassionate leave is to be made only where the Employee otherwise would have been on duty and shall not be granted in any case where the Employee concerned would have been off duty in accordance with any shift roster or on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a Public holiday.

18.3 The foregoing provisions are not intended to limit the Employer dealing with particular cases in a more generous basis.

19. — PARENTAL LEAVE

19.1 The Employee, after 52 consecutive weeks of service prior to the birth or placement of a child, shall be entitled to a maximum of 52 weeks parental leave, for the birth or adoption of a child, without pay.

19.2 The Employee shall give the Employer at least 10 weeks' written notice of the intention to take parental leave.

19.3 Maternity leave is to start six (6) weeks before the expected birth unless a medical practitioner has certified the Employee fit to continue work.

19.4 he Employee who is seeking to take paternity leave is to provide the Employer a certificate from a medical practitioner stating that the Employee or the Employee's spouse is pregnant and the expected date of birth.

19.5 The Employee is to notify the Employer of the intended dates on which parental leave is to start and finish. These dates are to be agreed between the Employee and Employer.

19.6 The Employee is not entitled, except for one weeks' unpaid parental leave taken by the male parent during or after the birth of the child; or the placement of a child for adoption, to take parental leave at the same time as the Employee's spouse.

19.7 The Employee is to give the Employer, a statutory declaration, notifying the particulars of any period of parental leave taken or to be taken by the Employee's spouse in relation to the same child.

19.8 On finishing parental leave the Employee will either be returned to the permanent position held immediately prior to parental leave or, if that position is not available, to an available position within the limits of the Employee's skills, competence and training that is comparable in pay and status to the Employee's former position.

PART VII — TRAINING AND RELATED MATTERS

20.—TRAINING

20.1 The Employer and the employees recognise that in order to increase efficiency, productivity and international competitiveness of the enterprise, a greater committment to training and skill development is required.

20.2 The Consultative Committee will establish a training programme consistent with—

(i) The current and future skill needs of the enterprise;

(ii) The size, structure and nature of the operations of the enterprise;

(iii) The need to develop vocational skills relevant to the enterprise through courses conducted where appropriate by accredited educational institutions and providers.

20.3 The Consultative Committee will also monitor the training programme implementation and availability of training courses and career opportunities to employees, and the recommending of individual employees for training courses and re-classification, advise management and employees regarding the ongoing effectiveness of the training.

21.—SIGNATORIES

The COMMON SEAL of)
Jones & Rickard Properties Pty Ltd T/A)
Jones & Rickard Service (WA)) COMMON
(ACN 008 960 245) was hereunto affixed) SEAL
in the presence of:)

(indecipherable—signed) General Manager
....
Signature Title (Print)
Date 10/10/ 1997

....
Signature Title (Print)
Date / / 1997

The COMMON SEAL of)
Automotive, Food, Metals, Engineering,) UNION
Printing and Kindred Industries Union) SEAL
of Workers (W.A. Branch) was hereunto)
affixed in the presence of:)

J Sharp-Collett (signed) State Secretary
....
Signature Title (Print)
Date 14/10/ 1997

....
Signature Title (Print)
Date / /1997

The COMMON SEAL of)
Communications, Electrical, Electronic,)
Energy, Information, Postal, Plumbing)
and Allied Workers Union of Australia,) UNION
Engineering and Electrical Division) SEAL
(W.A. Branch) was hereunto affixed)
in the presence of:)

J D Fiala (signed) Organiser
....
Signature Title (Print)
Date 15/10/1997

....
Signature Title (Print)
Date / /1997

LEIGHTON CONTRACTORS MINING AND PROCESSING PERSONNEL ENTERPRISE AGREEMENT 1997.

No. AG 354 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leighton Contractors Pty Ltd

and

The Australian Workers' Union,

West Australian Branch, Industrial Union of Workers.

No. AG 354 of 1997.

Leighton Contractors Mining and
Processing Personnel Enterprise Agreement 1997.

28 January 1998.

Order.

HAVING heard Ms T.M. Allen as agent for the Applicant and Mr R.J. Krygsman 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 agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 10th day of December, 1997 entitled Leighton Contractors Mining and Processing Personnel Enterprise Agreement 1997 be registered as an industrial agreement.

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

LEIGHTON CONTRACTORS MINING AND PROCESSING PERSONNEL ENTERPRISE AGREEMENT 1997

ENTERPRISE AGREEMENT—TABLE OF CONTENTS

PART I—APPLICATION AND OPERATION OF ENTERPRISE AGREEMENT

1.—TITLE

1.1 This Agreement will be known as the Leighton Contractors Mining And Processing Personnel Enterprise Agreement 1997.

2.—DEFINITIONS

2.1 Agreement

Agreement means the Leighton Contractors Mining and Processing Personnel Enterprise Agreement 1997.

2.2 Company

Company means Leighton Contractors Pty Limited

2.3 Employee

Employee means for the purposes of this Agreement someone who is referred to in Clause 4—Coverage of Agreement.

2.4 Union

Union means the Australian Workers Union, West Australian Branch, Industrial Union of Workers.

2.5 Parties

Parties means the Company, Employees and Union when referred to jointly in these terms and conditions.

3.—COMMENCEMENT DATE AND PERIOD OF OPERATION

3.1 This Agreement will operate for two year(s) from the date of registration.

3.2 This Agreement will continue to operate after its expiry unless another agreement has been negotiated and registered to take its place.

3.3 The implementation of this Agreement will be reviewed after it has been in operation for 12 months. The review will be conducted by a Committee of workforce representatives and company representatives. The number of representatives provided by the employees and the Company will be representative of the number of contracts at the time of review. This review will be for the sole purpose of ensuring that the processes of the Agreement are working appropriately.

3.4 Negotiations for a replacement to this Agreement will commence six (6) months prior to the expiry of this Agreement.

3.5 The Company undertakes to implement a consultative process in the development of a subsequent Agreement.

3.6 No further claims for increases in wages or conditions will be made during the period of this Agreement except where provided for in this Agreement.

4.—COVERAGE OF AGREEMENT

4.1 This Agreement will apply to employees of Leighton Contractors Pty Limited engaged at mine sites and who are involved in the surface mining and processing operations and associated works of the Company's contracts throughout the State of Western Australia. (Currently approximately 250 employees)

4.2 Should the Company secure a mining contract in a section of the Industry or an area of W.A. which normally provides well in excess of the pay rates and conditions contained in this Agreement, the Parties agree to negotiate either an addendum to this Agreement or a completely separate Agreement to cover that particular contract.

4.3 The Company will endeavour to secure a maximum of no more than six (6) weeks on and one (1) week off roster, during the process of writing new contracts.

5.—RELATIONSHIP WITH OTHER AWARDS

5.1 This Agreement shall be read and interpreted wholly in conjunction with the AWU Gold (Mining and Processing) Award 1993 and to the extent of any inconsistency between this Agreement and the Award, this Agreement will prevail to the extent of such inconsistency.

6.—PARTIES BOUND

6.1 The Employer

Leighton Contractors Pty Limited.

6.2 The Union

The Australian Workers Union West Australian Branch Industrial Union of Workers and Employees who are or are eligible to be members of the AWU.

7.—NO DISADVANTAGE TEST

7.1 On implementation of this Agreement, employees overall entitlements will not be less than that which they would be entitled to under the AWU Gold (Mining & Processing) Award if this Agreement did not exist.

7.2 In the event of an employee demonstrating reduction of wages, allowances and conditions by implementation of the Agreement, the Company will make up the employee's wage, allowances and conditions to that which existed prior to the commencement of this Agreement.

Average hourly income will be based on the employees earnings over the four (4) consecutive weeks worked prior to this Agreement becoming effective.

7.3 Make up pay will cease upon one of these events occurring and whichever occurs the earliest—

a) The completion of the Company's contract with its client.
b) Termination of employment.
c) The employee reclassification to a pay level in excess of that which existed prior to this Agreement through the Performance Appraisal System and which results in the employee's wages, allowances and conditions being greater than the made up pay.
d) Where an employee's pay is reduced due to inadequate performance through the Performance Appraisal System.
e) Transfer of the employee to another of the Company's contracts.

PART II—ENTERPRISE AGREEMENT OVERVIEW

8.—OVERVIEW

8.1 The objective of this enterprise agreement is to—

a) Introduce a series of productivity initiatives to improve the Company's on site efficiency thereby allowing the Company to be highly productive, win more work and consequently offer it's employees a longer and more stable career path.
b) Enable the Company to reward it's employees on the basis of individual contribution and skill levels through the introduction of a Performance Assessment System.
c) The Performance Assessment System will enable all of the Company's employees both existing and future to be periodically assessed by a site based

appraisal committee to determine the employees' overall grading and basic pay rates. The appraisal process will be comprised of three basic elements—

Element 1.—Competency Group Classification

Element 2.—Skill Grade Classification

Element 3.—Performance Classification

9.—OBJECTIVES

The Company will over the two year period, put in place strategies which achieve the following objectives—

9.1 Gain the Parties endorsement and commitment to the implementation of measures which will improve the effectiveness, productivity and efficiency of the Company's operations.

9.2 Employees will implement productivity improvements as proposed by the Company which aims to reduce staff turnover and increase efficiency.

9.3 Identify and implement measures which will reduce the Company's operating costs.

9.4 Employees will implement controls and reporting as required by the Company to measure costs.

PART III—CONDITIONS OF EMPLOYMENT

10.—WAGE RATES

10.1 On commencement of this Agreement employees shall receive wages as per Schedule 1 attached.

10.2 Additions to wages shall be determined in accordance with Leighton Contractors' Performance Assessment System.

10.3 The wage rates and allowances prescribed in this Agreement replace the wages schedules and all allowances prescribed in the Gold Award. Only those wage rates and allowances prescribed in this Agreement shall apply.

11.—HOURS OF WORK

11.1 Ordinary hours of work will be 40 hours per week. Monday to Friday inclusive 8 consecutive hours per day.

11.2 Scheduled production times are to be maintained by employees ensuring haul units are available for loading for the entire duration of production shift e.g. if the production shift runs from 6.30a.m.-5.30p.m. the first haul unit will be in the pit ready for loading at 6.30a.m. and the last loaded unit leaves the loading area at 5.30p.m. Such requirement is to be shared equally between the employees affected by means of establishing an appropriate rotating roster. Employees will only be paid for actual hours of work authorised by the Company, normally the scheduled production time.

Employees involved in unscheduled events outside the normal production time shall be paid for the time of the event at the employees' rate of pay.

11.3 Employees are either day employees or shift employees. Day employees are employees who work on a permanent day shift basis. Shift employees are employees who work on a rotating day/night shift basis or permanent night shift basis.

11.4 The rates of pay and conditions prescribed in this Agreement for a shift employee shall also apply equally to an employee working in a continuous 24 hour uninterrupted process.

11.5 Employees who as part of their duties are required to transport other employees to and from their place of work (e.g. bus driver) will be paid for the extra time worked. The extra time worked shall be paid at the employees' rate of pay for ordinary hours or overtime in accordance with Schedule 2.

12.—OVERTIME

12.1 All time worked in excess of the ordinary working hours in any week shall be paid as per Schedule 2 attached.

13.—TRANSPORT

13.1 The Company may provide transport for employees to and from their workplace.

The Company will determine at the commencement of a contract for the duration of the contract whether or not it will provide transport for employees.

13.2 If the Company does not provide transport a travelling allowance of $5.00 per day shall be paid where an employee's usual place of residence is more than 30 kilometres from the job.

14.—NOTICE REQUIREMENTS

14.1 The period of notice to be provided by an employee prior to terminating employment shall be one weeks notice or the forfeiture of an equivalent number of ordinary hours pay.

14.2 The notice to be provided by the employer or the payment of an equivalent number of ordinary hours pay shall be as follows—

Employee's period of continuous service with the employer	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but less than 5 years	3 weeks
More than 5 years	4 weeks

The period of notice shall be increased by 1 week if the employee is over the age of 45 years and has completed at least 2 years continuous service with the Company.

An employee will receive payment in lieu of notice for any part of an entitlement for which the Company is unable to provide employment.

14.3 An employee dismissed for misconduct (See Subclause 30.3 of this Agreement) will not be entitled to the provisions of this Clause.

15.—REST BREAKS

15.1 Rest breaks will be of a 10 minute duration and shall count as time worked.

15.2 Rest breaks will be taken in the closest, safest and most convenient place.

15.3 (a) The Company will supply existing employees with a 1 litre thermos and a 2 litre plastic water bottle at commencement of this Agreement and new employees upon commencement of employment. The thermos will be replaced on a "fair wear and tear", "new for old" basis.

(b) The thermos and water bottle will become the property of the employee three (3) months after issue. If the employee terminates or is terminated within this period, the equivalent value of the thermos and water bottle will be deducted from the employees termination pay if they are not returned.

(c) Filling the thermos and water bottle will be carried out in the employee's time prior to the start of shift.

15.4 The dayshift rest break will be taken prior to the shift meal break. eg.10:00 am. This time will be scheduled as appropriate for the operations and consensus of employees.

The nightshift rest break will be taken after the shift meal break. e.g. 3:00am. This time will be scheduled as appropriate for the operations and consensus of employees.

15.5 Rest and shift meal breaks will be scheduled so no employee works more than 6.5 hours without a break.

15.6 Hot water, tea, coffee, milk and sugar will be supplied and co-ordinated within each site.

15.7 An adequate supply of cool drinking water will be provided by the Company on each site.

16.—MEAL BREAKS

16.1 Shift meal breaks are to be managed by the Company as appropriate to the specific operation and daily conditions on site to minimise the interruption to production.

16.2 Meal breaks shall be of 30 minutes duration.

16.3 Meal breaks will be paid for all shift employees.

16.4 Where day employees are required by the Company to work from time to time through their meal break, they will be entitled to be paid for that meal break.

17.—LEAVE ENTITLEMENTS

17.1 Where an employee has accrued entitlements to Annual Leave, RDO's and Leisure Days prior to the implementation of this Agreement, such accrued entitlements shall, on the implementation of this Agreement be added to the employee's 'Leave Pool'.

17.2 Employees will accrue the following leave entitlements at the ordinary rate of pay over the period of 12 month's continuous service with the employer—

(a)	Annual Leave	23.5 Days
(b)	Public Holidays	10.0 Days
(c)	Leisure Days	12.0 Days
	Total Leave Pool	45.5 Days

Leave Pool days shall accrue as follows—

(a) Annual Leave—Weekly at the rate of 188 hours (23.5 x 8) divided by 52 weeks per year

(b) Public Holidays—As gazetted, 8 hours each

(c) Leisure Days—Weekly at the rate of 96 hours (12 x 8) divided by 52 weeks per year

17.3 An employee before going on leave, shall be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave during the period of leave.

17.4 In the event that employment terminates, the employee shall be entitled to be paid for all accumulated days in the Leave Pool which have not yet been taken by the employee.

17.5 During a period of leave the employee shall be paid the appropriate rate of pay and allowances as applicable.

17.6 (a) The following days to be included in the leave pool as public holidays are namely; New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(b) Any statutory change to Public Holidays by the State Government, is to be automatically applied to this Agreement.

17.7 (a) Paid leave taken will be limited to the total number of days accrued in the Leave Pool. Any days taken in excess of the accrued days will be considered as leave without pay.

(b) Leave without pay may be taken by an employee by agreement with the Project Manager where the employee does not have sufficient accrued entitlement in the Leave Pool to cover the period of leave requested. Approval of applications for leave without pay will not be unreasonably withheld by the Project Manager.

(c) On remote sites the first break to which an employee is entitled may be taken as leave without pay irrespective of the employee's accrued entitlement in the Leave Pool.

17.8 (a) Any unused portion of the leave entitlement in the Leave Pool in any one year shall accumulate from year to year.

(b) An employee with the agreement of the Project Manager may take leave without pay during the year or at the time of taking annual leave for the purpose of being able to take up to 20 days of annual leave in one break. Each year stands alone. Leave without pay for annual leave will not be approved if the employee has accrued annual leave entitlements in the Leave Pool.

17.9 Notification of leave will be made using the proforma, "Employee Leave Pool Application Form".

17.10 Accrual of days in Annual Leave in excess of 20 days to a maximum of 30 days will be allowed only by agreement of the Project Manager.

Employees may not accrue more than 30 days annual leave.

17.11 Clause 12, 13 and Clause 21 of the AWU Gold (Mining and Processing) Award do not apply.

18.—ANNUAL LEAVE LOADING (LEAVE POOL)

For the purpose of this Agreement three and a half (3.5) days has been added to the Annual Leave included in the Leave Pool in lieu of the 17.5% Annual Leave Loading.

19.—SICK LEAVE POOL

19.1 Ten days sick leave shall be accrued annually into the Sick Leave Pool and such leave shall be available to an employee for the purpose of illness or injury.

19.2 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.

19.3 All sick leave entitlements accrued prior to the implementation of this Agreement, shall on implementation of this Agreement be credited to the employee's "Prior EBA Sick Leave Pool".

19.4 All sick leave entitlements accrued after implementation of this Agreement, shall be credited to the employee's "Sick Leave Pool".

19.5 Notification of sick leave will be made using the proforma, " Employee Leave Pool Application Form". An employee will be required to nominate when their sick leave is to come from their "Prior EBA Sick Leave Pool" should any accrual be available in it.

19.6 An employee is to inform the Company prior to the start of the employee's next rostered shift or within 24 hours of the commencement of an absence for injury or illness, as far as practicable. The employee must state the nature of the injury or illness and the estimated duration of the absence.

19.7 Medical Certificates—

(a) An employee will be required to provide a medical certificate to justify all sick leave claimed in excess of two (2) days from their "Prior EBA Sick Leave Pool".

(b) An employee will not be required to provide a medical certificate to justify sick leave claimed after commencement of this agreement.

19.8 In the event that employment terminates, the employee shall be entitled to be paid for all accumulated sick days in the pool, accrued since the commencement of this Agreement, which have not yet been taken by the employee.

Employees whose point of engagement is deemed to be Kalgoorlie i.e. those employees who return to Kalgoorlie after each shift shall in addition be entitled to be paid for all accumulated sick days in the pool accrued prior to the commencement of this Agreement.

19.9 Sick leave accrued either before or after implementation of this agreement may only be utilised by an employee for the purpose of illness or injury and Pressing Domestic Need/ Carer's Leave.

19.10 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.

19.11 Should a medical condition occur to an employee the Company may require, in consultation with the employee, the employee to be medically examined to ensure the employee's well-being and that appropriate actions such as evacuation from site can take place.

The employee may seek treatment from his/her physician where practicable.

19.12 Clause 22 of the AWU Gold (Mining and Processing) Award does not apply.

20.—LONG SERVICE LEAVE

(a) An employee shall be entitled to 13 weeks long service leave after completion of 10 years continuous service.

(b) An employee shall be entitled to be paid pro-rata Long Service Leave after completion of 5 years continuous service where employment is terminated—

i) by either the employee or the employer for any reason other than misconduct.

ii) by the death of the employee.

(c) After completion of each subsequent 7 year period of continuous service an employee shall be entitled to 13 weeks long service leave.

21.—PRESSING DOMESTIC NEED/CARER'S LEAVE

21.1 Subject to the agreement of the Project Manager an employee may be absent from work because of pressing domestic need and be entitled to leave of up to 3 days in any one year. Any additional required leave is to be at the discretion of the Project Manager. Accrued entitlement in either the Leave Pool or Sick Leave Pool may be used for this purpose. Otherwise the leave will be leave without pay.

21.2 The interpretation of "Pressing Domestic Need" is an unscheduled event and not an event that occurs at scheduled or frequent intervals. The event must be one that is of a serious urgent domestic nature that cannot be resolved by anyone other than the employee.

22.—PAYMENT OF WAGES

22.1 Employees at all sites will be paid on a weekly basis.

23.—TRAINING

23.1 Employees will assist in the training of other employees as required by the Company.

23.2 All employees will be ready, willing and able as required by the Company to participate in agreed training programs applicable to the Company's operations.

23.3 Should an employee make written application to be trained on other pieces of equipment, they will need to indicate three (3) machines in order of preference.

The employees written application will be listed in order of receival by Project Management and the Company will make every attempt to provide the applicant with the opportunity to be trained on the equipment listed, within the constraints of production and the individuals competency.

23.4 The Performance Assessment System will provide the opportunity for all Mining and Processing Personnel to improve their skills and be rewarded according to skill grading and performance.

The Parties agree to keep the Performance Assessment System under review for the term of this Agreement, however should it change by agreement of the Parties, no employee is to be financially disadvantaged by these changes.

24.—EMPLOYEE TRANSFERS

24.1 Employees transferred from one site to another will be paid at up to 8 ordinary hours for the day of transfer and will remain at their current level except employees who request and accept a position at a lower classification.

24.2 Notwithstanding the above, Leading Hand allowances will cease to be paid on commencement at the new site unless the employee is required to work in the capacity of Leading Hand in which case the allowance will be paid.

24.3 The Company may commence any new employee on a pay classification as determined by the Company notwithstanding any prior service the employee may have had.

24.4 Employees transferred from one site to another will be reimbursed at a rate of $0.54 per kilometre, by the shortest route. Payment will only be made to the owner or driver of the vehicle. Payment will be up to the Company's cost of an equivalent airfare. This will only apply to travel approved by the Company.

24.5 Where an employee travels to and from home each day, they are to be offered alternative employment, within a reasonable commuting distance, if available.

25.—ABANDONMENT OF EMPLOYMENT

An employee will be required to advise the employer of any absence from work within 24 hours of commencement of duties where practicable and failure to do so will result in the termination of employment, whereby the employee will be deemed to have abandoned employment.

26.—OTHER DUTIES

An employee who cannot be utilised in their normal duties must be prepared to perform other duties for which they are competent. e.g. Cleaning crib hut.

27.—CONTINUITY OF SERVICE

The Company may make no payment for any day an employee cannot be usefully employed arising out of any cessation of operations, either wholly or partially due to industrial disputes, including any strike, bans or limitations, or arising out of any cause for which the employer is not responsible. Provided that if stand downs are to occur, the employer will give the Union 24 hours notice of such stand down, where practicable.

28.—INCLEMENT WEATHER

28.1 An employee who has reported for work as requested and where work is disrupted or unavailable due to inclement weather shall be paid as if the employee worked normally provided that the employee remains at work if requested and is ready, willing and able to perform any work as directed within the employee's skill and competence.

28.2 An employee who has reported for work as requested and work is abandoned due to inclement weather and the employee is not required to remain on duty shall be paid up to 8 hours ordinary time.

28.3 An employee will be entitled to payment of up to 8 hours ordinary time in any day in any year when the plane in which the employee is traveling is unable to land at site due to inclement weather on the day the employee is rostered to return to work.

28.4 If an employee is advised in advance not to report for work because work is not available due to inclement weather the employee may elect to use a day from an accrued entitlement in the Leave Pool. The time work is unavailable will otherwise be without pay.

28.5 Employees will be notified by either—

i) Telephone or

ii) At each mustering point or

iii) Personally

29.—PERSONAL PROTECTIVE EQUIPMENT (PPE)

29.1 Employees will be issued with personal protective equipment as required and equipment so provided shall be used.

29.2 At issue all PPE will be signed for by the employee and replaced on a fair wear and tear basis.

29.3 Lost or willfully damaged PPE will be replaced at cost to the employee.

29.4 All issued PPE shall be returned at termination. The cost of items not returned will be deducted from the employee's termination pay.

29.5 Ear Protection—

Where hearing protection is required, employees will be able to choose between two (2) types of hearing protection—

i) Ear muffs.

ii) E.A.R. "Express" Pod Plugs.

29.6 Safety Footwear

(a) New employees will provide their own safety footwear (e.g. steel cap, non slip sole, ankle length, lace up boots) upon engagement and will not be entitled to any replacement until they have been employed for at least three (3) months.

(b) After the initial 3 months employment safety footwear shall be replaced by the Company on a fair wear and tear, new for old basis.

(c) Reimbursement equal to the cost of Company provided boots will be given should an employee provide the replacement boots on provision of the receipt.

29.7 Prescription Lenses

(a) The cost of prescription lens hardening will be reimbursed by the Company up to the value of $18.00 per annum. The employee will provide if required at his/her cost side protectors/wings to fit the employee's glasses.

(b) Employees will provide evidence to the Company that prescription lenses have been hardened.

29.8 Protective Work Clothing

The Company will provide upon request protective work clothing for all employees on the following basis—

(a) Four (4) articles of clothing being either short or long sleeved shirts or shorts or long trousers or any combination of these articles, upon commencement of this agreement and then issued annually.

(b) Employees will be responsible for the cleaning of the clothing at their own cost.

(c) The clothing will become the property of the employee three (3) months after issue. If the employee terminates or is terminated within this period, the equivalent value of the clothing will be deducted from the employees termination pay.

(d) New employees will be issued with selected articles of clothing as soon as practicable after commencement of employment.

29.9 Lockers

The Company will provide suitable on site lockers for each employee for storage of PPE.

29.10 Shoulder Crib Bag

Upon commencement of this Agreement each employee working as an operator of equipment who is required to take their rest break at the machine shall be provided with a suitable

shoulder crib bag. This shoulder crib bag will be provided by the Company and be for the life of this Agreement.

Lost or damaged shoulder crib bags will be the responsibility of the employee.

The shoulder crib bag will become the property of the employee three (3) months after issue. If the employee terminates or is terminated within this period, the equivalent value of the bag will be deducted from the employees termination pay.

30.—EMPLOYEE COUNSELLING AND DISCIPLINARY PROCEDURES

30.1 Counselling Procedure

If in the opinion of the immediate Supervisor an employee's performance has deteriorated for whatever reason, the Supervisor may utilise the procedure as outlined below—

(1) Arrange a meeting between the Supervisor and the employee and his/her representative. Notice must be given to the employee of the meeting and its purpose in sufficient time for the employee to obtain satisfactory representation.

(2) The concerns of the Supervisor will then be detailed to the employee.

(3) The employee may respond to the concerns expressed. This response is to be recorded and duly considered by the Supervisor.

(4) The Supervisor will then consider possible courses of action which may include but not be limited to—

- Additional training or re-training required for the employee.
- Reference to internal or external counselling services that may be available.
- Issuing warnings.

(5) Once the Supervisor has collected and considered all the information he/she will then make a determination as to the most appropriate action to pursue. This action will be conveyed to the employee and recorded on the employee's personal file.

30.2 Disciplinary Procedure

Should the Supervisor decide to issue a warning to the employee, the following procedure will be followed—

(1) A verbal warning will be issued and a note made on the employee's file.

(2) A second warning in writing will be issued and this will be recorded on the employee's personal file including any response the employee wishes to make.

(3) Should the employee give cause for further disciplinary action to take place after being issued with a written warning, the employee may be dismissed.

An employee may request a cleansing of their personal file, with the exception of breaches of safety, after the completion of 12 months continuous service following the event which caused the disciplinary procedure to take place.

Any appeal is to follow the Grievance Resolution Procedure—see Clause 36.

30.3 Misconduct

Where an employee is found guilty of misconduct, the employee shall be dismissed without notice. Misconduct may include the following breaches—

- Major breaches of safety provisions.
- Fighting.
- Affected by intoxicating liquor or drugs in the workplace.
- Failure to comply with lawful instruction of a Company Officer.
- Physical violence.
- Stealing, theft or fraud.
- Conduct which involves dishonesty or harm or real possibility of injury to others.
- Obscenity/indecency
- Breach of the duty of fidelity causing damage to the Company's business.

30.4 Personal Files

(a) Access to personal files is to be restricted to authorised officers of the Company. E.g. Managers/Site Supervisors/Payroll Clerk and the individual employee.

(b) Employees will be given access to their personal file, provided their request is made through their Supervisor, who will arrange an appropriate and convenient time.

31.—JURY SERVICE

An employee required for jury service during the employee's ordinary working hours shall be granted leave for all periods of time so required for jury service. The employee shall provide proof of attendance at jury service and proof of monies paid by the Court, at which time the Company shall pay to the employee the difference between what the employee would normally have been paid for an eight (8) hour day and what was actually paid by the Court.

32.—AIRFARES AND TRAVEL COSTS

32.1 The point of engagement for those employees who return to Kalgoorlie after each shift shall be deemed to be Kalgoorlie. For all sites other than those whose employees return to Kalgoorlie after each shift, the point of engagement shall be deemed to be Perth.

32.2 (a) Airfares or reimbursement of travel costs will only be provided to those employees whose point of engagement is deemed to be Perth. An employee need not travel to Perth to be eligible for reimbursement of travel costs. E.g. If an employee's home was say 200km from the remote site where they are working, those employees would be entitled to travel costs under this clause.

(b) Employees other than those employed locally to a contract and those employed from Kalgoorlie for work at a Kalgoorlie site shall be entitled to transportation costs/airfares on engagement and termination except for termination for misconduct.

32.3 (a) An employee who terminates employment prior to the completion of seven weeks service will have the commencement return airfare deducted from their termination pay. This deduction will be based on a pro-rata basis (e.g. one-seventh of the airfare deducted on termination after six weeks service).

(b) Remote Site Employees who terminate after seven weeks service and give the required period of notice shall receive reimbursement of transport costs or the return flight paid for by the Company.

32.4 An employee who wishes to make travel arrangements other than flying will be reimbursed at a rate of $0.54 per kilometre (by the shortest route) up to the value equal to the Company's cost of an equivalent airfare. Payment will be made only to the owner or driver of the vehicle who must provide receipts to the Company as proof of costs incurred. This will only apply to travel approved by the Company.

32.5 Airfares and travel costs will only be paid for rest and recreation breaks and travel approved by the Company.

Employees who's point of engagement is deemed to be Perth are entitled to return to Perth for rest and recreation leave after completion of a continuous period of service an site. The service requirements may vary between sites.

An employee who waives this entitlement to a rest and recreation break will be required to take the next rest and recreation break due after completion of a further period of continuous service on site.

32.6 Where practical a Project Manager may allow an employee to finish work before the end of a shift to enable the employee to catch a flight that same day.

The Company will not allow an employee to finish work early if the Company will be disadvantaged in doing so.

Employees are required to return to site from leave to recommence work at the start of their first rostered shift.

32.7 An entitlement to airfares and payment of travel costs will not accrue.

32.8 The Company shall provide an airfare or reimburse travel costs in the event of the employee's services being terminated during a probationary period of employment.

32.9 Notwithstanding anything contained in the preceding clauses travel costs will not be reimbursed to employees working on sites where air travel is provided to the Company and its employees free of charge.

33.—CAMP FACILITIES

Board and lodging when provided by the Company to an employee shall be at the Company's expense.

34.—REDUNDANCY

34.1 An employee shall be deemed to have been made redundant if the employee's services are no longer required by the Company because the employee has become surplus to the requirements on account of technological change or reorganisation of work or down turn in the industry.

34.2 In addition to the period of notice prescribed in Clause 14 of this Agreement an employee whose employment is terminated by the Company for reasons set out in subclause 34.1 shall be entitled to the following amount of severance pay, at the employee's ordinary rate of pay, in respect of continuous period of service with the Company.

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
More than 1 year but less than 2 years	160 hours
More than 2 years but less than 3 years	240 hours
More than 3 years but less than 4 years	280 hours
More than 4 years	320 hours

34.3 If the employee is offered but does not accept alternative employment with the Company, whether at the employee's present classification or otherwise the employee's employment will be terminated. The employee shall not be entitled to the severance pay prescribed in subclause 34.2. Consideration must also be given to subclause 24.5.

34.4 Voluntary redundancies may be allowed first when there are redundancies imminent in any classification provided that this sub clause only applies if a suitable replacement employee with the necessary competence, training and skills is available to replace the employee who voluntarily vacates a position.

34.5 The Company will base its selection for redundancies on required skill and experience levels. Where an employee's skill and experience levels are surplus to operational requirements such employee shall be made redundant. All things being equal the Company may use the employee's most recent Appraisal Committee assessment and length of service to reach a decision.

34.6 Where the number of employees to be made redundant is fifteen (15) or more, the Company shall as soon as practicable after a decision is made, notify the Commonwealth Employment Service of the intended redundancies.

34.7 Where a redundancy of a shift or of 15 or more employees is intended the Company shall confer with the Union concerned with respect to the conditions to apply to an employee whose services are to be so terminated with respect to the following—

(a) the reasons for the terminations;

(b) the number and categories of employees likely to be affected;

(c) the time when, or the period over which, the Company intends to carry out the terminations;

(d) measures to avert or minimise the terminations; and

(e) measures (such as finding alternative employment) to mitigate the adverse effects of the termination or terminations.

34.8 If no agreement is reached regarding the redundancy arrangements the matter shall be referred to the Western Australian Industrial Relations Commission for determination.

34.9 Where an agreement is reached or these conditions are otherwise determined, the services of an employee may be terminated.

35.—GRIEVANCE RESOLUTION PROCEDURE

To resolve any grievances or disputes, questions or difficulties arising under this Agreement, the following procedure will be adhered to—

(a) There will be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

(b) At all stages in the dispute resolution procedure, and to allow for the peaceful resolution of issues, the parties will commit to avoiding industrial action in any form, and will continue to work as directed by the Company after due consultation with the employees whilst the parties follow the dispute resolution procedure.

(c) At any stage during the dispute settlement procedure an employee is entitled to seek either an employee representative or Union representative (Australian Workers Union West Australian Branch) nominated by the employee.

(d) The following five stage procedure will be used to resolve any disputes or grievances—

(i) Should any matter arise which gives cause for concern to the employee, the matter will be brought to the attention of the immediate supervisor.

(ii) Should any matter arise which gives cause for concern to the Company, the matter will be brought to the attention of the employee.

(iii) Should the matter not be resolved by the parties within an agreed time (not exceeding 5 shifts) in (i) and (ii) above, it will be brought to the attention of the Project Manager by either party.

(iv) If the Project Manager is unable to resolve the matter within an agreed time (not exceeding 5 shifts), either party may bring the matter to the attention of the Contracts Manager.

(v) Should there be no resolution of the matter within a further agreed time frame which is not to exceed another 5 shifts, either party will have the right to have the matter referred to the Western Australian Industrial Relations Commission for resolution in accordance with the Industrial Relations Act 1979.

(e) All relevant facts will be documented when requested by the employee/s or the Company.

36.—REPRESENTATIVES INTERVIEWING EMPLOYEES

A duly accredited official of the Union shall have the right to enter the Company's premises provided that the Company has been notified in advance, but shall not without the permission of the Company interview employees during their working hours. A duly accredited official of the Union shall not be unreasonably denied access to the Company's premises.

37.—RECORDS

37.1 The Company shall keep a time and wages books showing the name of each employee and the nature of the 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.

A duly accredited official of the Union shall have the power to inspect the time and wages record of an employee or former employee, provided that such power shall 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 Union, unless the employee authorises the union in writing, and;

(b) has notified the Company in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

Before exercising a power of inspection, the official shall give reasonable notice of not less than 24 hours to the Company.

37.2 Clause 31 of the AWU Gold (Mining and Processing) Award does not apply.

38.—SERVICE RECOGNITION

Upon achievement of five (5) years continuous service, the Company will recognise the employee with a Certificate of

Service and Leighton's jacket, which will be presented at an appropriate time and location by a Senior Officer of the Company.

39.—SIGNATORIES

Signed for and on behalf of Leighton Contractors Pty Limited

R Merkenhof (signed)

……

Signed for and on behalf of the Australian Workers Union, West Australian Branch, Industrial Union of Workers.

R Krygsman (signed) UNION SEAL

……

SCHEDULE 1

Rate of Pay

1. Hourly Rates

Year 1

a) Base rate for operators and labourers —all sites $13.00 per hour

b) Allowance—Remote Site employees $0.75 per hour

Year 2

a) Base rate for operators and labourers —all sites $13.2600 per hour

b) Allowance—Remote Site employees $0.765 per hour

Remote Site employees are those employees whose point of engagement is deemed to be Perth i.e. those employees who do not return to Kalgoorlie after each shift.

Kalgoorlie Site employees are those employees whose point of engagement is deemed to be Kalgoorlie i.e. those employees who return to Kalgoorlie after each shift.

2. Employee Classification/Competency Grade

a) The Performance Assessment System classifies the equipment operated by the Company into 5 groups. Each group has a range of scores associated with skill levels. The scores within each group will dictate the maximum and minimum base rate of pay that an employee can receive.

b) The 5 groups are known as the Competency Groups and are outlined as follows—

Group 1	Multiple Machine Operation Driller Shotfirer Excavator/Faceshovel Bulldozer Grader Dump Truck FEL/Wheel Bulldozer Jumbo Tipper/Road Train/FEL Water Truck
Group 2	Single Machine Operation Excavator; Face Shovel; Bulldozer; Grader; FEL; Wheel Bulldozer; Jumbo Tipper/Road Train/FEL; Drill; Shotfirer
Group 3	Scraper Water Truck Crusher Operation Truck Trainer
Group 4	Dump Truck Operator Senior Site Clerk Surveyor's Assistant
Group 5	Labourers Site Clerk

3. Competency/Skills and Performance Payment

An employee may earn up to a maximum of $1.00 per hour in addition to the hourly rates at 1a and b above. The proportion of the $1.00 an employee may earn is determined by the result of the Performance Assessment System.

The Competency/Skills and Performance Payment distribution—

COMPETENCY / SKILLS

Classification	Minimum ($/hour)	Maximum ($/hour)
Group 1	$0.56	$0.70
Group 2	$0.41	$0.55
Group 3	$0.21	$0.40
Group 4	$0.11	$0.20
Group 5	$0.01	$0.10

PERFORMANCE

Classification	Minimum ($/hour)	Maximum ($/hour)
Groups 1—5	$0.01	$0.30

COMPETENCY/SKILLS AND PERFORMANCE COMBINED

Classification	Minimum ($/hour)	Maximum ($/hour)
Group 1	$0.57	$1.00
Group 2	$0.42	$0.85
Group 3	$0.22	$0.70
Group 4	$0.12	$0.50
Group 5	$0.02	$0.40

4. Hourly Rates and Competency / Skills and Performance Payments Combined

a) Remote Sites

Year 1

COMBINED HOURLY RATE

Classification	Minimum ($/hour)	Maximum ($/hour)
Group 1	14.3200	14.7500
Group 2	14.1700	14.6000
Group 3	13.9700	14.4500
Group 4	13.8700	14.2500
Group 5	13.7700	14.1500

Year 2

COMBINED HOURLY RATE

Classification	Minimum ($/hour)	Maximum ($/hour)
Group 1	14.5950	15.0250
Group 2	14.4450	14.8750
Group 3	14.2450	14.7250
Group 4	14.1450	14.5250
Group 5	14.0450	14.4250

b) Kalgoorlie Sites

Year 1

COMBINED HOURLY RATE

Classification	Minimum ($/hour)	Maximum ($/hour)
Group 1	13.5700	14.0000
Group 2	13.4200	13.8500
Group 3	13.2200	13.7000
Group 4	13.1200	13.5000
Group 5	13.0200	13.4000

Year 2

COMBINED HOURLY RATE

Classification	Minimum ($/hour)	Maximum ($/hour)
Group 1	13.8300	14.2600
Group 2	13.6800	14.1100
Group 3	13.4800	13.9600
Group 4	13.3800	13.7600
Group 5	13.2800	13.6600

The above rates are all purpose and shall apply to all paid hours.

5. Leading Hand Allowance

An employee appointed as a Leading Hand shall be paid at the highest rate attainable in Group 1 and in addition shall be paid—

	Year 1 (per hour)	Year 2 (per hour)
a) In charge of not less than one and not less than five other employees	$0.65	$0.66
b) In charge of more than five but less than ten other employees	$0.83	$0.85
c) In charge of more than ten other employees	$1.10	$1.12

An employee shall only be paid the above rate and allowance for the period the employee is a Leading Hand.

The above rates are all purpose and shall apply to all paid hours.

6. Shift Allowance

A shift employee whilst on night shift other than on a Saturday or Sunday shall be paid 15% more than the employee's ordinary rate for the first 8 hours worked.

7. Service Allowance

Kalgoorlie Sites employees only shall be paid the following additional weekly flat payment for continuous service—

a)	After 6 months	$5.00 per week
b)	After 12 months	$8.00 per week
c)	After 18 months	$11.00 per week
d)	After 23 months	$15.50 per week
e)	After 36 months	$23.00 per week

8. First Aid Allowance

Any qualified employee appointed by the Company to perform first aid duties shall be paid an additional flat allowance of $1.58 per shift.

9. Location Allowance

A) Subject to the provisions of this Clause, in addition to the wages prescribed elsewhere in this Schedule, an employee shall be paid the following flat weekly allowances when employed in the towns described hereunder.

To be reviewed annually under section 50—General Order.

Town	Per Week $
Agnew	15.10
Argyle	39.30
Balladonia	14.90
Barrow Island	25.60
Boulder	6.20
Broome	24.00
Bullfinch	7.20
Carnarvon	12.30
Cockatoo Island	26.40
Coolgardie	6.20
Cue	15.40
Dampier	20.80
Denham	12.30
Derby	25.00
Esperance	4.60
Eucla	16.80
Exmouth	21.60
Fitzroy	30.20
Goldsworthy	13.70
Halls Creek	34.40
Kalbarri	5.10
Kalgoorlie	6.20
Kambalda	6.20
Karratha	24.70
Koolan Island	26.40
Koolyanobbing	7.20
Kununurra	39.30
Laverton	15.30
Learmonth	21.60
Leinster	15.10
Leonora	15.30
Madura	15.90
Marble Bar	37.50
Meekatharra	13.20
Mt Magnet	16.40
Mundrabilla	16.40
Newman	14.50
Norseman	12.80
Nullagine	37.40
Onslow	25.60
Pannawonica	19.50
Paraburdoo	19.30
Port Hedland	20.70
Ravensthorpe	8.10
Roebourne	28.30
Sandstone	15.10
Shark Bay	12.30
Shay Gap	13.70
Southern Cross	7.20
Telfer	34.80
Teutonic Bore	15.10
Tom Price	19.30
Whim Creek	24.50
Wickham	23.80
Wiluna	15.40
Wittenoom	33.20
Wyndham	37.10

B) Except as provided in Clause C, an employee who has—

(i) A dependant, shall be paid double the allowance prescribed in Clause A.

(ii) A partial dependant, shall be paid the allowance prescribed in clause A plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

C) (i) Where an employee is provided with board and lodging by the Company, free of charge, or

(ii) Is provided with an allowance in lieu of board and lodging.

Such employee shall be paid 66 and two third per cent of the allowances prescribed in Clause A.

D) Where an employee is on annual leave or received 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.

E) Where an employee is on long service leave or other approved leave with pay (other than annual leave) the employee shall only be paid location allowance for the period of such leave the employee remains in the location in which the employee is employed.

10. Living Out Allowance

A Living Out Allowance of $37.80 per day ($264.40 per week) shall be paid to an employee whose application for the Living Out Allowance is approved by the Company.

Refer to Schedule 3 for details of Living Out Allowance.

SCHEDULE 2

OVERTIME

Overtime rates shall apply to hours worked in excess of the ordinary hours worked in any week.

The ordinary hours of work are 40 hours per week. Monday to Friday inclusive 8 hours per day.

Kalgoorlie Sites	-	Sites at which employees work whose point of engagement is deemed to be Kalgoorlie.
Remote Sites	-	Sites at which employees work whose point of engagement is deemed to be Perth.

a) Kalgoorlie Sites

Day Employees and Shift Employees

Monday to Friday

All time worked in excess of the ordinary working hours on any day shall be paid at the rate of time and one half for the first two hours and double time thereafter.

Saturday

Shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

Sunday

Shall be paid at the rate of double time.

b) Remote Sites

Day Employees

As per clause a) above.

Shift Employees

All time worked in excess of the ordinary working hours on any day, shall be paid at double time.

SCHEDULE 3

LIVING OUT ALLOWANCE (L.O.A.)

Introduction

The intent of L.O.A. is to provide accommodation assistance to employees in lieu of board and lodging provided by the Company.

Who is Entitled To L.O.A.

When an employee—

- Is married and living with their immediate family.

- Is living in a defacto relationship for more than 6 months.
- Is employed and Company provided accommodation is unavailable.

  The employee will not be required to take up occupancy of Company provided accommodation in any six months period . At the end of the fifth month in any six months period the employee shall seek advice from the Project Manager for the continuation of the payment of L.O.A. or the availability of Company provided accommodation. Should the employee choose not to accept the Company provided accommodation the payment of L.O.A. shall cease at the end of the six months period.
- Is notified at commencement that there will not be Company provided accommodation for a particular project. L.O.A. will be paid.

Should the Company's client provide the projects accommodation and the employee chooses not to live in the provided accommodation, the Company will pay L.O.A. where approved by the Project Manager at the equivalent to the camp cost but no more than the L.O.A. If the client provides accommodation at no cost to the Company there will not be any payment of L.O.A.

Eligibility (Married/Defacto)

Eligibility for L.O.A. is subject to an employee providing the Project Manager with—

- Married
  - Evidence of marriage certificate
  - Evidence of home ownership/or tenancy agreement of the occupied property.
- Defacto
  - A statutory declaration certifying:

    the partners full name

    a bonafide defacto relationship of at least 6 months

    the parties are living together at the declared residential address

    Evidence of ownership or tenancy agreement of the occupied property.

The statutory declaration has to be witnessed by an eligible person (Justice of Peace or Commissioner of Declarations).

If a couple are both working for the Company, either on the same project or separate Company projects, only one person is eligible to receive L.O.A. provided both people reside in the same household.

Payments of L.O.A.

- The payment of L.O.A. will be from the date of approval by the Project Manager.
- L.O.A. payments will continue for—
  - days worked
  - leave pool days
  - sick pool days (sick days accrued prior to EBA will only be paid when a doctor's certificate is presented)
  - days stood down because of inclement weather
  - workers compensation paid days
  - rostered days off (i.e. scheduled non work days)
  - bereavement leave

L.O.A. will not be paid for—

: leave without pay

: absent on a rostered shift

: sick leave from prior to EBA

Payment of L.O.A. shall cease upon termination of employment.

Value of L.O.A.

A Living Out Allowance of $37.80 per day ($264.40 per week) shall be paid to an employee whose application for the Living Out Allowance is approved by the Company.

PARKER AND KNIGHT INDUSTRIAL AGREEMENT.

No. AG 229 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Leslie Parker and James Knight trading as Parker & Knight Bricklaying Contractors.

No. AG 229 of 1997.

Parker and Knight Industrial Agreement

COMMISSIONER P.E. SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Parker and Knight Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Parker and Knight Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Leslie Parker and James Knight trading as Parker & Knight Bricklaying Contractors (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 4 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

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

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

course fees

course books and materials

payment of ordinary time earnings for such absence.

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the

sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of-

The Unions: **BLPPU** Signed **Common Seal**
Date: 8/9/97
Signed
WITNESS

CMETU Signed **Common Seal**
Date: 8/9/97
Signed
WITNESS

The Company: PARKER & KNIGHT BRICKLAYING CONT.
Date: 26/8/97
Signed LESLIE PARKER Signed JIM KNIGHT
PRINT NAME
Signed
WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3/)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), 1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), 2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), 3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.80
Above	$2.1 m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.1 m	$1.20
Above	$2.1 m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures

- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

STRAIGHT EDGE FORMWORK AND CONCRETE INDUSTRIAL AGREEMENT.
No. AG 300 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Straight Edge Formwork and Concrete Pty Ltd.

No. AG 300 of 1997.

Straight Edge Formwork and Concrete Industrial Agreement.

COMMISSIONER P E SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Straight Edge Formwork and Concrete Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Straight Edge Formwork and Concrete Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Straight Edge Formwork and Concrete Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 8 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

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

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

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

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions:	**BLPPU**	Signed **Common Seal** Date: 24/10/97 Signed WITNESS
	CMETU	Signed **Common Seal** Date: 24/10/97 Signed WITNESS
The Company:	**Common Seal**	Signed Date: 16/10/97 GARY OREB PRINT NAME Signed WITNESS

APPENDIX A—WAGE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plaster, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), (1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), (2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), (3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—

- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations
and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

SUPERCUT INDUSTRIAL AGREEMENT.
No. AG 233 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

John Williem and Jason Richard Van Krieken trading as Supercut.

No. AG 233 of 1997.

Supercut Industrial Agreement.

COMMISSIONER P E SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Supercut Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

CONCRETE CUTTING AND DRILLING AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Supercut Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers (hereinafter referred to as the "Union") and Jan Willem & Jason Richard Van Krieken trading as Supercut (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be members of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 1 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

Employees covered by this Agreement will be paid as Group 1 Builders Labourers. This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

In addition to the rates prescribed in Appendix A—Wage Rates, employees will be paid an all-purpose allowance of $1.00 per hour, in lieu of Structural Frame Allowance

11.—SITE ALLOWANCE

This Agreement provides for a site allowance of $2.35 or higher as provided under Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

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

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Union: **BLPPU** Signed **Common Seal**
Date: 3/8/97
Signed
WITNESS

The Company SUPERCUT
Date: 29/8/1997
J VAN KRIEKEN Signed
PRINT NAME
IAN COOKE Signed

APPENDIX A—WAGE RATES

	1 August 1997	1 February 1998	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate $	Hourly Rate $	Hourly Rate $	Hourly Rate $	Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—
- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. Site Allowance Formula

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.80
Above	$2.1m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.60
Above	$2.1m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1m	$1.50
Above	$ 2.1m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1m	NIL
Above	$1m to $2.1m	$1.20
Above	$2.1m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

TOTAL CORROSION CONTROL PTY LTD.

No. AG 259 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

Total Corrosion Control Pty Ltd.

No. AG 259 of 1997.

Total Corrosion Control (Metal Workers) Enterprise Bargaining Agreement 1997

CHIEF COMMISSIONER W.S. COLEMAN.

13 January 1998.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and there being no appearance 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 Total Corrosion Control (Metal Workers) Enterprise Bargaining Agreement 1997 be registered in accordance with the following Schedule and such shall have effect from the beginning of the first pay period commencing on or after the 23rd day of October 1997 and that Order No. AG 38 of 1993 (73 WAIG 2425) be hereby cancelled.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S.]

1.—TITLE

This Agreement shall be known as the Total Corrosion Control (Metal Workers) Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

3.—PARTIES BOUND

This Agreement is between the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch (hereinafter referred to as the "Union") and Total Corrosion Control Pty Ltd (hereinafter referred to as the "Company").

4.—APPLICATION

This Agreement shall apply to and be binding upon the Company, the Union and an estimated 65 persons employed by the company who are members, or eligible to be members of the Union, engaged on work covered by the terms and conditions of Part II—Construction of the Metal Trades (General) Award No. 13 of 1965.

5.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate for a period of 12 months from the commencement of the first pay period beginning on or after lst March 1997.

(2) The increases contained herein are to be the only ones allowable, except where the annualised C.P.I. or a National Wage Case Award exceeds such amount, in which case it is agreed that the higher wage shall apply. it is further agreed that there will not be any double counting with respect to wages.

6.—OBJECTIVES AND PRINCIPLES

(1) The parties have an on-going commitment to identify common objectives for improved productivity, flexibility, efficiency, quality of employment and delivery of quality service.

(2) To achieve the objectives outlined in subclause (1) hereof, the parties are committed to the following—

(a) Promoting the development of trust and motivation within the Company and to continue fostering better employee/management relations

(b) Ensuring honesty and mutual respect will prevail at all times.

(c) A free exchange of relevant information and ideas at all times, subject to agreed commercial confidentiality.

(d) Equity.

(e) The availability of proper and effective consultation through the appropriate structures on structural efficiency and workplace reform matters affecting employees, prior to implementation of any change. Employees who will be so affected must genuinely agree to such changes.

(f) Enhancement of the quality and security of employment for Company employees resulting from increased skill acquisition and utilisation, better working practices and improved remuneration based on productivity improvement resulting from on-going implementation of agreed structural efficiency processes.

(3) The parties recognise that this Agreement continues a programme of structural efficiency and workplace reform. Fundamental to the continuation of this programme of reform, the parties undertake to—

(a) Identify career paths within the Company.

(b) Broaden training and career opportunities for all employees and develop accredited competency-based training plans to complement job re-design.

(c) Create more meaningful, interesting and better paid jobs for employees.

(4) The Company, the Union and all employees accept joint responsibility to ensure this Agreement is effective and, in the event of any ambiguity or dispute, the spirit and intention of this clause will remain paramount.

7.—SPECIFIC MEASURES TO ACHIEVE PRODUCTIVITY

(1) The parties re-affirm their commitment to the consultative processes outlined herein and to have these committees in place within four weeks of this Agreement being ratified.

(2) The Consultative Committee will also act as a Training Committee to monitor the introduction of the metals skills enhancement programme applicable to work being carried out by the Company. Access to training shall be equitably distributed and monitored by the Consultative Committee.

(3) Wash Up Time—

Workers shall be reminded of Award clauses and the Consultative Committee will monitor this issue on an on-going basis.

(4) Rostered Days Off—

(a) The parties agree to employees accruing up to a maximum of five rostered days off in any one year.

(b) The accrued days must be taken within 12 months from the date of the first accrual and each 12 months thereafter.

(5) Utilisation of Sub-contractors and Labour Hire—

(a) In future, sub-contractors will not be employed by the Company.

(b) Contractors presently engaged are to be phased out and not replaced on termination or resignation.

(c) The issue of labour hire may be subject to discussion by the Consultative Committee at some future date.

(6) Smoko/Lunch Break Flexibility—

From time to time the Consultative Committee will agree on smoko/lunch break flexibility in line with Award provisions.

(7) Staff Assistance to Wages Employees—

Where practicable, staff may assist wages employees in the following circumstances—

Supervisory staff (salaried staff) may use tools when carrying out inspections, the testing of equipment or when instructing/training employees, provided that such action does not attempt to replace jobs of employees covered by this Agreement.

(8) Union Meetings on Local Issues—

(a) Meetings to report on in-house matters may be held at times convenient to the Company and employees, with the aim of maintaining a continuous non-disrupted work pattern. It has been agreed by the parties that meal breaks will be the most convenient time.

(b) Discussions with Management will take place if any party wishes to change the time for a meeting.

(9) Benchmarking—

(a) The Consultative Committee will develop a productivity and performance plan to identify and benchmark a number of performance indicators. The benchmarking process will use a "best practice" policy to create an environment and a performance plan which will commit the parties to a simultaneous improvement in costs, quality and delivery.

(b) The two main groups which performance indicators will be identified with are—

(i) Over-all Company performance measures applicable to the business.

(ii) Improvement measures specific to the various Company sections.

(10) Examples of improvement measures include, but are not limited to—

(a) Housekeeping standard in work areas and stores to be established and maintained.

(b) Measurement and control of consumables.

(c) Labour turnover.

(d) Measurement of, and a commitment to minimise, the use of sick leave.

(e) Measurement of overtime and reasons for same.

(f) Down-time measurements.

(g) Maintenance programme performance.

(h) Pro-active safety programme.

(i) Work Organisation procedures—i.e. scaffolding procedures and manning.

(j) Development of maintenance and production work procedures.

(k) An alternative roster system.

(l) Labour flexibility.

(m) Rehabilitation Programme.

(n) Introduction of a stores card system to monitor usage of P.P.E. equipment.

(11) Teamwork—

(a) The parties are committed to reviewing work Organisation practices at all levels in the operations of Total Corrosion Control during the life of this Agreement.

(b) The object of such review is to introduce a 'team work' concept in and across the various sections of the Company.

(12) Safety Harness—

(a) All employees required to wear safety harness for the purposes of their work shall be issued with such equipment by the Company and employees shall be responsible for their own harness.

(b) Harnesses, including those personally owned, shall be replaced or repaired on a fair wear and tear basis by the Company.

(13) Casual Employees—

(a) From time to time casual employees will be used to alleviate shortfalls in the regular core crew workforce of Total Corrosion Control. An employee to be employed, as a casual will be notified of this status, in writing, at the time of engagement.

(b) For the purposes of this Agreement an employee shall be deemed 'casual' if the expected term of employment is less than three months.

(c) The period of notice for a casual employee shall be one hour.

(d) In all other respects the conditions for casuals shall be in accordance with the provisions in the Metal Trades (General) Award No. 13 of 1965 for such employees.

(e) After three months of continuous employment with Total Corrosion Control, a casual shall become a permanent employee.

(14) Annual Leave Accrual—

The parties agree that employees shall not accrue more than eight weeks of annual leave, except in special circumstances agreed between the employee concerned and the Company.

(15) Inclement Weather—

(a) It is agreed that the parties will collectively work towards minimisation of lost time due to inclement weather.

(b) The parties undertake that work will continue where it is safe to do so and this shall be decided by the elected Health and Safety representative, in consultation with the Company's Safety Advisor and/ or Site Manager.

(c) If the area is deemed to be unsafe, where practicable, alternative work which is within the scope of the employees, skills, competence and training will be made available.

(d) If this is not possible, then all employees and management will make constructive use of the time through safety process improvement sessions, plant equipment maintenance or relevant and constructive skill development sessions.

(16) Heat Stress and Transient Heat—

The parties agree to comply with the provisions dealing with natural and artificially heated environments as set out in Appendix "All attached hereto.

8.—RESOLUTION OF QUESTIONS, DIFFICULTIES OR DISPUTES

(1) Where a question, difficulty or dispute arises, the employee concerned shall initially discuss the matter with his/ her immediate Supervisor and, if the employee so desires, his/ her Union delegate.

(2) If the question, difficulty or dispute is not resolved by the discussion referred to in subclause (1) hereof, the Union delegate shall discuss and attempt to resolve the dispute with the Site Manager.

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

(4) While the steps in subclauses (1), (2) and (3) hereof are being followed, industrial action shall not be taken. A minimum of seven days shall be allowed for all stages of the discussions to be finalised.

(5) If the grievance remains unresolved after seven days, either party may refer the matter to the Western Australian Industrial Relations Commission, provided that any party reserves the right to refer an issue to the Commission at any time, provided that with effect from 22 November, 1997 it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

(6) The parties will give each other the earliest possible notice of any problem which may give rise to a grievance of dispute. All relevant facts shall be clearly identified and recorded throughout.

(7) Bans or limitations will not be placed on the performance of work while the dispute procedure is being followed.

(8) Total Corrosion Control shall ensure that all practices applied during the operation of the procedure are in accordance with safe working principles and consistent with established custom at the work site.

9.—JOURNEY COVER INSURANCE

The Company agrees to insure all employees, whether casual or not, for journey cover to and from work, with conditions not less than those of the TLC—AMWU Journey Cover Insurance provisions.

10.—CONSULTATIVE PROCESS

In order to progress Award restructuring and Enterprise Bargaining initiatives, consultative mechanisms as follows will be established by the Company.

(1) Committee—

The Committee will consist of Management representatives and appointed Union members employed by the Company.

(2) Roles and Function—

(a) To plan, co-ordinate and determine the framework for award restructuring and workplace change at the Company.

(b) To ensure, via representatives, that all employees participate in the workplace restructuring programme and are fully informed of changes that will affect their working lives.,

(c) To ensure that the work area committees conform to the guide-lines set by the Consultative Committee.

(d) To consider proposals for the establishment of issue-based task forces.

(e) To consider issues which cannot be agreed by a consensus of opinion in the workplace.

(f) To keep the workforce informed on matters being considered by the Consultative Committee.

(g) To decide how appeals over-classification will be conducted.

(3) Work Area Committees—

The functions of the Work Area Committees are to discuss, test, assist and evaluate the development of proposals such as those for improving efficiency, effectiveness,, work Organisation, job design, career prospects, productivity, training opportunities, influence decision making and the quality or working life of the workforce.

(4) Committee Procedures—

(a) At its first meeting the Consultative Committee shall nominate an individual from representatives to act as a Chairperson. The Chair will then alternate between management and Unions on a six-monthly basis.

(b) A secretary will be available to the Consultative Committee to take minutes of the meetings and provide administrative support to meetings. This service will be arranged by the Company.

(c) The Consultative Committee shall meet on a regular basis, as necessary. Such meetings will be conducted in a formal manner, with due notice and an agenda provided to members. Jointly agreed minutes from each work area committee meeting shall be forwarded to the Consultative Committee Chairperson for information.

(d) Decisions will be arrived at by consensus.

11.—ENTERPRISE BARGAINING PAYMENTS

(1) In recognition of the productivity measures agreed to in Clause 7 hereof, all employees covered by this Agreement shall receive three pay increases, in each instance based on the agreed composite rate operative at the time of registration of this Agreement. The first two increases shall total 7.5% and be non-cumulative.

(a) Stage One—

An increase of 2% on the agreed composite rate shall be paid on the first pay period on or after lst March 1997.

(b) Stage Two—

An increase of 2% on the agreed composite rate shall be paid on the first pay period commencing on or after lst July 1997.

(b) Stage Three—

An increase of 3.5% on the agreed composite rate shall be paid on the first pay period commencing on or after lst November 1997.

12.—RATES OF PAY

(1) In accordance with the successful operation of this Agreement and a continuing commitment from both parties, wage increases prescribed herein shall be a composite rate, paid in the following manner.

	Existing Rate $	1.3.97 $	1.7.97 $	1.11.97 $	%
Metals Level 6	649.00	662.00	678.83	710.15	110
Metals Level 5	619.50	631.90	648.10	678.37	105
Metals Level 4	590.00	601.80	617.40	646.60	100
Metals Level 3	575.10	586.60	601.90	626.80	97.4
Metals Level 2	545.20	556.10	570.80	598.30	92.4
Metals Level 1	527.80	538.40	559.80	579.66	87.4

(2) Composite Rate—

(a) The rates prescribed in subclause (1) hereof include the following provisions—

Tool Allowance: $9.70

Certified Rigger Leading Hand Allowance: $17.50

All-purpose Site Allowance: $1.90 per hour, applicable across all sites,

regardless of disabilities and special rates.

(b) The composite rate shall absorb any further safety net wage adjustments arising out of the 1994 National or State Wage Case Decisions.

(3) Reclassification—

(a) The first step involved in transferring from existing classifications to the new career- path skill levels will be a simple process of "lining up", based on the current titles of employees. The definitions contained in Clause 12 hereof explain where existing classifications line up.

(b) During the life of this Agreement the Consultative Committee will assess qualifications and ability of all metals employees, using R.P.L. techniques where necessary,, to re-classify employees to their appropriate level, based on application of skills.

13.—CLOTHING

(1) (a) Within one month of commencing employment with the Company, employees shall be issued with one pair of safety boots and two pairs of overalls.

(b) The items issued in accordance with paragraph (a) hereof shall be replaced on a fair wear and tear basis.

(2) Permanent employees of the Company shall be issued with one bluey jacket between lst May and lst November each year.

14.—DEFINITIONS

(1) The following definitions describe what is required, both in terms of training undertaken or qualifications achieved and skills applied, prior to being entitled to receive rates of pay as set out Clause 11 hereof.

(2) The parties recognise that further work is needed to identify the exact mixture of skills to be applied for each classification level. Integral to this process is the Consultative Committee which will work with Company training personnel to define each classification, using the training programme as a guide and bearing in mind the over-all objective of creating a highly skilled and flexible workforce free of artificial demarcation barriers.

Metals Level 1—

This is the entry Level for non-qualified employees who have not previously worked in the industry. Such employees shall undertake 38 hours induction training to familiarise themselves with the Company, its objectives, wages and conditions, fellow workers and Union representation. Employees at this Level shall complete training for the Basic Rigging/Scaffolding Certificate.

Metals Level 2—

This Level applies to an employee who works above and beyond Level 1 and who has completed an Intermediate Level Rigging/Scaffolding Certificate or eight Modules from the TCC Training Programme, or holds an EPC I or applies equivalent skills.

Metals Level 3—

At this Level the employee works above and beyond Level 2 and has completed an Advanced Level Rigging/ Scaffolding Certificate, or 16 Modules from the TCC Training Programme, or holds an EPC 2 or applies equivalent skills.

Metals Level 4—

An employee at this Level works above and beyond Level 3 and has completed one of the following—

A Trades Certificate, an EPC 3, 24 Modules from the TCC Training Programme or applies any of the equivalent skills.

Metals Level 5—

At this Level an employee works above and beyond Level 4 and has completed three Post-trade Modules that contribute towards an Advanced Certificate or AVC 4, or applies equivalent skills.

Metals Level 6—

An employee at this Level works above and beyond Level 5 and has completed six Post-trade Modules that contribute towards an Advanced Certificate or applies the equivalent skills.

SIGNATORIES TO AGREEMENT

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

.....*signed*.....**Common Seal Affixed**

Dated: 27/8/97

Signed for and on behalf of Total Corrosion Control Pty Ltd—

.....*signed*.....

Dated: 27/8/97

TOTAL CORROSION CONTROL (METAL) WORKERS) ENTERPRISE BARGAINING AGREEMENT

APPENDIX "A"

MEASURES TO DEAL WITH NATURAL AND ARTIFICIALLY HEATED WORK ENVIRONMENTS

The parties commit themselves to follow the procedures prescribed herein to minimise exposure of employees to effects of heat stress caused by natural and artificially heated work environments.

1.—SEASONAL (TRANSIENT) HEAT

(1) (a) The parties are anxious to prevent health and safety problems and serious discomfort arising from the exposure of employees to high seasonal heat levels at work.

(b) Such exposure occurs during summer months to both indoor and outdoor workers. Problems which need to be prevented include—

- reduced concentration (with increased likelihood of accidents);
- increased discomfort in the use of protective clothing and equipment;
- aggravation caused by other hazards—i.e. noise;
- aggravation of pre-existing illnesses;
- fainting and heat exhaustion.

(2) (a) A satisfactory measure of seasonal hot conditions is provided by the ordinary dry-bulb temperature reading.

(b) Heat discomfort is felt at 300 Celsius and all efforts should be taken to keep temperatures below this level or to provide conditions for outdoor workers that will help to reduce effects of seasonal hot conditions where the temperature exceeds 30C.

(3) All indoor work areas should be temperature-controlled by air conditioning.

(4) (a) Where such conditions do not already exist, wherever possible, the following measures should be taken to control the effects of seasonal heat—

- installation of air conditioning;
- insulation of heat sources;
- installation of safe roof and wall insulation.

(b) In both indoor and outdoor work areas, the following concessions should be made—

- provision of air conditioned rest rooms;
- longer time permitted for completion of jobs;
- the alternative of doing lighter work;
- use of air circulating fans; use of shade cloths;
- the constant supply of cool drinking water.

(5) When the temperature exceeds 300 C., workers should be allowed to take frequent paid work breaks to allow their bodies to recover some degree of thermal equilibrium. Rest breaks should be introduced and modified to suit local conditions and to meet individual requirements.

(6) (a) The Consultative Committee shall negotiate an agreed procedure to apply paid rest breaks when the temperature reaches and/or exceeds 30° C.

(b) At 36° C., or 38° C. in hotter areas, workers should be on stand-by on full pay and provided with adequate cooled rest areas. However, it should be noted that the stand-by periods can also impose a workload and must not be regarded as non-working time.

(7) (a) In northern areas of the country where the average temperature is much higher than generally experienced in the south, special provisions need to apply—that is, all practical control and elimination procedures must be implemented as basic conditions.

(b) Very careful note should be made of rosters and days off-duty, which should be assessed on a scientific basis with special regard for the workload.

(c) All irregular hours of work must take into account the extra load imposed by working in such hot conditions. All rest breaks should be reconsidered for duration and the time they take place during a heat-wave and be relevantly spaced.

2.—HEAT STRESS AREAS

(1) (a) The parties aim to prevent health and safety problems arising from the exposure of employees to heat stress incurred by the nature of their job.

(b) Problems to be prevented include In the short term—

- the increased likelihood of accidents;
- aggravation of discomfort and/or effects of other hazards;
- aggravation-of pre-existing medical conditions;
- heat induced illness—e.g. heat stroke, chronic exhaustion.
- In the long term heat rash;
- reproductive problems.

(2) (a) In the absence of a comprehensive alternative monitoring programme, a satisfactory measure of heat stress is provided by ordinary Dry-bulb Temperature Reading.

(b) A heat stress area is one where the temperature art work is normally or consistently above 35° C. i.e. the limit of discomfort from transient heat conditions for unacclimatised employees.

(c) Alternative measures to gauge heat stress are available, such as the Wet Bulb Globe Temperature (WBGT) Index and an indication of a heat stress area on this scale is one where 25° C. is exceeded.

(d) Alternative measures of heat stress should only be used where management provides adequate technical support for a comprehensive monitoring programme.

(3) (a) Heat stress areas will be clearly designated as such and in them special working conditions shall apply.

(b) All efforts will be taken to reduce unnecessary heat exposure through measures such as insulation, cladding and shielding of heat sources, ducting of heat exhausts and provision of ventilation.

(c) No new heat source—such as an oven—will be introduced to the workplace without prior adequate steps being taken to keep temperatures in 0 its immediate vicinity to below 36° C. (or 25° C. WBGT).

(d) Details of cladding, insulating and shielding for all such products will be obtained before they are purchased and the employer should be encouraged to provide this information to Unions.

(4) In areas considered to be subject to heat stress, the parties shall have a qualified consultant conduct a full occupational hygiene survey to identify such sites and develop recommendations for reducing the levels with concentration on changes to the working environment.

(5) In areas which, despite the best efforts outlined in subclause (4) hereof, remain sites of heat stress, they should be clearly designated as such with accompanying warning symbol. only authorised, acclimatised and trained employees should be allowed to work in these areas, subject to the following conditions.

(a) Time on full pay will be allowed for acclimatisation.

(b) New workers should be given five to seven days in which to acclimatise.

(c) The acclimatisation schedule should begin with 20% of the anticipated workload on day one, followed by 20% increases each following day thereby building up to a 100% workload on days five to seven.

(d) Regular acclimatised employees who return after having had nine or more consecutive days of leave should undergo a four-day re-acclimatisation process, starting on day one with 50% of the regular workload, 60% on day two, 80% on Day three and 100% on day four.

(e) Regular acclimatised workers returning from four or more consecutive days of illness should undergo a four-day re-acclimatisation process as outlined in paragraph (d) hereof.

(6) workers over 45 years of age in areas of heavy work and heat sources such as furnaces, ovens, laundries or typical heat microclimates—e.g. underground mines—should be given the right, without loss of pay, -seniority or other entitlements, to transfer to other work areas which do not require an acclimatisation programme.

(7) Discriminative employment practices based on age and heat are unacceptable because the ageing process is subject to individual variation.

(8) (a) All employees will be provided with regular paid work breaks of 30 minutes every hour.

(b) Depending on conditions, paid work breaks may be taken either as 15 minutes on and 15 minutes off, or 30 minutes on and 30 minutes of f and cooled rest rooms shall be provided for this purpose.

(c) Constant environmental monitoring using an 'ordinary' dry-bulb thermometer, supplemented in some cases by WBGT rating instruments, shall be implemented.

(d) Work should never take place in areas where the temperature exceeds 50° C., or 32° C. WBGT.

(e) All employees shall be provided with appropriate protective clothing that promotes air circulation and evaporation of sweat as well as copious supplies of non-alcoholic drinks.

(f) Once a quarter, at the expense of the Company, all employees shall be given regular medical checks, including an electrocardiogram (ECG) , to assess how they are coping with heat stress.

(g) All new employees will be trained in the basics of heat stress and its prevention.

(9) Each employee shall be provided with a copy of this Enterprise Bargaining Agreement.

TOTAL CORROSION CONTROL (METAL WORKERS) ENTERPRISE BARGAINING AGREEMENT

APPENDIX "B"

REHABILITATION POLICY

1.—INTRODUCTION

It is the policy of Total Corrosion Control Pty Ltd to provide occupational rehabilitation for all employees following illness, injury or disability in the workplace.

In this context, rehabilitation is defined as the "ongoing co-ordinated use of medical, social, educational and vocational measures for training or re-training the injured employee to return to gainful employment". Early intervention with effective rehabilitation provides psychological, physical, social and financial benefits to employees, minimising disruption to work and reducing costs.

2.—OBJECTIVES

(1) To establish a structured "in-house" rehabilitation service for all employees following work-related injury, disability or illness.

(2) To develop the expectation that it is normal practice, following work-related injury, disability or illness for a person to return to appropriate work.

(3) To establish that rehabilitation is the usual course of action and that, where possible, the safe and early return to meaningful, productive work should begin at the time when treatment is first started.

(4) To minimise disruption to fellow employees.

(5) To reduce costs to the employer.

3.—PROCESS

The rehabilitation process can involve any or all of the following components, depending on the severity of the case.

(1) Medical—

Prompt medical diagnosis and treatment aimed at maximising the rate and extent of recovery.

(2) Vocational—

Provision of occupational services to enable employees to return to work as soon as possible which may include vocational assessment, guidance, training/re-training or counselling.

(3) Social—

To assist rehabilitees in restoring self-image, reducing stress associated with a disability and re-adjustment to the work environment, community and society in general.

(4) Work Environment—

To ensure, as far as practicable, that the work environment for the rehabilitee is as ergonomically sound as possible.

4.—GUIDE-LINES

(1) A case management approach will be used to determine the best course of action for each rehabilitee.

(2) A Rehabilitation Councillor from the Workers' Compensation and Rehabilitation Commission will initially co-ordinate the rehabilitation service for a period through the establishment of the Rehabilitation case management mentioned in subclause (1) hereof. Thereafter, the rehabilitation service will be coordinated by the Total Corrosion Control Pty Ltd Rehabilitation Case Management.

(3) The Rehabilitation Case Management will comprise:

- Safety Manager
- Medical Practitioner
- Others as required—e.g. General Manager

The Management will meet as often as required.

(4) Implementation of the Rehabilitation Process—

(a) As soon as practicable in cases of injury or disability where there is no evidence of immediate return to work.

(b) As soon as practicable where injury or disability in the workplace causes difficulties for employees in maintaining or re-introducing themselves into the workplace.

(c) It may be necessary in the rehabilitation process to recommend, in conjunction with the treating medical rehabilitation service, where appropriate.

5.—REHABILITATION PROGRAMMES

A rehabilitation programme needs to be established to meet each rehabilitee's individual requirements.

(1) Rehabilitation Procedures—

(a) Rehabilitation will commence as soon as practicable after an injury, illness or disability where there is no immediate return to work.

(b) The Case Manager will design individual programmes to match the rehabilitee's capabilities and limitations. The rehabilitation programme must be approved by the treating medical practitioner before implementation.

(c) The Case Manager will establish a timetable for monitoring the rehabilitee's progress, which will include medical reviews.

(d) It may be necessary for the Case Manager to recommend referral to a medical specialist or a community-based rehabilitation service for review or assessment.

(e) The Rehabilitation Counsellor from the Workers, Compensation and Rehabilitation Commission will initially co-ordinate liaison between the treating health professionals, the rehabilitee, insurer, supervisory staff and other interested parties.—

Following the development stage of the "in-house" rehabilitation service, this responsibility will be handed to the Rehabilitation Case Management Co-ordinator.

(f) If, following assessment and/or exhaustive efforts to rehabilitate employees either within and/or with an outside rehabilitation service provider, or the Workers' Compensation and Rehabilitation Commission's Case Management Service, a successful outcome is

not achieved, a decision on the Contribution of rehabilitation services and finalisation of the claim may be an option.

(g) An evaluation and review of the effectiveness of the rehabilitation service will be undertaken at regular intervals with a view to on-going programme development and the provision of feed-back to management on the progress of the service.

(2) Alternative Duties—

(a) Injured persons may be able to stay at work or return to work earlier if suitable alternative duties are available. Every effort will be made to provide alternative duties. These duties may require modification of the work tasks or work environment.

(b) The provision of alternative duties will not be possible on an unlimited and permanent basis unless—

- Such duties constitute a substantive position within the Organisation.
- Such a position is readily available.
- The person is fully competent to fill the position.

(c) A rehabilitation programme incorporating a graduated return to normal or alternative duties may be required for affected employees. A number of criteria-are to be considered.

- To develop short and long-term goals in consultation with the employee and treating medical practitioners. .
- To endeavor to provide meaningful work duties.
- To establish time frames for monitoring progress, including on-going medical reviews, up-grading of duties and hours to meet longterm goals and follow-up to ensure successful placement.
- To provide appropriate training and supervision for any duties unfamiliar to the employee.
- To ensure the documentation of review meetings and keep all interested parties informed of progress.
- To ensure that employees and their supervisors clearly understand the rehabilitation programme details—
  - (i) Work restrictions.
  - (ii) Physical limitations.
  - (iii) To whom problems should be reported.

6.—CONTACT AND CORRESPONDENCE

(1) It is essential for Total Corrosion Control Pty Ltd to establish early and continuing personal contact with the injured or disabled employee, whether the person is at or absent from work.

(2) Line Managers/Supervisors and members of the Rehabilitation Case Management will be encouraged to initiate this contact.

7.—CONFIDENTIALITY

(1) The "in-house" rehabilitation service is a confidential service and all records relating to individual rehabilitee's will only be available to members of the Management team. Written permission must be obtained from the rehabilitee in order to release information to any other party.

(2) The Rehabilitation Policy is a written commitment by. Total Corrosion Control Pty Ltd to the welfare of its employees.

TOTAL CORROSION CONTROL (METAL WORKERS) ENTERPRISE BARGAINING AGREEMENT

APPENDIX "C"

DISCIPLINARY PROCEDURES

1.—VERBAL WARNINGS

(1) In, the presence of the Shop Steward, the employee concerned shall be approached by his/her Supervisor who will make clear to the employee the nature of the misconduct/unsatisfactory work performance and identify ways in which the employee's behavior is to change and, if necessary, advise of any appropriate training and skill development to be undertaken.

(2) The Supervisor shall ensure the employee is provided with the opportunity to respond to any allegations made against him/her.

(3) Prior to receiving a formal written warning, an employee may be given up to three verbal warnings, details of which will be placed on his/her file.

2.—FORMAL WARNING

(1) If it is necessary for an employee to be issued with a formal warning, it shall be presented in writing before his/her Shop Steward.

(2) The Supervisor shall ensure the nature of the complaint is clearly explained to the employee and shall ensure he/she is provided with the opportunity to fully respond to any of the allegations.

(3) The Supervisor shall ensure that the employee completely understands the way in which his/her conduct or work performance is to be improved.

3.—TERMINATION/SUSPENSION FROM DUTY

Should it be necessary for an employee to be given a further formal written warning, the Company may elect to terminate the services of the employee by giving the appropriate period of notice.

4.—INSTANT DISMISSAL

(1) The foregoing procedures are to protect the rights of employees but shall not in any way limit the right of the Company to summarily dismiss an employee for serious misconduct or refusal of duty and conduct warranting such action includes the following—

(a) Fighting, brawling or assault while on duty.

(b) Deliberate damage or vandalism to property of the Company or a client.

(c) A deliberate breach of safety regulations.

(d) Theft of Company property.

(2) In any case, the dismissal of an employee shall not be harsh, unjust or unfair.

WATER CORPORATION PAY AND ALLOWANCES AGREEMENT 1997. No. AG 331 of 1997.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Water Corporation

and

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Others.

No. AG 331 of 1997.

Water Corporation Pay and Allowances Agreement 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

13 January 1998.

Order.

HAVING heard Mr K. Provost and Mr S. Rook on behalf of the Applicant and Ms S. Ellery on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, Mr B. Krygsmen. on behalf of the Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Ms Doyle on behalf of the Civil Service Association of Western

Australia Incorporated, Mr G. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch, and Mr J. Murie on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Water Corporation Pay and Allowances Agreement 1997 be registered in accordance with the following Schedule and shall have effect from the beginning of the first pay period commencing on or after the 11th day of December 1997.

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

Schedule.

SECTION ONE — PRELIMINARY

CLAUSE 1.1 TITLE

This Agreement shall be known as the Water Corporation Pay and Allowances Agreement 1997. It replaces the Water Corporation (Enterprise Bargaining) Agreement 1996 (No. AG338 of 1995) and the Water Corporation (Salaries, Allowances & Conditions) Agreement 1996 (No. PSA AG12 of 1995). This Agreement is to be read in conjunction with the Water Corporation Conditions Agreement 1997, which contains the other conditions of employment not specified in this Agreement.

CLAUSE 1.2 ARRANGEMENT

CLAUSE 1.3 PARTIES BOUND

This Agreement is an agreement made under Part VI B of the Workplace Relations Act 1996 in respect of—

the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Division, WA Branch and;

the Australian Workers Union, for those classifications prescribed in Table (B), Clause 2.2—Rates of Pay.

This Agreement is an agreement made under Section 41 of the Industrial Relations Act 1979 in respect of—

the Civil Service Association of Western Australia (Inc) for those classifications prescribed in Table (A), Clause 2.2—Rates of Pay and;

the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch for those classifications prescribed in Tables (B) and (C), Clause 2.2—Rates of Pay and;

the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia for those classifications prescribed in Table (C) Clause 2.2—Rates of Pay and;

the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Division, WA Branch for those classifications prescribed in Tables (C) and (D), Clause 2.2—Rates of Pay.

This Agreement applies to and binds the Corporation, all persons (except those in managerial positions who are or become parties to common law contracts) who are employees of the Corporation during the operation of this Agreement and also applies to and binds the following organisations—

Australian Liquor Hospitality and Miscellaneous Workers Union, Miscellaneous Division, WA Branch (ALHMWU)

The Australian Workers Union, (AWU)

Civil Service Association of Western Australia (Inc) (CSA)

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

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering & Electrical Division, Western Australian Branch (cepu)

This Agreement will cover an estimated 2074 employees at the date of registration.

CLAUSE 1.4 PRECEDENCE OVER AWARDS

Where the terms of an award covering employees covered by this Agreement are inconsistent with the terms of this Agreement, the Agreement shall prevail to the extent of any such inconsistency. The relevant awards are—

Awards of the Australian Industrial Relations Commission

the Australian Workers' Union (Western Australian Public Sector) Award 1992;

the Metropolitan Water Supply Sewerage and Drainage Employees Western Australia Award 1988

Awards of the Western Australian Industrial Relations Commission

the Government Water Supply, Sewerage and Drainage Foremens' Award 1984

the Government Water Supply, Sewerage and Drainage Employees Award 1981

CLAUSE 1.5 TERM OF AGREEMENT

This Agreement shall operate from the beginning of the first pay period to commence on or after the date on which it is certified under Part VIB of the Workplace Relations Act 1996 and registered under Section 41 of the Industrial Relations Act 1979, or if it is so certified and so registered on different dates, the later of the two dates, and remain in force until 30 June 1999.

CLAUSE 1.6 RENEWAL OF AGREEMENT

At least 6 months prior to the expiry of this Agreement the parties shall indicate their intentions with respect to a replacement for this Agreement. Pay quantums contained within this Agreement and the Water Corporation Conditions Agreement 1997 shall continue after the expiry of these Agreements until such time as they are replaced.

CLAUSE 1.7 DEFINITIONS

"Agreement" means the Water Corporation Pay and Allowances Agreement 1997.

"Conditions Agreement" means the Water Corporation Conditions Agreement 1997 incorporating provision for Local Agreements.

"Corporation" means the Water Corporation established under Section Four of the Water Corporation Act 1995.

CLAUSE 1.8 NO FURTHER CLAIMS

The parties to this Agreement undertake that for the duration of this Agreement there shall be no further pay increases sought or granted, except for those provided under the terms of this Agreement and those resulting from repackaging of working conditions under the terms of the Water Corporation Conditions Agreement 1997, Clause 5.8—Salary Packaging or provided for in a National or State Wage Case Decision.

SECTION TWO — MONEY MATTERS

CLAUSE 2.1 GENERAL PAY INCREASES

General pay increases to employees covered by this Agreement will be—

(A) Pay adjustments for employees as prescribed in Clause 3.1—Method of Payment, subclause (L)(ii) and (iii) of the Water Corporation Conditions Agreement 1997.

(B) 0.45% payable to employees as prescribed in Clause 3.1—Method of Payment, subclause (L)(iv) of the Water Corporation Conditions Agreement 1997.

(C) 3.0% payable 12 months from the first pay period on or after the operative date of this Agreement.

CLAUSE 2.2 RATES OF PAY

Subject to Clause 3.3—Leave Reserved of this Agreement and Clause 3.1—Method of Payment of the Water Corporation Conditions Agreement 1997, the rates of pay for employees covered by this Agreement shall be according to the tables in (A), (B), (C) and (D) hereunder.

(A) Annual Pay Rate Employees

Reporting Levels 4-6

Classification	Pay Point	Annual Rate $
Level 8	Point 23	81,111
	Point 22	77,919
Level 7	Point 21	70,749
	Point 20	68,399
Level 6	Point 19	62,799
	Point 18	59,787
Level 5	Point 17	53,950
	Point 16	51,413
Level 4	Point 15	46,465
	Point 14	45,232
Level 3	Point 13	42,449
	Point 12	40,798
Level 2	Point 11	37,775
	Point 10	35,919
Level 1	Point 9	32,942
	Point 8	31,602
	Point 7	29,450
	Point 6	26,486
	Point 5	24,258
	Point 4	21,783
	Point 3	19,044
	Point 2	16,562
	Point 1	14,410
Specified Callings		
Level 2/4	5th Year	46,465
Level 2/4	4th Year	45,232
Level 2/4	3rd Year	40,798
Level 2/4	2nd Year	37,775
Level 2/4	1st Year	35,919

(B) Water Industry Workers

Water Industry Worker	Rate per wk $	Relativity to Tradesperson (%)	Skill Band
Level 7.1	743.65	132.5	
Level 6.4	730.15	130.0	
Level 6.3	703.45	125.0	E
Level 6.2	676.65	120.0	
Level 6.1	662.95	117.5	
Level 5.4	649.75	115.0	
Level 5.3	636.20	112.5	D
Level 5.2	622.70	110.0	
Level 5.1	609.15	107.5	
Level 4.2	595.80	105.0	C+
Level 4.1	582.45	102.5	
Level 3.2	569.05	100.0	C
Level 3.1	559.10	98.2	
Level 2.4	554.60	97.3	
Level 2.3	542.45	95.1	B
Level 2.2	530.70	92.9	
Level 2.1	522.00	91.3	
Level 1	518.20	90.6	A

(i) The base rates shown include the Government Water Supply, Sewerage & Drainage Wage Loading previously prescribed as at 18 April 1990.

(C) Water Industry Engineering Tradespersons

Classification	Rate/Week $
Level C13	462.60
Level C12	490.75
Level C11	517.05
Level C10	557.00
Level C9	583.40
Level C8	609.65
Level C7	636.00
Level C6	688.50
Level C5	714.75
Instrument/Electrical	
Level DC10	627.20
Level DC9	664.65
Level DC 8	690.75
Level DC 7	717.30
Level DC 6	756.20
Level DC 5	782.45

(i) In addition to the above rates an employee classified C13 to C7 or DC10 to DC7 inclusive, shall receive an all purpose experience allowance of $12.55 per week, payable after 1 year of service in the Water Industry or the equivalent elsewhere in industry.

(D) Building Trades Employees

Classification	Rate/Week $
Painter or signwriter on engagement	557.00
After 1 years service	563.50
After 2 years service	568.70

(E) Tool Allowance

(i) Engineering Trades

(a) Where the Corporation does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice the Corporation shall pay a tool allowance of—

(i) $9.70 per week to such tradesperson or apprentice

(b) Any tool allowance paid pursuant to (a) shall be included in, and form part of, the ordinary weekly rate prescribed in Table (C) of this clause.

(c) The Corporation shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesperson or apprentice shall replace or pay for any tools supplied by the Corporation if lost through the negligence of the employee.

(ii) Building Trades

In addition to the rate of pay prescribed in Tables (B) and (D) of this clause for a tradesperson bricklayer, carpenter, painter or signwriter or plasterer such employee shall be paid a tool allowance as follows—

	$ Per Week
(a) Tradesperson Bricklayer	13.40
(b) Carpenter and/or Joiner	18.70
(c) Painter or Signwriter	4.60
(d) Plasterer	15.40

(F) Leading Hands

An employee placed in charge of—

(i), for Metal Trades;

(a) 3 and not more than 10 other employees shall be paid $16.60 per week extra.

(b) more than 10 and not more than 20 other employees shall be paid $25.40 per week extra.

(c) more than 20 other employees shall be paid $32.70 per week extra.

(ii), for Building Trades;

(a) 3 and not more than 10 other employees shall be paid $26.90 per week extra.

(b) more than 10 and not more than 20 other employees shall be paid $35.98 per week extra.

(c) more than 20 other employees shall be paid $45.05 per week extra.

CLAUSE 2.3 SPECIAL RATES AND PROVISIONS

(A) Subject to Clause 3.3—Leave Reserved subclause (C) the following rates apply only to employees paid in accordance with Tables (B), (C) and (D) of Clause 2.2—Rates of Pay.

(B) Allowances not Cumulative

For the purposes of this clause, where more than one of the disabilities entitling an employee to extra rates exists on the same job, the Corporation shall be bound to pay only one rate, namely the highest for the disabilities so prevailing. Provided that this subclause shall not apply to confined space, dirt money, height money, hot work, wet work, first aid or construction allowance the rates for which are cumulative.

(C) Asbestos

(i) An employee using materials containing asbestos or working in close proximity to any employee using such material shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority.

(ii) Where such safeguards include the mandatory wearing of protective equipment i.e. combination overalls and breathing equipment of similar apparatus, any such employee shall be paid 44 cents per hour extra whilst so engaged.

(D) Bosun's Chair Allowance

An employee required to work in a bosun's chair or on a single plank swing-scaffold shall be paid an additional 48 cents per hour or part thereof.

(E) Cement, Lime Or Flyash

(i) An employee exposed to cement dust or powdered lime, while spreading or mixing them, shall be paid 34 cents per hour extra.

(ii) Employees working with powdered lime are to be supplied by the Corporation with adequate protective clothing.

(F) Closet Cleaning Allowance

(i) All employees called upon to clean closets, connected with septic tanks or sewerage shall receive an allowance of 44 cents per closet per week.

(ii) For the purposes of this subclause 1 metre of urinal shall count as one closet and three urinal stalls shall count as one closet.

(iii) All such employees shall be supplied with rubber gloves.

(G) Coffer Dams

Any employee doing coffer dam work not under air pressure shall be paid an all purpose allowance of $6.00 per week. Where employees are doing such work under pressure a rate shall be agreed between the parties.

(H) Confined Spaces

An employee working in a compartment, space or place the dimensions of which necessitate working in an unusually stooped or otherwise cramped position, or without proper ventilation, shall be paid an allowance of 44 cents per hour whilst so engaged.

(I) Chainmen And Meter Fitters' Vehicle Allowance

A chainman or meter fitter who, in the course of his/her duties, has to ride a motor cycle or drive a motor vehicle shall be paid $7.78 per week extra.

(J) Construction Work Allowance

(i) All employees required to perform construction work, as defined below, shall be paid an allowance of $16.04 per week to compensate for disabilities when actually engaged on construction work on site.

(ii) "Construction Work" for the purpose of paragraph (i) of this subclause hereof shall mean and include all work performed on site on the construction, alteration, repair or maintenance of roads, reservoirs and drainage works, pipelines, water and sewerage mains and services. It shall not include the following classes of work—

(a) work in, around and/or adjacent to any office, workshop, depot, yard, treatment works, nursery or other similar establishments where there is access to reasonable amenities;

(b) work in, around and/or adjacent to pumping stations for less than 2 hours;

(c) gardening operations; or

(d) driving vehicles, floats or fork lifts when that driving is not directly associated with construction work (as defined) for less than 4 hours on the day.

(iii) Provided that employees who are engaged in the construction or alteration of any building, structure or other civil engineering project which is carried out in areas excluded in paragraph (ii)(a) and (b) of this subclause shall be paid a construction allowance at the rate of $8.02 per week.

(K) Dirt Money

An employee while engaged on work of an unusually dirty nature shall be paid an extra 34 cents per hour.

(L) Electrical Licence Allowance

An Electronic Tradesperson, an Electrician—Special Class, an Electrical Fitter and/or an Armature Winder or an Electrical Installer who holds and in the course of employment may be required to use a current 'A' grade or 'B' grade licence issued pursuant to the relevant Regulation in force on the 28th day of February 1978 under the Electricity Act 1948 shall be paid an allowance of $13.52 per week. Provided that an employee appointed to the DC classification structure as contained in Table (C) of Clause 2.2—Rates of Pay shall not receive this allowance as the pay rate contained in the DC classification structure includes a component for license allowance.

(M) Explosive Powered Tools Allowance

An employee qualified in accordance with the laws and regulations of the State to operate explosive powered tools shall be paid an allowance of 82 cents per day on which the employee uses such tools.

(N) First Aid Attendant

(i) An adequate first aid outfit shall be provided and maintained by the Corporation in work areas.

(ii) An employee who is a qualified first aid attendant and is appointed by the Corporation to carry out first aid duties in addition to normal duties, shall be paid an additional rate of $1.30 per day.

(iii) The name and where practicable the location of the appointed first aid attendant shall be made known to employees.

(O) Fluoride Allowance

An employee who is required to handle fluoride shall be paid an allowance of $3.21 per week. This allowance shall only be payable to an employee who was formerly covered by the Government Water Supply (Kalgoorlie Pipeline) Award No 15 of 1981, which has been cancelled.

(P) Fumes

An employee required to work in a place where fumes of sulphur or acids or other offensive fumes are present shall be paid an allowance of 33 cents for each hour worked.

(Q) Drivers Licenses

Initial issue or additional classifications of drivers licenses required by the Corporation shall be paid for by the Corporation. In addition the Corporation shall allow the employee sufficient time off with pay to take the requisite test.

(R) Height Money

An employee while working at a height of 9 metres or more above the nearest horizontal plane shall be paid 33 cents per hour extra.

(S) Hot Bitumen

An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 44 cents per hour extra.

An employee shall be supplied with gloves and overalls and with oil or other solvents suitable for the removal of the said materials.

(T) Hotwork

An employee who works in a place where the temperature has been raised by artificial means to between 46°C and 54°C

shall be paid 36 cents per hour or part thereof, and to more than 54ºC—44 cents per hour or part thereof, in addition to any other amount prescribed for the employee elsewhere in this Agreement. Where such work continues for more than 2 hours the employee shall be entitled to 20 minutes rest after every 2 hours work without loss of pay, not including the special rate provided by this subclause.

(U) Pesticides

(i) An employee required to wear protective clothing or equipment for the purposes of this subclause shall be paid 44 cents per hour or part thereof while doing so.

(ii) An allowance is not payable under this subclause if the appropriate Health Authority advises the Corporation in writing that protective clothing or equipment is not necessary.

(iii) When the Corporation requires an employee to use a pesticide it shall—

(a) Inform the employee of any known health hazards involved; and

(b) Ascertain from the appropriate Health Authority whether and, if so, what protective clothing or equipment should be worn during its use.

(iv) Pending advice from that Authority the Corporation may require the pesticide to be used, provided that the Corporation informs the employee of any safety precautions specified by the manufacturer of the pesticide and instructs the employee to follow those precautions.

(v) The Corporation shall supply the employee with any protective clothing or equipment required pursuant to (iii) or (iv) of this subclause and, where necessary, instruct the employee in its use.

(V) Pneumatic Tools (Percussion)

Any employee actually working a pneumatic tool of the percussion type shall be paid 30 cents per hour extra whilst so engaged.

(W) Polychlorinated Biphenyls

Employees required to remove or handle equipment or fittings containing polychlorinated biphenyls (PCBs) for which protective clothing must be worn shall, in addition to the rates and provisions contained in this clause, be paid an allowance of $1.35 per hour whilst so engaged.

(X) Sand Blasting

An employee sand blasting shall be paid an allowance of 43 cents per hour for each such hour.

(Y) Scrub Cutter Allowance

An employee required to use a scrub cutter shall be paid an allowance of 44 cents per hour. No employee shall be required to work for more than 50 consecutive minutes without a break of 10 minutes, whilst so engaged.

(Z) Sewerage Work

(i) Sewerage maintenance employees, whilst engaged in field work, shall be paid $22.63 per week to compensate for the disabilities and dirty work associated with the work performed. This allowance is to be in lieu of all other allowances contained within this clause.

(ii) An employee on live sewer work shall be paid an additional 29 cents per hour.

(iii) An employee (other than a sewerage maintenance employee) who comes into contact with raw sewage during the operation of cleaning out septic tanks, sand pits, ripple chambers, suction chambers of sewerage pumping stations or in deragging of sewerage pumps shall be paid $3.27 per day extra.

(iv) An employee (other than a sewerage maintenance employee) employed on offensive work in connection with working in or about old sewers or working in ground where fumes arise from decomposed material or from any other cause shall be paid 25% of the employee's ordinary time rate extra.

(AA) Compressed Air Work

The following special rates shall be paid to employees engaged in construction work in compressed air—

Gauge Reading	Rates per hour worked and spent in compression and decompression
0 to 34 KPa	$0.56
Over 35 and up to 65 KPa	$0.74
Over 65 and up to 100 KPa	$1.49
Over 100 and up to 170 KPa	$2.90
Over 170 and up to 225 KPa	$5.11
Over 225 and up to 275 KPa	$9.29

(BB) Slurry Work

A slurry refiller when so engaged shall not be entitled to wet pay, but shall receive an additional $1.10 per day.

(CC) Shaft Sinking

Any sinker required to timber any shaft, drive or trench shall be paid an additional 38 cents per day or part thereof.

(DD) Shotfirers Allowance

An employee being a permit holder, responsible for the proper handling of explosives and the conducting of firing shall be paid an allowance of $3.85 per shift.

(EE) Spray Painting

(i) Where the nature of the paint or substance used in spraying is such that a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substances used, an employee shall be paid an extra $1.07 per day.

(ii) Each employee applying paint by spraying, shall be provided with full overalls, head covering and a respirator by the Corporation.

(iii) Lead paint shall not be applied by a spray to the interior of any building.

(iv) No surface painted with lead paint shall be rubbed down or scraped by a dry process.

(v) Width of brushes: Paint brushes shall not exceed 127 mm in width and no kalsomine brush shall be more than 177.8 mm in width.

(vi) No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.

(FF) Steam/Water Cleaning

An employee using a steam or water cleaning unit shall be paid an allowance of 34 cents per hour whilst so engaged.

(GG) Toxic Substances

(i) An employee using toxic substances or materials of a like nature shall be paid 44 cents per hour extra. An employee working in close proximity to any employee so engaged shall be paid 36 cents per hour extra.

(ii) For the purpose of this subclause toxic substances shall include epoxy based materials and all materials which include or require the addition of a catalyst hardener or reactive additives deemed (by mutual agreement between the Corporation and the relevant Union) to be materials of a similar relative toxicity to epoxy resins.

(HH) Traffic Control

An employee who regulates and controls vehicular traffic in thoroughfares shall receive an allowance of $1.55 per shift above the employee's usual rate.

(II) Underground Allowance

(i) An employee required to work underground on tunnelling or shaft sinking shall be paid an amount of $1.55 per day or shift in addition to any other amount

prescribed for such employee elsewhere in this Agreement. Where a shaft is to be sunk to a depth greater than 6 metres the payment of the underground allowance shall commence from the surface. This allowance shall not be payable to employees engaged upon "cut and cover" work at a depth of 3.5 metres or less or to employees in trenches or excavations.

(ii) "Shaft" means an excavation over 1.8 metres deep with a cross sectional area of less than 13.4 square metres.

(iii) "Tunnelling" shall include all work performed in a tunnel until it is commissioned.

(JJ) Well Work

An employee required to enter a well 9 metres or more in depth for the purpose, in the first instance, of examining the pump, or any other work connected therewith, shall receive an amount of $1.88 for such examination and 72 cents per hour extra thereafter for fixing, renewing or repairing such work.

(KK) Wet Places

(i) Any employee working in a wet place shall be paid an allowance of $1.68 per day in addition to the employee's ordinary rate, irrespective of the time worked unless the employee's classification expressly includes an allowance for wet pay.

(ii) A place shall be deemed to be wet when it is agreed that water (other than rain) is continually dropping from overhead to such an extent that it would saturate the clothing of an employee if the employee was not provided with waterproof clothing or when the water in the place where the employee is standing is over 2.5 cm deep.

(iii) An employee shall be paid an allowance of 25% of the employee's ordinary rate where the Corporation directs work to continue in the rain.

(iv) An employee required to work in a wet place or during wet weather shall be provided with rubber boots and adequate waterproof clothing, including waterproof head covering so as to protect the employee from getting wet. Such waterproof clothing and rubber boots shall be replaced as required, subject to fair wear and tear in the service of the Corporation.

(LL) Workers Compensation Make Up Pay

(i) The Corporation shall pay an employee workers' compensation make-up pay where the employee received an injury for which weekly payments of compensation are payable by or on behalf of the Corporation pursuant to the provisions of the Workers' Compensation and Assistance Act 1981, as amended from time to time.

(ii) "Workers' compensation make-up pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to Workers' Compensation and Rehabilitation Act and the employee's appropriate 38 hour rate, or where the incapacity is for a lesser period than 1 week, the difference between the amount of compensation and the employee's 38 hour rate for that period.

(iii) The Corporation shall pay workers' compensation make-up pay during the incapacity of the employee until such incapacity ceases or until the expiration of a period of 26 weeks from the date of injury, whichever event shall first occur.

(iv) The liability of the Corporation to pay workers' compensation make-up pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable. The termination of the employees employment for any reason during the period of any incapacity shall in no way affect the liability of the Corporation to pay workers' compensation make-up pay as provided in this subclause.

(v) In the event that the employee receives a lump sum in redemption of weekly payments under the Workers' Compensation and Assistance Act, the liability of the Corporation to pay workers' compensation make-up pay as herein provided shall cease from the date of such redemption.

(vi) The Corporation may at any time apply to the Western Australian/Australian Industrial Relations Commission for exemption from the provisions of this clause on the grounds that a workers' compensation make-up pay scheme proposed and implemented by the Corporation contains provisions generally more favourable to the employees than the provisions of this clause.

CLAUSE 2.4 ADJUSTMENT OF ALLOWANCES

Subject to Clause 3.3—Leave Reserved, allowances prescribed in this Agreement will be varied to reflect changes in relevant awards as described in Clause 1.4—Precedence Over Awards, subject to orders of the Australian or Western Australian Industrial Relations Commission, as and when they occur.

CLAUSE 2.5 HIGHER RESPONSIBILITY ALLOWANCE

Subject to Clause 3.3—Leave Reserved subclause(B) the following shall apply—

(A) Employees Paid in Accordance with Clause 2.2—Rates of Pay Table (A)—

(i) An employee who is requested by the Corporation to act in a position which is classified higher than the employee's substantive position and who performs the full duties and accepts the full responsibility of the higher position for a continuous period of 5 consecutive working days or more, shall, subject to the provisions of this clause, be paid an allowance equal to the difference between the employee's own pay rate and the pay rate the employee would receive if the employee was appointed to the position in which the employee is required to act.

(ii) Provided that where the hours of duty of an employee performing shift work are greater than 7.6 hours per day as provided for in Clause 3.3—Shift Work Allowance of the Water Corporation Conditions Agreement 1997 the allowance shall be payable after the completion of 38 consecutive working hours in the higher classified position. This period shall not include any time worked as overtime.

(iii) Where the full duties of a higher position are temporarily performed by 2 or more employees they shall each be paid an allowance based on the proportion of duties undertaken.

(iv) An employee who is requested to act in a higher classified position but who is not required to carry out the full duties of the position and/or accept the full responsibilities, shall be paid such proportion of the allowance provided for in paragraph (i) of this subclause as the duties and responsibilities performed bear to the full duties and responsibilities of the higher position. Provided that the employee shall be informed, prior to the commencement of acting in the higher classified position of the duties to be carried out, the responsibilities to be accepted and the allowance to be paid.

(v) The allowance paid may be adjusted during the period of higher duties.

(vi) Where an employee who has qualified for payment of higher duties allowance under this clause is required to act in another position or other positions classified higher than the employee's own for periods less than 5 consecutive working days without any break in acting service, such employee shall be paid a higher duties allowance for such periods: provided that payment shall be made at the highest rate the employee has been paid during the term of continuous acting or at the rate applicable to the position in which the employee is currently acting, whichever is the higher.

(vii) Acting service with allowances for acting in offices for the same classification or higher than the position during the 18 months preceding

thecommencement of such acting shall aggregate as qualifying service towards such an increase in the allowance.

(viii) Where an employee who is in receipt of an allowance provided under this clause and has been so for a continuous period of 12 months or more, proceeds on—

(a) a period of normal annual leave; or

(b) a period of any other paid leave of absence of not more than 4 weeks;

the employee shall continue to receive the allowance for the period of leave: provided that this subclause shall also apply to an employee who has been in receipt of an allowance for less than 12 months if during the employee's absence no other employee acts in the position in which the employee was acting immediately prior to proceeding on leave and the employee resumes in the position immediately on return from leave.

(ix) For the purpose of this subclause the expression "normal annual leave" shall mean the annual period of recreation leave as referred to in Clause 2.2—Annual Leave of the Water Corporation Conditions Agreement 1997 and shall include any public holidays and leave in lieu accrued during the preceding 12 months taken in conjunction with such annual recreation leave.

(x) Where an employee who is in receipt of an allowance granted under this clause proceeds on—

(a) a period of annual leave in excess of the normal; or

(b) a period of any other approved leave of absence of more than 4 weeks, the employee shall not be entitled to receive payment of the allowance for the whole or any part of the period of such leave.

(B) Employees Paid in Accordance with Clause 2.2—Rates of Pay Tables (B),(C) and (D)—

(i) An employee required by the Corporation to carry out the duties and responsibilities of a higher level job ranked at WIW Level 3 or C 10 and above shall be paid the higher rate for the whole day or shift during which such duties and skills are being exercised. Provided that an employee so engaged for less than 2 hours shall be paid for the time actually worked.

(ii) These arrangements shall apply where an individual is covering a position vacant as a result of such things as sickness, annual leave, long service leave, special leave or the position is vacant because the normal occupant is in another position on acting duty arrangements. Ordinarily this would be for a period of no longer than 3 months and in any event no longer than 6 months.

(iii) An employee who proceeds on annual leave shall be paid at the rate the employee has received for the greatest portion of the calendar month prior to taking the leave.

(iv) An employee who has been employed in 1 or more positions each of which carries a higher rate than the employee's permanent classified rate for a continuous period of 12 months ending not earlier than 2 weeks before the day on which the employee commences long service leave or is paid pro rata long service leave in accordance with Clause 2.4 of the Water Corporation Conditions Agreement 1997, the rate which the employee has received for the greatest portion of that 12 month period shall be the rate at which the long service leave is paid.

SECTION THREE — MISCELLANEOUS

CLAUSE 3.1 COPIES OF AGREEMENT

Every employee shall be entitled to have access to a copy of this Agreement. Sufficient copies shall be made available by the Corporation for this purpose.

CLAUSE 3.2 DISPUTE RESOLUTION PROCEDURE

Unless otherwise agreed by the parties to this Agreement at an enterprise level, the procedure prescribed in the Water Corporation Conditions Agreement, Clause 5.6—Dispute Resolution Procedure shall apply.

CLAUSE 3.3 LEAVE RESERVED

It is the intention of the parties to vary this Agreement during its term to give effect to the results of—

(A) Job Banding And Pay Range Project

From 1 July 1999, or from such other date as may be agreed between the parties, all jobs covered by this Agreement shall be placed in job bands using a system of job evaluation to be agreed between the parties to this Agreement. Also to be agreed between the parties is the system by which the rates of pay of individual employees are to be determined within the pay ranges attached to the relevant job bands.

(B) Review Higher Responsibility Allowances

These allowances are to be reviewed concurrently with the Job Banding and Pay Range Project.

(C) Review of Special Rates & Provisions

These will be reviewed early in the life of this Agreement with a view to rationalising the number and their application.

CLAUSE 3.4 SIGNATORIES

Signed for and on behalf of the Corporation.

....

WITNESS

Dated: / / Dated: / /

Signed for and on behalf of the Community and Public Sector Union, WA Branch, Civil Service Association of Western Australia Incorporated.

....

WITNESS

Dated: / / Dated: / /

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union (Miscellaneous Workers WA Branch).

....

WITNESS

Dated: / / Dated: / /

Signed for and on behalf of the Australian Workers Union.

....

WITNESS

Dated: / / Dated: / /

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

....

WITNESS

Dated: / / Dated: / /

Signed for and on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering & Electrical Division, Western Australian Branch.

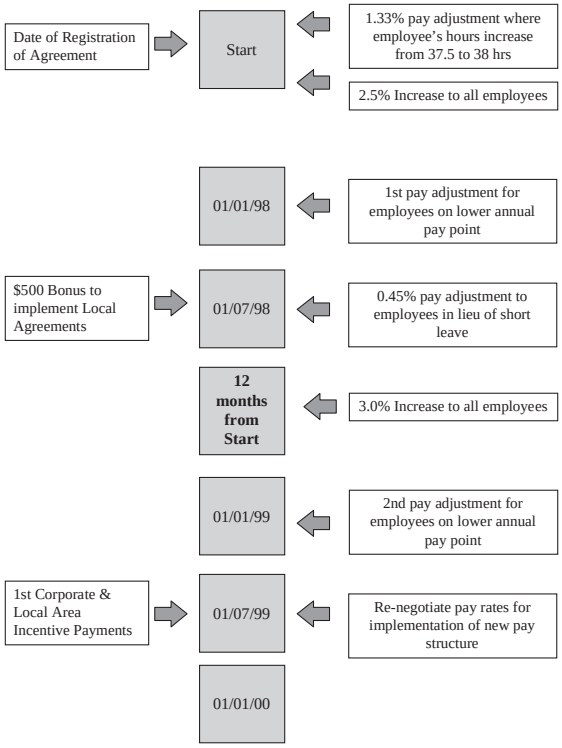
....

WITNESS

Dated: / / Dated: / /

SECTION FOUR - APPENDICES

WATER CORPORATION SALARIES & WAGES AGREEMENT 1997



SCHEDULE A - TIMETABLE FOR PAYMENT

WILDFLORA LANDSCAPES INDUSTRIAL AGREEMENT.

No. AG 235 of 1997.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Graham Walter, Mark Simon, Paul Timothy and Wendy Julia Naomi Stacey trading as Wildflora Landscapes.

No. AG 235 of 1997.

Wildflora Landscapes Industrial Agreement

COMMISSIONER P.E. SCOTT.

21 January 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance 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 Wildflora Landscapes Industrial Agreement in the terms of the following schedule be registered on the 19th day of December 1997.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Wildflora Landscapes Industrial Agreement.

2.—ARRANGEMENT

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builder's Labourers, Painters, & Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Graham Walter, Mark Simon, Paul Timothy and Wendy Julia Naomi Stacey trading as Wildflora Landscapes (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its officers and members, and any person eligible to be members of the Unions employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 2 employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st of August 1997 and shall continue in effect until 31 October 1999.

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

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

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

8.—RELATIONSHIP WITH AWARDS

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

9.—ENTERPRISE AGREEMENT

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

10.—WAGE INCREASE

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

11.—SITE ALLOWANCE

This Agreement provides for site allowances as per Appendix C—Site Allowance.

12.—INDUSTRY STANDARDS

1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to $45 per week per employee into the Western Australian Construction Industry Redundancy Fund and then will increase this to $50 per week per employee on 1 August 1998.

2. Superannuation

The Company will increase its level of payment into the Construction + Building Unions Superannuation Scheme to $60 per week per employee as of 1 August 1997.

3. Apprentice Rates

The Company agrees to maintain a ratio of no more than four tradespeople to one apprentice employed.

13.—CLOTHING AND FOOTWEAR

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

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

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

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

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

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

1. A training allowance of $12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

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

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

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

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

course fees

course books and materials

payment of ordinary time earnings for such absence.

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

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

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

15.—SENIORITY

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

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

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

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

16.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

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

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

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—FARES AND TRAVELLING

In addition to Clause 12A of the award a travel payment shall be made in the form of a daily payment (on days worked) of $6.15 per day per employee.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

20.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the

Agreement. However the Union reserves the right to raise the unforseen matters. The Company agrees to insure the employees for sickness and accident cover. The terms of the policy will be agreed to between the Company and the Union.

Signed for and on behalf of—

The Unions: **BLPPU** Signed **Common Seal**
Date: 5/9/97
Signed
WITNESS
CMETU Signed **Common Seal**
Date: 5/9/97
Signed
WITNESS

The Company: WILDFLORA LANDSCAPES
Signed
Date: 2/8/97
GRAHAM W STACEY
PRINT NAME
Signed
WITNESS

APPENDIX A—WAGE RATES

	Date of Signing Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Labourer Group 1	15.56	16.01	16.47	16.92	17.15
Labourer Group 2	15.03	15.47	15.90	16.34	16.56
Labourer Group 3	14.63	15.05	15.48	15.90	16.12
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
Painter, Glazier	15.81	16.27	16.73	17.19	17.42
Signwriter	16.15	16.62	17.09	17.56	17.80
Carpenter	16.27	16.75	17.22	17.70	17.93
Bricklayer	16.11	16.58	17.05	17.52	17.75
Refractory Bricklayer	18.50	19.04	19.58	20.12	20.38
Stonemason	16.27	16.75	17.22	17.70	17.93
Rooftiler	15.99	16.45	16.92	17.38	17.62
Marker/Setter Out	16.75	17.24	17.72	18.21	18.46
Special Class T	16.96	17.46	17.95	18.45	18.69

APPRENTICE RATES

	1 August 1997 Hourly Rate $	1 February 1998 Hourly Rate $	1 August 1998 Hourly Rate $	1 February 1999 Hourly Rate $	1 August 1999 Hourly Rate $
Plasterer, Fixer					
Yr 1	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3)	8.90	9.16	9.42	9.68	9.81
Yr 3 (2/3)	12.13	12.49	12.84	13.19	13.37
Yr 4 (3/3/)	14.23	14.65	15.06	15.48	15.69
Painter, Glazier					
Yr 1 (.5/3/5)	6.64	6.84	7.03	7.22	7.32
Yr 2 (1/3), 1.5/3.5)	8.70	8.95	9.20	9.45	9.58
Yr 3 (2/3), 2.5/3.5)	11.86	12.20	12.55	12.89	13.06
Yr 4 (3/3), 3.5/3.5)	13.92	14.32	14.73	15.13	15.33
Signwriter					
Yr 1 (.5/3/5)	6.79	6.99	7.18	7.38	7.48
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65	9.78
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17	13.35
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46	15.66
Carpenter					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Bricklayer					
Yr 1	6.77	6.96	7.16	7.36	7.46
Yr 2 (1/3)	8.86	9.12	9.37	9.63	9.76
Yr 3 (2/3)	12.08	12.43	12.79	13.14	13.31
Yr 4 (3/3)	14.17	14.59	15.00	15.41	15.62
Stonemason					
Yr 1	6.84	7.04	7.24	7.44	7.54
Yr 2 (1/3)	8.95	9.21	9.47	9.73	9.86
Yr 3 (2/3)	12.21	12.56	12.92	13.27	13.45
Yr 4 (3/3)	14.32	14.73	15.15	15.57	15.78
Rooftiler					
6 months	9.12	9.38	9.65	9.91	10.04
2nd 6 months	10.02	10.31	10.61	10.90	11.04
Yr 2	11.71	12.05	12.39	12.73	12.90
Yr 3	13.74	14.14	14.54	14.94	15.14

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.

b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

c) There will be no payment of lost time to a person unable to work in a safe manner.

d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.

e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

f) A worker having problems with alcohol and or other drugs—
- Will not be sacked if he/she is willing to get help.
- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.

b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.

c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX C—SITE ALLOWANCE

1. This agreement is between the parties to this agreement and shall apply to construction work undertaken by principal contractors who are engaged in the commercial/industrial sector of the building industry in the state of Western Australia within a 50km radius of the Perth General Post Office.

2. This agreement provides for a site allowance to be paid to employees engaged on particular building projects, and for such site allowance to be paid in addition to the wage rates and allowances prescribed by the award as well as any industrial or certified agreements made in conjunction with the award which does not prescribe a site allowance.

3. The site allowance payable under this agreement is to be paid at a flat rate per hour for all hours worked to compensate for all special factors/disabilities on the project and in lieu of all award special rates, with the exception of rates relating to the lifting of heavy blocks, cleaning down brickwork and the use of explosive powered tools which will be payable to an employee when he/she encounters that particular disability.

4. **Site Allowance Formula**

At the commencement of a project the particular site allowance to apply shall be determined in accordance with the following formula—

4.1 Projects Located Within Perth C.B.D. (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.80
Above	$2.1 m to $4.4m	$2.15
Over	$4.4m	$2.75

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500, 000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

4.2 Projects Located Within West Perth (as defined)

New Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.60
Above	$2.1 m to $4.4m	$1.80
Over	$4.4m	$2.35

Renovations, Restorations and/or Refurbishment Work

Project Contractual Value		Site Allowance
Up to	$500,000	NIL
Above	$500,000 to $2.1 m	$1.50
Above	$ 2.1 m to $4.4m	$1.70
Over	$4.4m	$1.95

The site allowance on projects which are a combination of new and renovation work shall be governed by the majority of work involved. For example, where the majority of work is new work, then the site allowance appropriate to new work shall be paid for all employees on the project.

4.3 Projects within 50 km radius of Perth G.P.O. but not including the C.B.D. or West Perth (as defined)

Project Contractual Value		Site Allowance
Up to	$1 m	NIL
Above	$1 m to $2.1 m	$1.20
Above	$2.1 m to 5.8m	$1.50
Above	$5.8m to $11.6m	$1.75
Above	$11.6m to $23.6m	$1.95
Above	$23.6m to $58.6m	$2.25
Over	$58.6m	$2.45

"C.B.D."—Central Business District shall mean the area bounded by the Swan River South, Swan River East to Nile Street running into Wittenoom Street, Hill Street to Royal Street, Royal Street to Lord Street, Lord Street to Newcastle Street, along Newcastle Street to the Freeway, the Freeway South to the Perth Fremantle railway line, along the Perth-Fremantle railway line to Dyer Street, Dyer Street through to Havelock Street, Havelock Street to Kings Park Road, Kings Park Road to Fraser Avenue, Fraser Avenue projected through to the Swan River.

"West Perth"—shall mean the area contained within the boundaries formed by Thomas Street, Kings Park Road, Havelock Street, Dyer Street and the Perth-Fremantle railway line back to Thomas Street.

Boundary roads: If a road borders between two regions in which site allowances are to be paid as per this agreement, the parties confirm that one side of such a boundary road will be deemed to fall in one region and the other side of the boundary road will be deemed to fall in the other region. For example, the eastern side of Havelock Street will be in the "CBD" and the western side of Havelock Street shall be in "West Perth".

"Project Contractual Value"—shall be deemed to mean the value of all tendered work which falls under the scope of the principal contractor's contract.

5. The site/project allowance and project contractual value detailed in this agreement shall be adjusted on 1 October each year by the total C.P.I. movements for Perth during the preceding four quarters ending 30 June and accordingly, the site allowance amounts shall be adjusted up or down to the nearest five cents.

6. Project contractual values shall be subject to review at any renewal of this agreement, but in any event shall not be adjusted by a percentage less than the total CPI movements for Perth during the preceding four quarters ending 30 June. Such adjustment being to the nearest $10,000.

7. The agreed site allowance once set pursuant to this agreement shall be recorded in a site agreement to which the applicable principal contractor and the Union will be signatories. The level of allowance once nominated at the commencement of the project will continue without change until completion of the project.

8. It is acknowledged that on certain projects a site agreement may be entered into between the principal contactor and the building trades group of unions for that project that may include matters regularly addressed within the industry, such as, but not limited to, the following—

- Disputes Procedures
- Occupational Health and Safety Procedures
- Demarcation Procedures
- First Aid Provisions and On-Site Amenities

and the unions will not unreasonably refuse to continue to discuss such matters if raised by the principal contractor.

9. This agreement does not apply to resource development projects or civil and engineering projects.

10. Where a dispute arises as to the application of the terms of this agreement, if the issue cannot be resolved in discussions between the parties, it is agreed that the matter will be referred to the appropriate industrial tribunal for resolution without recourse to industrial action.

11. It is a term of this agreement that all site allowance agreements entered into prior to this date will be honoured by all parties and will continue to apply for the life of the particular project.

12. Where because of a condition of contract the principal contractor is required not to allow for a site allowance, before final application of this agreement, discussions will be held between the parties with a view to resolving any problems that may arise as a result of this situation.

13. This agreement shall only apply to building contracts entered into on or after 1 October, 1995.

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

THE TRANSPORT TRUST SALARIED OFFICERS' AWARD No. 3 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metropolitan (Perth) Passenger Transport Trust

and

The Metropolitan (Perth) Passenger Transport Trust Officers' Union of Workers, Perth.

No. P 58 of 1997.

The Transport Trust Salaried Officers' Award No. 3 of 1977.

COMMISSIONER P E SCOTT.

28 January 1998.

Order.

HAVING heard Mr G Wibrow on behalf of the Applicant and Mr P Taliana 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 Transport Trust Salaried Officers' Award No. 3 of 1977, be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after 8 December 1997.

(Sgd.) P.E. SCOTT,

[L.S.] Commissioner.

Schedule.

The Transport Trust Salaried Officers Award No. 3 of 1977

1. Clause 6.—Definitions. In the first paragraph delete the word Transperth and insert in lieu thereof the following—

MetroBus

2. Clause 52—Passes. Delete the word Transperth in this paragraph and insert in lieu thereof the following—

MetroBus

3. Schedule N—Transition Provisions (Broadbanding). In the second paragraph of subclause (1) delete the word Transperth and insert in lieu thereof the following—

MetroBus

4. Clause 30.—Camping Allowance to Clause 34.—Flying Allowance inclusive, Clause 36.—Property Allowance, Clause 38.—Relieving Allowance to Clause 41.—Transfer Allowance inclusive, Clause 43.—Weekend Absence from Residence, Schedule F—Camping Allowance, Schedule G—District Allowance, Schedule K—Shift Work Allowances, Schedule L—Other Allowances and Schedule M—Travel Concessions for Annual Leave. In each paragraph of these clauses delete the word Transperth and insert in lieu thereof the following—

MetroBus

5. Schedule B—Government Officers Not Covered by this Award and Schedule C—List of Awards/Agreements replaced by this Award. Delete the word Transperth and insert in lieu thereof the following—

MetroBus

6. Clause 7.—Contract of Service. Delete subclause 2 (g) and delete the reference to subparagraph (g) of subclause 2 in the following subclause 3 (b).

7. Clause 9.—Part-Time Employment. Delete subclause (5) and insert in lieu thereof the following—

(5) (a) An officer shall be granted leave in accordance with clause 19—Annual Leave of this award. Payment to an officer proceeding on annual leave shall be calculated having regard for any variations to the officers ordinary working hours during the accrual period. Payment in such instances shall be calculated as follows—

(i) Where accrued annual leave only is being taken, the ordinary hours worked by the officer over the accrual period shall be averaged to achieve the average hours worked per fortnight. This average is then applied to the following formula to achieve an average fortnight rate of pay—

$$\frac{\text{average fortnightly hours worked}}{75} \times \frac{\text{appropriate fortnightly salary}}{1}$$

For those officers working under a 76 hour fortnight, 76 replaces 75 in the above formula.

(ii) Subject to paragraph (iv) of this subclause, annual leave taken entirely in advance shall be paid according to the salary the officer would have received had the officer not proceeded on leave.

(iii) Subject to paragraph (iv) of this subclause, annual leave which combines both accrued and leave taken in advance shall be calculated as follows—

the accrued portion of leave shall be paid at the rate achieved by averaging the hours worked during the accrual period; and

the portion of leave which is being taken in advance shall be paid according to the salary the officer would have received had the officer not proceeded on leave.

(iv) Payment for annual leave taken in advance pursuant to paragraph (ii) and (iii) of this subclause, shall be subject to financial reconciliation either at the end of the leave year or when the officer ceases employment to take account of any variations in the hours worked by the officer subsequent to the officer proceeding on annual leave. This may require further payment by the employer to the officer, or repayment by the officer to the employer. In all instances the reconciliation should be based on the appropriate fortnightly salary at the time the leave was taken.

An officer taking annual leave in advance shall be advised of the requirements of this section prior to the officer proceeding on such leave.

(b) Not applicable within MetroBus (annual leave travel concession).

8. Clause 10.—Salaries and Salary Ranges. Delete subclause 3 and insert in lieu thereof the following—

(3) Subject to Clause 11.—Salaries—Specified Callings of this Award the annual salaries applicable to officers covered by this Award shall be as contained in Schedule D of this Award. Provided that—

(a) an adult officer employed pursuant to level 1 shall commence employment at Level 1.1. Provided that at the discretion of the Chief Executive Officer, the officer may be appointed to a higher incremental level subject to previous relevant knowledge and experience.

(b) the employer is not prohibited from granting special allowances based on additional duties and responsibilities undertaken by an officer due to expertise and knowledge of the officer.

9. Clause 11A.—Arbitrated Safety Net Adjustment. Delete this paragraph and insert in lieu thereof the following—

The rates of pay in this award include three 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 November 1, 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.Furthermore the rates of pay in this award include the $10.00 per week arbitrated safety net adjustment payable from the beginning of the first pay period on or after the 14th day of November 1997.This arbitrated safety net adjustment shall be offset against any equivalent amount in rates of pay received by employees since 1 November 1991 whose wages and conditions are regulated by this award and which are above the wage rates prescribed in it, provided that the above award payments include wages payable under an enterprise agreement in which absorption is not contrary to the terms of the enterprise agreement.Increases made under State Wage Case Principles prior to November 1997, except those resulting from enterprise agreements, are not to be used to offset this arbitrated safety net adjustment of $10 per week.

10. Clause 21.—Long Service Leave. Delete subclause (1) and insert in lieu thereof the following—

(1) Any officer who was employed prior to 6 March 1988 and has served continuously on the salaried staff for seven years shall be entitled to thirteen weeks' long service leave on full pay or subject to departmental convenience twenty six weeks on half pay, or may allow an officer to take leave in not more than three separate periods with no period being less than 4 weeks, and thereafter for every seven years of continuous service similar leave shall be granted.

Provided that any officer employed on or after 6 March 1988 shall be entitled to thirteen weeks long service leave.

(i) after a period of ten years' continuous service; and

(ii) after each further period of seven years' continuous service.

11. Clause 21.—Long Service Leave. Delete subclause (7) and insert in lieu thereof the following—

(7) In the case of a deceased officer, payment shall be made to the estate of the officer unless the officer is survived by a legal dependant approved by the employer, in which case payment shall be made to the legal dependant.

12. Schedule D—Salaries. Delete this Schedule and insert in lieu thereof the following—

SCHEDULE D

SALARIES

Annual salaries applicable to officers covered by this Award.

Level	Salary Per Annum	1st, 2nd & 3rd Arbitrated Safety Net Adjustment	$10 Arbitrated Safety net Adjustment	Total
	$ pa	$ pa	$ pa	$ pa
Level 1				
Under 17 years	10,445	642	268	11,355
17 years	12,207	750	313	13,270
18 years	14,238	876	366	15,480
19 years	16,481	1,014	423	17,918
20 years	18,507	1,140	475	20,122
1.1	20,331	1,251	522	22,104
1.2	20,983	1,251	522	22,756
1.3	21,634	1,251	522	23,407
1.4	22,281	1,251	522	24,054
1.5	22,932	1,251	522	24.705
1.6	23,583	1,251	522	25,356
1.7	24,332	1,251	522	26,105
1.8	24,850	1,251	522	26,623
1.9	25,616	1,251	522	27,389
Level 2				
2.1	26,533	1,251	522	28,306
2.2	27,236	1,251	522	29,009
2.3	27,975	1,251	522	29,748
2.4	28,756	1,251	522	30,529
2.5	29,573	1,251	522	31,346
Level 3				
3.1	30,696	1,251	522	32,469
3.2	31,571	1,251	522	33,344
3.3	32,473	1,251	522	34,246
3.4	33,399	1,251	522	35,172
Level 4				
4.1	34,669	1,251	522	36,442
4.2	35,664	1,251	522	37,437
4.3	36,688	1,251	522	38,461
Level 5				
5.1	38,660	1,251	522	40,433
5.2	39,993	1,251	522	41,766
5.3	41,378	1,251	522	43,151
5.4	42,815	1,251	522	44,588
Level 6				
6.1	45,126	1,251	522	46,899
6.2	46,697	1,251	522	48,470
6.3	48,323	1,251	522	50,096
6.4	50,059	1,251	522	51,832

13. Schedule E—Salaries—Specified Callings. Delete this Schedule and insert in lieu thereof the following—

SCHEDULE E

SALARIES—SPECIFIED CALLINGS

Officers, who possess a relevant tertiary level qualification, or equivalent determined by the employer and who are employed in the callings of Agricultural Scientist, Architect, Dental Officer, Education Officer, Engineer, Geologist, Laboratory Technologist, Land Surveyor, Legal Officer, Librarian, Medical Officer, Planning Officer, Probation and Parole Officer, Psychiatrist, Clinical Psychologist, Psychologist, Quantity Surveyor, Scientific Officer, Social Worker, Superintendent of Education, Therapist (Occupational, Physio or Speech), Veterinary Scientist, or any other professional calling determined by the employer, shall be entitled to annual salaries as follows—

Level	Salary Per Annum	1st, 2nd & 3rd Arbitrated Safety Net Adjustment	$10 Arbitrated Safety net Adjustment	Total
	$ pa	$ pa	$ pa	$ pa
Level 2/4				
1st year	26,533	1,251	522	28,306
2nd year	27,975	1,251	522	29,748
3rd year	29,573	1,251	522	31,346
4th year	31,571	1,251	522	33,344
5th year	34,669	1,251	522	36,442
6th year	36,688	1,251	522	38,461

Level	Salary Per Annum	1st, 2nd & 3rd Arbitrated Safety Net Adjustment	$10 Arbitrated Safety net Adjustment	Total
	$ pa	$ pa	$ pa	$ pa
Level 5				
1st year	38,660	1,251	522	40,433
2nd year	39,993	1,251	522	41,766
3rd year	41,378	1,251	522	43,151
4th year	42,815	1,251	522	44,588
Level 6				
1st year	45,126	1,251	522	46,899
2nd year	46,697	1,251	522	48,470
3rd year	48,323	1,251	522	50,096
4th year	50,059	1,251	522	51,832

14. Schedule H—Motor Vehicle Allowance. Delete this Schedule and insert in lieu thereof the following—

SCHEDULE H

MOTOR VEHICLE ALLOWANCE

PART I—MOTOR CAR

Area and Details	Engine Displacement (in Cubic Centimetres) Over 2600cc	Over 1600cc - 2600cc	1600cc & under
	Rate (cents) per kilometre		
Metropolitan Area			
First 4,000 kilometres	136.3	118.4	103.5
Over 4,000-8,000 kilometres	56.7	49.1	43.7
Over 8,000-16,000 kilometres	30.2	26.1	23.8
Over 16,000 kilometres	31.6	27.2	24.5
South West Land Division			
First 4,000 kilometres	139.4	121.3	106.4
Over 4,000-8,000 kilometres	58.3	50.6	45.1
Over 8,000-16,000 kilometres	31.3	27.1	24.7
Over 16,000 kilometres	32.5	28.0	25.2
North of 23.5° South Latitude			
First 4,000 kilometres	154.4	135.1	118.8
Over 4,000-8,000 kilometres	63.9	55.7	49.7
Over 8,000-16,000 kilometres	33.7	29.2	26.7
Over 16,000 kilometres	33.4	28.7	25.8
Rest of the State			
First 4,000 kilometres	144.1	125.2	109.6
Over 4,000-8,000 kilometres	60.3	52.3	46.5
Over 8,000-16,000 kilometres	32.4	28.0	25.5
Over 16,000 kilometres	33.2	28.5	25.7

PART II—MOTOR CAR

Area and Details	Engine Displacement (in Cubic Centimetres) Over 2600cc	Over 1600cc - 2600cc	1600cc & under
	Rate (cents) per kilometre		
Metropolitan Area	63.3	54.9	48.7
South West Land Division	65.1	56.5	50.2
North of 23.5° South Latitude	71.4	62.3	55.5
Rest of the State	67.3	58.4	51.8

PART III — MOTOR CYCLE

Distance travelled during a year on Official Business	Rate Cents per Kilometre
All Areas of State	21.9

15. Schedule I—Overtime. Delete this Schedule and insert in lieu thereof the following—

SCHEDULE I

OVERTIME

PART I—OUT OF HOURS CONTACT

Standby	$5.43 per hour
On Call	$2.72 per hour
Availability	$1.36 per hour

PART II—MEALS

Breakfast	$6.50 per meal
Lunch	$8.00 per meal
Evening Meal	$9.60 per meal

16. Schedule J—Relieving Allowance, Transfer Allowance and Travelling Allowance. Delete this Schedule and insert in lieu thereof the following—

SCHEDULE J

CLAUSE 39.—RELIEVING ALLOWANCE

CLAUSE 42.—TRANSFER ALLOWANCE

CLAUSE 43.—TRAVELLING ALLOWANCE

Item	Particulars	Column A Daily Rate	Column B Daily rate officers with dependants: Relieving allowance for period in excess of 42 days SUB-PARAGRAPH (ii) OF PARAGRAPH (b) of subclause (9) Transfer allowance for period in excess of prescribed period PARAGRAPH (b) of subclause (6)	Column C Daily rate officers without dependants— Relieving allowance for period in excess of 42 days SUB-PARAGRAPH (ii) OF PARAGRAPH (b) of subclause (9)

ALLOWANCE TO MEET INCIDENTAL EXPENSES

1.	WA—South of 26° South Latitude	$8.65
2.	WA—North of 26° South Latitude	$10.35
3.	Interstate	$10.35

ACCOMMODATION INVOLVING AN OVERNIGHT STAY IN A HOTEL OR MOTEL

		$	$	$
4.	WA—Metropolitan Hotel or Motel	148.20	74.10	49.35
5.	Locality South of 26° South Latitude	124.05	62.05	41.30
6.	Locality North of 26° South Latitude			
	Broome	197.25	98.60	65.70
	Carnarvon	123.15	61.60	41.00
	Dampier	146.10	73.05	48.65
	Derby	157.20	78.60	52.35
	Exmouth	157.35	78.65	52.40
	Fitzroy Crossing	160.35	80.20	53.40
	Gascoyne Junction	118.85	59.40	39.55
	Halls Creek	166.85	83.40	55.55
	Karratha	240.10	120.05	79.95
	Kununurra	154.75	77.35	51.55
	Marble Bar	125.35	62.70	41.75
	Newman	190.35	95.20	63.40
	Nullagine	115.35	57.70	38.40
	Onslow	101.80	50.90	33.90
	Pannawonica	126.85	63.40	42.25
		$	$	$
	Paraburdoo	193.35	96.65	64.40
	Port Hedland	202.75	101.35	67.50
	Roebourne	133.70	66.85	44.55
	Sandfire	97.35	48.65	32.40
	Shark Bay	161.75	80.95	53.90
	Tom Price	164.85	82.40	54.90
	Turkey Creek	94.35	47.20	31.40
	Wickham	130.35	65.20	43.40
	Wyndham	101.85	50.90	33.90
7.	Interstate—Capital City			
	Sydney	176.90	88.45	58.90
	Melbourne	166.60	83.30	55.45
	Other Capitals	153.80	76.90	51.20
8.	Interstate—Other than Capital City	124.05	62.05	41.30

ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL OR MOTEL

	$
9. WA—South of 26° South Latitude	53.15
10. WA—North of 26° South Latitude	63.70
11. Interstate	63.70

TRAVEL NOT INVOLVING AN OVERNIGHT STAY

	$
12. WA—South of 26° South Latitude—	
Breakfast	10.20
Lunch	10.20
Evening Meal	24.05
13. WA—North of 26° South Latitude—	
Breakfast	11.95
Lunch	14.75
Evening Meal	26.70
14. Interstate	
Breakfast	11.95
Lunch	14.75
Evening Meal	26.70

DEDUCTION FOR NORMAL LIVING EXPENSES (SUBCLAUSE 6 (d))

	$
15. Each Adult	18.40
16. Each Child	3.15

MIDDAY MEAL

17. Rate per meal	4.45
18. Maximum reimbursement per pay period	22.30

AWARDS/AGREEMENTS— Variation of—

BUILDING TRADES (CONSTRUCTION) AWARD 1987.
No. R 14 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Adsigns Pty Ltd and Others.

No. 1885 of 1997.

Building Trades (Construction) Award 1987.
No. R 14 of 1978.

COMMISSIONER P E SCOTT.

2 February 1998.

Order.

HAVING heard Ms J Harrison on behalf of the Applicants and Ms S Laferla on behalf of various Respondents and Mr K Richardson on behalf of the Master Builders' Association of Western Australia (Union of Employers) 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. R 14 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 11th day of December 1997.

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

Schedule.

1. Clause 28.—Time Records: Delete subclause (1) of this clause and insert the following in lieu thereof—

(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) each day worked, the hours worked each day, including time of starting and finishing work each day;

(c) the gross amount of ordinary wages, overtime wages, special rates and specific allowances paid;

(d) the amount of each deduction and the nature thereof;

(e) the net amount of ordinary wages, and overtime wags, special rates and specific 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.

GOVERNMENT RAILWAYS LOCOMOTIVE ENGINEMEN'S AWARD 1973-1990.
No. 13 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

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

No. 1800 of 1997.

Government Railways Locomotive Enginemen's Award 1973—1990.

No. 13 of 1973.

COMMISSIONER P E SCOTT.

14 January 1998.

Order.

HAVING heard Ms M Kovacevich on behalf of the Western Australian Government Railways Commission and Mr D Hathaway on behalf of the West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Government Railways Locomotive Enginemen's Award 1973—1990 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.

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

Schedule.

1. Clause 35.—District Allowance—Delete subclause (1) of this clause and insert the following in lieu thereof—

(1) District Allowances specified below, shall be paid to workers stationed at—

		$ Per Week
(i)	Carrabin to Kalgoorlie	11.45
	except the following where the allowance shall be—	
	—Kalgoorlie	3.45
(ii)	Northwards of Kalgoorlie	22.94
(iii)	Norseman	6.89
	Salmon Gums	22.94
	Esperance	3.45
(iv)	Perenjori, Koorda, Mukinbudin and Kalannie	11.45
(v)	Amery	6.89
(vi)	Kulja and Beacon	22.94
(vii)	Mullewa and Miling	3.45
(viii)	Eneabba	11.45

GOVERNMENT RAILWAYS LOCOMOTIVE ENGINEMEN'S AWARD 1973-1990.

No. 13 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Government Railways Commission

and

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

No. 1800 of 1997.

Government Railways Locomotive Enginemen's Award 1973—1990.

No. 13 of 1973.

COMMISSIONER P E SCOTT.

14 January 1998.

Order.

HAVING heard Ms M Kovacevich on behalf of the Western Australian Government Railways Commission and Mr D Hathaway on behalf of the West Australian Locomotive Engine Drivers', Firemen's and Cleaners' Union of Workers, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 (and specifically section 27(1)(s)), and by consent, hereby orders—

THAT Application No. 1800 of 1997 be divided into two parts, to become Application No. 1800 of 1997 which shall deal with the matter raised by the Applicant in its application and Application No. 1800A of 1997 which shall deal with those matters raised in the Respondent's Notice of Answer and Counter Proposal which go beyond the matters raised in Application No. 1800 of 1997.

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

CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

BUILDING TRADES (CONSTRUCTION) AWARD 1987.
No. R 14 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 112.

Building Trades (Construction) Award 1987, No. R 14 of 1978.

COMMISSIONER A.R. BEECH.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Building Trades (Construction) Award 1987, No. R 14 of 1978 namely—

Gardner Peter J.

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

CEMENT TILE MANUFACTURING AWARD.
No. 3 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 134

Cement Tile Manufacturing Award. No. 3 of 1966.

COMMISSIONER A.R. BEECH.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Cement Tile Manufacturing Award No. 3 of 1966 namely—

Standard Tile Co., 515 Hay Street, Subiaco

Quality Tile Manufacturers, Scarborough Beach Road, Osborne Park

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

CLERKS (COMMERCIAL, SOCIAL AND PROFESSIONAL SERVICES) AWARD.
No. 14 of 1972.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part Y.

Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972.

CHIEF COMMISSIONER W.S. COLEMAN.

27 JANUARY, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972 namely—

Albany Building Society, 77 Albany Highway, Albany

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

EARTH MOVING AND CONSTRUCTION AWARD.
No. 10 of 1963.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 121.

Earth Moving and Construction Award. No. 10 of 1963.

COMMISSIONER A.R. BEECH.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Earth Moving and Construction Award No. 10 of 1963

namely—

Perron Bros Pty Ltd

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

ENGINE DRIVERS' (BUILDING AND STEEL CONSTRUCTION) AWARD.
No. 20 of 1973.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 107.

Engine Drivers' (Building and Steel Construction) Award. No. 20 of 1973.

COMMISSIONER A.R. BEECH.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973

namely—

A.V. Jennings Ltd

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

ENGINE DRIVERS' (GENERAL) AWARD.
No. R21 A of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

(No. 76 of 1980, Part 188).

Engine Drivers' (General) Award, No. R21 A of 1977.

CHIEF COMMISSIONER W.S. COLEMAN.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Engine Drivers' (General) Award, No. R21 A of 1977 namely—

F.H. Faulding and Co. Limited

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

FURNITURE TRADES INDUSTRY AWARD.
No. A 6 of 1984.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 111.

Furniture Trades Industry Award.
No. A 6 of 1984.

COMMISSIONER A.R. BEECH.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Furniture Trades Industry Award No. A 6 of 1984

namely—

George's Cabinet Works (1980) Pty Ltd, 76 Albert Street, Osborne Park 6017

Freiberg International Pty Ltd, 91-97 Kensington Street, East Perth 6007

B.J. Furnishings Pty Ltd, Unit 2/75 Crocker Drive, Malaga 6062

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

HOSPITAL LAUNDRY AND LINEN SERVICE (SALARIED OFFICERS) AWARD 1980.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Lakes Hospital.

No. P 57 of 1997.

20 January 1998.

Order.

HAVING heard Ms A. Kennedy on behalf of the Applicant and there being no appearance on behalf of the Respondent; and

WHEREAS the abovecited application, filed in the Registry on 1 December 1997, seeks the cancellation of the Hospital Laundry and Linen Service (Salaried Officers) Award, 1980 (the Award); and

WHEREAS the applicant has shown that the Lakes Hospital Board was abolished pursuant to section 8 of the Hospitals Act by notice dated 13 October 1992 published in the *Government Gazette;*

AND WHEREAS the aforementioned Award is limited in its operation to the Lakes Hospital Board and employees thereof;

NOW THEREFORE the Public Service Arbitrator, being satisfied that the aformentioned Award no longer has any practical force and effect, has decided that such Award ought be cancelled pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and hereby orders—

THAT the Hospital Laundry and Linen Service (Salaried Officers) Award, 1980 be and is hereby cancelled.

(Sgd.) C.B. PARKS,
[L.S.] Public Service Arbitrator.

HOSPITAL WORKERS (GOVERNMENT) AWARD.
No. 21 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 190.

Hospital Workers (Government) Award
No. 21 of 1966.

CHIEF COMMISSIONER W.S. COLEMAN.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of The Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Hospital Workers (Government) Award No. 21 of 1966 namely—

The Board of Management, Dampier District Hospital

The Board of Management, Quo Vadis Hospital

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

ROCK LOBSTER AND PRAWN PROCESSING AWARD 1978.
No. R 24 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 124.

Rock Lobster and Prawn Processing Award 1978.
No. R 24 of 1977.

COMMISSIONER A.R. BEECH.

27 January, 1998.

Order.

HAVING read and considered the documents relating to this matter there being no party desiring to be heard in opposition thereto, and upon being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Commissioner of The Western Australian Industrial

Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby Order and declare—

THAT from the date of this order the following employers be struck out of the Schedule of Respondents to the Rock Lobster and Prawn Processing Award 1978 No. R 24 of 1977

namely—

Markwell Ross Fisheries Pty Ltd., 7 Cleaver Street, West Perth 6005

Oyster Beds Pty Ltd., 14 Mouat Street, Fremantle 6160

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

TRADES AND INDUSTRIAL UNIONS CLERICAL STAFF AWARD 1996.

No. A10 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth and Others.

No. A 10 of 1997.

COMMISSIONER P.E. SCOTT.

21 January 1998.

Order.

WHEREAS this is an application for an award; and

WHEREAS by letters dated the 19th day of December 1997, Australian Municipal, Administrative, Clerical and Services Union and the Association of Professional Engineers, Scientists and Mangers, Australia sought leave to delete the latter from the schedule of respondents to the proposed award; and

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

THAT leave be granted for the Association of Professional Engineers, Scientists and Mangers, Australia to be deleted from the schedule of respondents this application.

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

WESTERN AUSTRALIAN SCHOOL OF NURSING (SALARIED OFFICERS) AWARD.
No. 37 of 1978.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hon. Minister for Health

and

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

No. 268 of 1996.

4 February 1998.

Order.

HAVING heard Ms P. Wilson on behalf of the Applicant and Ms A. Kennedy on behalf of the Respondent; and

WHEREAS the abovecited application, filed in the Registry on 1 March 1996, seeks the cancellation of the Western Australian School of Nursing (Salaried Officers) Award No. 37 of 1978 (the Award);

AND WHEREAS the aforementioned Award is limited in its operation to the Western Australian School of Nursing and employees thereof;

NOW THEREFORE the Commission, being satisfied that the aforementioned Award no longer has any practical force and effect, has decided that such Award ought be cancelled pursuant to the powers conferred on it under the Industrial Relations Act, 1979, and hereby orders—

THAT the Western Australian School of Nursing (Salaried Officers) Award No. 37 of 1978 be and is hereby cancelled.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

NOTICES—
Award/Agreement matters—

Application No. AG 16 of 1998

APPLICATION FOR REGISTRATION OF AN INDUSTRIAL AGREEMENT TITLED

"WORSLEY EXPANSION PROJECT PARTNERSHIP AGREEMENT"

NOTICE is given that an application has been made to the Commission by White Air and Others under the Industrial Relations Act 1979 for registration of the above Agreement.

As far as relevant, those parts of the Agreement which relate to area of operation or scope are published hereunder.

5.1Application of Agreement

This Agreement shall apply to the on site construction work within the scope of management of Kaiser Bechtel Joint Venture (an unincorporated joint venture) at the Worsley Alumina Refinery Site, the Bauxite Mine facility at Boddington, the bauxite overland conveying system and the Portsite Facilities at Bunbury.

Provide that the Agreement shall not apply to—

- Staff Supervisory personnel (however rules of conduct as described herein do form part of staff supervisory personnel's ongoing employment conditions on this expansion);
- Employees of Worsley Alumina Pty Ltd;
- Mining, mine development and associated work undertaken by Worsley Alumina Pty Ltd and by contractors to Worsley Alumina Pty Ltd;

- Deliveries of personnel and material and equipment to and from site—
- Statutory employees other than those involved in the scope of work managed by KBJV as described above;
- Pipelines and transmission lines and towers associated with utilities to their initial point of tie in to the development within the known and accepted site boundary and recognised as on site project works;
- Off site infrastructure including manufacture and fabrication associated with the development; and
- The construction and operation of any hostel or camp that may house employees engaged on the Worsley Alumina Expansion Project.

A copy of the Agreement may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. A. SPURLING,
Registrar.

2 February 1998.

INDUSTRIAL MAGISTRATE—Complaints before—

IN THE INDUSTRIAL MAGISTRATE'S COURT

HELD AT PERTH

WESTERN AUSTRALIA

HEARD: 14 August 1997

DELIVERED: 19 December 1997

BEFORE: P G MALONE SM

COMPLAINT No. 110 oF 1997.

THE COMPLAINT OF

THE WESTERN AUSTRALIAN BUILDERS' LABOURERS, PAINTERS AND PLASTERERS UNION OF WORKERS
Complainant

AND

BARRETT PTY LTD
Defendant.

APPEARANCES—

Mr Graham Giffard appeared on behalf of the Complainant

Mr Ian Barrett appeared on behalf of the Defendant

Reasons for Decision.

INTRODUCTION

This matter concerns alleged breaches of an industrial award by the respondent employer in respect of a particular individual.

HISTORY OF THE PROCEEDINGS.

The complaint was dated the 13 June 1997. It came before the Court on the 25 June 1997 and was adjourned to a hearing on the 14 August 1997. The hearing proceeded on that day and the Court reserved its decision. I have reached that decision and my reasons are set out following.

AMENDMENT TO THE COMPLAINT

When laid the complaint alleged 67 breaches dating between 10 February 1995 and 17 May 1996. None of the complaints particularised an individual to whom the alleged breach related.

At the commencement of the hearing the question of the competence of the complaints was raised. As a result of that only breaches 43 to 67 were proceeded with and they were amended to particularise an individual.

THE ALLEGED BREACHES

THE AWARD

The award is Award No. R 14 of 1978

THE INDIVIDUAL

The alleged employee was a Mark Mangan

THE BREACHES

The alleged breaches were failures to "keep time and wages records in contravention of clause 28(1) of the award.

The breaches were for the following periods

1995	
December	1,8,15,22,29
1996	
January	5,12,19,26
February	2,9,16,23
March	1,8,15,22,29
April	5,12,19,26
May	3,10,17

EVIDENCE ON BEHALF OF THE COMPLAINANT

JAMES REID is an official with the complainant union. He has been a union organiser for 20 years. He is familiar with industrial awards and their coverage with particular reference to the construction industry. He is familiar with the award the subject of these matters and is aware of who it covers. It has application to painters.

He became aware of work being done at the Balga Primary school. This included extensions, renovations and the construction of new buildings. The defendant company did part of the work. He was approached on 22 May 1996 by a painter concerning the question of the payment of a site allowance.

The day after, he spoke to Ian Barrett on the telephone and arranged an on site meeting. At that meeting, he asked Barrett if he had brought the time and wages books as he had requested in his telephone conversation. Barrett had not.

JENNIFER LEE HARRISON is an industrial officer with the complainant union and has been with the union since 1991. She is familiar with industrial awards and in particular with the award the subject of these proceedings.

Her first dealings with the defendant company were on the 24 May 1996 when the issue was raised of difficulty with accessing time and wages records. A request was made to view the records and the building industry task force had intervened. She sent by facsimile the letter tendered as exhibit one. The union then lodged a conference application and the conference occurred on 12 June 1996 before Commissioner Beech. The commission issued notes of the conferences and these were tendered as exhibits 5 and 6. The complainant union did not receive any records and re-listed the matter before the Commission. Barrett then wrote a letter which is exhibit 7 and the conference was re-convened on 8 July 1996. There was an undertaking by Ian Barrett to supply the records by 29 July 1996 but this did not occur. The history is summarised in exhibit 8.

In view of the failure the complainant union issued these proceedings. The union wrote to the defendant company in the letter which is exhibit 9 but no response was received to the letter.

NO CASE TO ANSWER

It was submitted on behalf of the defendant company that there was no case to answer but I ruled against that submission.

NO EVIDENCE ON BEHALF OF THE DEFENDANT

The defendant company elected not to give evidence in the matter.

EXHIBIT EVIDENCE

COMPLAINANTS EXHIBITS

ONE—a facsimile transmission dated 24 May 1996 to Samcom and the complaint union from Jeff Marsh of the WA Building & Construction Industry Taskforce.

TWO —a notice of the application by the complainant union seeking a compulsory conference with the defendant company

dated stamped by the Western Australian Industrial Relations Commission 28 May 1996.

THREE—an Australian Securities Commission company extract for the defendant company it was registered on 25 November 1992 and that the directors are Ian William Barrett and Tracey Marie Barrett.

FOUR—a photocopy of a card showing that Jennifer Lee Harrison is a duly accredited representative of the complainant union.

FIVE —a letter dated the 12 June 1996 to the defendant company from the complainant union seeking inspection of "time and wages records".

SIX—a letter dated 13 June 1996 from Jennifer Edwards, associate to Commissioner Beech, from the Western Australian Industrial Relations Commission to the secretary of the complainant union recording an agreement reached following a conference in the Commission between the parties.

SEVEN—a letter dated 3 July 1996 from Ian Barrett, director of the defendant company to the complainant union

EIGHT—a further letter, dated 9 July 1996 from Jennifer Edwards (see Exhibit 6) to the complainant union recording the result of a further conference in the Commission between the parties

NINE—a letter dated the 25 June 1996 to the defendant company from the complainant union seeking inspection of "time and wages records".

DEFENDANTS EXHIBITS

A—a copy of a decision in complaints numbered 139 and 140 of 1995 delivered 29 September 1995.

STANDARD OF PROOF

In deciding upon the facts it is necessary for me to be satisfied on the balance of probabilities.

THE AWARD

The material part of the award were as follows;

"Clause 28 (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) ....."

CONCLUSION

In my view the case against the defendant company was fatally flawed by the failure to call evidence from the worker the subject of the complaints.

I took the view from the beginning of the matter that it was appropriate to have included the name of the worker concerned in the complaints.

The complainant union then amended the complaints by inserting the name of Mark Mangan for counts 43 to 67 inclusive.

There is certainly evidence from which an inference can be drawn that wages records may not exist.

Despite approaches from the complainant union and proceedings taken in the Industrial Commission records have not been produced by the defendant company. However there is insufficient evidence to conclude, on the balance of probabilities, that wages records were not kept for a Mark Mangan for the period 1 December 1995 to 17 May 1996.

Without criticism, I say that the discussions that James Reid had with the painter on site do not provide probative evidence of the employment by the defendant company of a Mark Mangan.

The history of the proceedings in the Industrial Relations Commission was that the application stated the union was in dispute over access to time and wages records. The letter to the defendant company of 12 June 1996 refers to "painters employed by you" without specifying names.

The record of the conference states the defendant company agreed that "its employee, identified as Mark" would receive a certain rate.

The next record refers again to "the employee named Mark".

In my view there is not sufficient evidence to conclude that the employee named Mark is one and the same as the Mark Mangan named in the amended complaints. However even if I am wrong about that and it is said that Jennifer Harrison evidences provide the nexus there is still not sufficient evidence to establish the tenure of that employment.

To undertake in July 1996 to continue to pay a certain rate to an employee does not provide evidence of that person having been employed between December 1995 and May 1996. If regard is had to Reid's evidence, that would provide inferential evidence of employment from 22 May 1996.

Although the history of the proceedings in the Industrial Relations Commission might give rise to the inference that records may not have been kept they do not provide evidence as to which records. In the absence of clear evidence of the employment of people to whom the award applies there is no clear obligation to keep time and wages records. Accordingly any failure to produce could be consistent with the records not justifiably existing as distinct from not properly being kept.

In my view, despite the obvious and justifiable concerns that have arisen from the defendants company's ignoring of written requests to make its records available for inspection and its apparent non-compliance with agreement to produce records, the complaints have not been proved and will be dismissed.

PETER MALONE,
Industrial Magistrate.

19 December 1997.

SECTION 23—
Matters dealt with—

Editors Note: The reasons for Decision dated 19/11/97 were published at 77 WAIG 3477 under an incorrect heading and are therefore republished here for ease of reference.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Hamersley Iron Pty Limited.

No. 929 of 1997.

COMMISSIONER A.R. BEECH.

19 November 1997.

Reasons for Decision.

Towards the end of 1996, Hamersley Iron Pty Ltd (the Company) sought to change the locomotive crew roster applicable to the few locomotive engine drivers who remain employed pursuant to the *Iron Ore Production and Processing (Hamersley Iron Pty Ltd) Award* 1987. No agreement was reached. By virtue of Clause 5(1)(c) of Part 2 of the Award the existing locomotive crew roster continues in operation until a new roster is agreed between the parties or, in the event of disagreement, determined by the Commission.

The Union has brought an application to the Commission pursuant to that Award provision seeking a determination by the Commission of a roster in terms proposed by the union. In the alternative the Union seeks an order that the minimum annual gross wage of each locomotive crew employee be $75,000. When the matter came before the Commission the Union asked it to determine first a point of principle between the parties which it says is preventing the negotiations between the parties from reaching a successful conclusion. The point of principle is that the Union claims that there is a practice within the Company that changes to the roster are to be cost neutral. The Union seeks a decision from the Commission that the change to the roster on this occasion be cost neutral. The Company opposes the Union's claim that there is a practice within the Company that changes to the roster should be cost neutral. It is the common position of both parties that any determination of the Commission on this point will not finally

determine this application. It is to be held open and be available in case the further negotiations between the parties following the decision of the Commission are unsuccessful.

The Union called evidence from Mr Daniel Daniel who has been a locomotive engine driver with the Company for some 24 years. It also called evidence from Mr Paul Bates who had been with the Company from 1974 until, as I understand it, the end of 1996. Mr Bates was the Roster Administrator from mid 1993 until 1994. In 1994 he became a staff employee and assisted in developing new rosters for rail crew. The Company called evidence from Mr Blakely, an Administrator-Scheduler Planning Train Control for the Company, from Mr Ellis, a Locomotive Crew Supervisor, from Mr Keith Hayes, the Superintendent of Railway Operations and previously Locomotive Crew Supervisor for six years with the Company and from Mr Alan Watling, the Manager of Rail Operations for the Company. Mr Watling had formerly been the Superintendent Rail and Superintendent Planning Rail Control. Mr Watling has been involved with the Company's rail operations for 15 years. The Company also called evidence from Mr Gerrard who has been employed with the Company for 23 years and is a staff locomotive enginemen. The Company also tendered, with the consent of the Union, an affidavit of Mr Geoffrey Neil who is the General Manager, Services, of the Company and who has been employed with the Company for 23 years.

Background

Before dealing with the issues which the Commission is required to determine, I set out some of the background to this matter. In the latter half of 1994, the Company offered staff contracts to its railway operations employees. At that time all of its railway operations employees were covered by the Award. The significant majority of railway operations employees accepted the offers. As a result, the Company now has 87 locomotive enginemen who are on staff contracts. The staff contracts are underpinned by a workplace agreement. It has 3 locomotive engine drivers who are affected by this application who still remain covered by the Award (a fourth person being absent due to illness). It therefore has two groups of locomotive engine drivers doing the same work in the same location but on different conditions of employment. The award-covered locomotive engine drivers were referred to in the proceedings as locomotive engine drivers and work to a roster. The staff locomotive engine drivers were referred to in the proceedings as locomotive enginemen and work to a schedule.

From 5 January 1997 the Company introduced a new schedule for its staff locomotive enginemen. The new schedule was inconsistent with the roster operating for the three remaining award-covered employees. Accordingly, the Company sought to change the roster applicable to the Award covered employees. The absence of any agreement between the Company and the three locomotive engine drivers has been the reason for this application coming before the Commission for determination.

Due to the incompatibility between the schedule and the roster, the Company has not required the three locomotive engine drivers actually to work their roster. The Company continues to pay them as though they work their roster but it has only given them work to do in the rail yard. They have not worked on mainline work since then. The Commission has not been asked to consider the fairness of that situation.

The nature of these proceedings

An argument advanced by the Company is that the Union's application is to be seen as an application for the fixing of a minimum guaranteed wage for the locomotive engine drivers. The Company submitted that a decision of the Commission granting such a claim would conflict with the Award because, according to the Company, the Award is a paid rates Award. An order prescribing a minimum guaranteed wage would be incompatible with that status. The Company drew the Commission's attention to the State Wage Principles and submitted that the Union's claim would need to be tested against the Principles.

I have little hesitation in rejecting the Company's submission. The application before the Commission on this occasion relates directly to the Award provision quoted at the beginning of these reasons. It is a provision of the parties' Award that the Commission will determine the locomotive crew roster if it is unable to be agreed between the parties. The determination of the Commission in this matter will therefore be consistent with the terms of the Award. The Commission's determination will not affect the status of the Award whether it be paid rates or minimum rates award. Similarly, the determination of the roster, at least at this stage of the proceedings, does not involve a consideration of the State Wage Principles. That is because the matter which the Union asks the Commission to determine is seen by the Union as merely a step along the path of the parties determining a new roster between themselves.

Another issue which was raised in the proceedings concerns the fact that the 87 staff enginemen are employed pursuant to a workplace agreement. The Commission is not permitted to inform itself or receive into evidence any provision of a workplace agreement because of s.26A of the Act. That section is as follows—

> **26A.** In the exercise of its jurisdiction the Commission shall not —
>
> (a) receive in evidence or inform itself of any workplace agreement or any provision of a workplace agreement; or
>
> (b) award particular conditions of employment to employees who are not parties to a workplace agreement merely because those conditions apply to any other employees who are parties to a workplace agreement.

However, the Company, and to some extent the Union, drew to the Commission's attention some of the working conditions of the staff enginemen in order to provide the framework of the parties' respective positions. The Commission drew the attention of the parties to s.26A. I was assured by both the parties that any condition of employment of a staff enginemen referred to in these proceedings is not a provision of the staff enginemen's workplace agreement. Indeed, as I understand it, the vast bulk of the staff enginemen's employment conditions are not contained within the workplace agreement at all. In this regard I note that whilst section 26A(a) speaks of the Commission not receiving in evidence "any provision of a workplace agreement or any provisions of a workplace agreement", section 26A(b) refers to the Commission not awarding particular "conditions of employment" to employees who are not parties to a workplace agreement. The language differentiates between "any provision of a workplace agreement" and "conditions of employment" of a person covered by a workplace agreement. Although the Commission may not receive in evidence "any provision of a workplace agreement or any provisions of a workplace agreement", that prohibition does not extend to the Commission receiving into evidence any conditions of employment of an employee employed pursuant to a workplace agreement which are not a provision of the workplace agreement. It still may not award those conditions of employment to an employee not covered by a workplace agreement merely because those conditions of employment apply to employees covered by the workplace agreement.

However, I am not entirely convinced of the relevance of the working conditions of the staff enginemen. In my view Mr Schapper is quite correct that the issue before the Commission is to decide according to equity, good conscience and substantial merit the issue as between the three locomotive engine drivers and their employer. There is much force in the view that s.26A and s.7C of the Act read together mean that the conditions of employment of employees covered by a workplace agreement are not a significant part of the Commission's considerations under s.26 of the Act. The staff enginemen are not employees for the purposes of the Commission's jurisdiction: s.7B. The fact of their presence in the workplace may form part of the equity, good conscience and substantial merits of the case as would the fact of the presence of persons such as subcontractors or other persons performing work who are not doing so pursuant to a contract of employment as that is defined under the *Industrial Relations Act, 1979*. It is to be expected that persons employed under a workplace agreement will have different conditions of employment from award-covered employees even though they are doing the same or similar work as employees covered by the Award. Although

a situation where an employer has two groups of employees doing the same job but on different conditions of employment may well cause dissatisfaction in the workplace the effect of the operation of the *Workplace Agreements Act, 1993* together with the *Industrial Relations Act, 1979* is to create the legal environment for that to occur as a matter of course. The conclusion which follows is that where, as in this case, an employer offers workplace agreements to its existing employees, the employer must be understood to do so knowing that a possible outcome of the offer is that only some of the employees will accept. The employer will then have two sets of employment conditions enjoyed by the same class of people doing the same or similar work in the one workplace. That may well cause dissatisfaction, but it must be taken to have been seen as a reasonably foreseeable outcome of the employer's decision. However, the Commission is only able to enquire into and deal with industrial matters referred to it by or on behalf of those employees within its jurisdiction. In this case that means the locomotive engine drivers.

The Commission turns to consider the Union's claim.

Cost neutrality

In this context, the term "cost neutral" means that although the roster may change, the earnings of employees working the roster do not change, or change only slightly. The Union claims that there is a practice which has existed since 1994 that changes to the roster would be cost neutral. The Company denies that there is such a practice other than in relation to the introduction of one man operation (OMO) for locomotive drivers in 1994.

It is clear from the evidence before the Commission that prior to 1994 changes to the engine drivers' rosters may have had an effect upon the engine drivers' earnings. It is also clear from the evidence before the Commission that from the time of the introduction of OMO, the Company has chosen to make any changes in the locomotive engine drivers' rosters cost neutral. In relation to the introduction of OMO, the immediate increase in the number of available locomotive engine drivers which resulted from the reduction of locomotive crews from two persons to one person was accompanied by redundancies. The evidence is that changes which were necessary to the roster at that time would have had a significant effect upon the earnings of locomotive engine drivers. This was not seen by the Company as being a desirable outcome and hence the roster change was designed to be cost neutral. Although Mr Watling was adamant in his evidence that the offer of "cost neutrality' was restricted to the OMO roster I do not accept that it was. Rather, I prefer the evidence of Mr Daniel that cost neutrality has applied to all other roster changes since then. Mr Daniel's evidence is supported by Mr Ellis (transcript pp 79, 92-3) and Mr Neil (exhibit B paragraph 7). Mr Neil's evidence is that the cost neutrality for the roster change initiated by OMO was the first occasion. Subsequent changes "in the recent aftermath" of the introduction of OMO were also cost neutral because the abandonment of that position would still have had a very significant impact on the earnings of Award employees. The evidence of Mr Bates, evidence which I accept, is that changes since the introduction of OMO which involved an increase in the number of trains, the opening of the Marandoo mine, change-overs and other scheduled changes, some five or six changed rosters in all, were cost neutral notwithstanding the roster changes. The practice applied even when the number of trains increased thus potentially increasing the earnings of the locomotive engine drivers; there was no increase in wages when the number of trains increased and there was no decrease in wages when the number of trains decreased. It follows that the Union has indeed been able to demonstrate that there was a practice adopted by the Company for award roster changes to be cost neutral for all roster changes since OMO.

The Union does not ask the Commission to determine that all rosters into the future be cost neutral based upon the practice. However it does ask that this proposed roster change be cost neutral.

The merits of the claim

On the evidence before me I find the primary reason for the Company wanting to change the roster is to achieve compatibility with the staff schedule. There has been a change in the staff schedule which has resulted in it being incompatible with the roster. Mr Daniel was told that there was to be a decrease in the number of trains following a decrease in the tonnages of ore required. It was put to Mr Daniel that the Company has gone from an 8 train schedule to a 7.2 schedule (transcript p.31). That change is entirely consistent with earlier changes to the roster since 1994 which have been cost neutral. Changes from 6.5 to 7.4 to 8 produced only minor changes (transcript p.79). There is no reason that I can find in the evidence why it should have any different an effect on this occasion.

I have little difficulty in reaching the firm conclusion that a significant issue on this occasion is to achieve an equalisation of mainline jobs as between staff locomotive enginemen and the locomotive engine drivers. That is not to say it is the only reason for wishing to change the roster but I again accept the evidence of Mr Bates that this was the reason stated to him by Mr Ellis for the roster change. It is directly corroborated by the evidence of Mr Ellis who was involved in drawing up the roster under Mr Hayes' instruction. He was instructed to draw up an award roster based on realigning days off and to better balance the working between the award and the staff rosters (transcript p80, 81). It was done because of an impending schedule change. It lowered the earnings of the locomotive engine drivers by about $10,000 per year. According to Mr Ellis, subsequent discussions between the parties has resulted in a proposed roster which would mean that the locomotive engine drivers would lose about $5000, perhaps as little as $3500 to $4000.

This is consistent with the evidence of Mr Daniel that towards the end of 1996 he was called into Mr Hayes' office in the presence of Mr Bernardi, Mr Hayes and Mr Ellis. Mr Hayes handed a draft roster to Mr Daniel and stated "it's crunch time". The roster would reduce the earnings of Award covered locomotive engine drivers by $10,000—$15,000 per year.

That evidence is largely confirmed by Mr Hayes' own evidence. Although Mr Hayes did say that he had been trying to change the Award covered employees' roster to alter the fact that they were all off together on rostered days off he did admit that the Company wanted to change the Award roster because it needed to be more compatible with the staff locomotive enginemen's schedule. His objective was that he wanted to get within 0.5 of a mainline job between the Award and staff locomotive enginemen. It was appropriate to achieve equalisation now, according to Mr Hayes, because there are about 600 mainline jobs less per year. But he also acknowledges that some staff members do say to him that it is unfair that the Award engine drivers receive more mainline jobs than staff enginemen. I have the distinct impression from Mr Hayes' evidence on this point that this reason is sensitive. He stated that he could "very quickly" have fair treatments (transcript p. 103). He sees it as treating everybody equally. That evidence tends to corroborate Mr Bates' evidence that he had been told by Mr Ellis a reason to achieve equality was because of a threat by Mr Gerrard, a staff enginemen, to implement the Fair Treatment System over the lack of equality in the mainline work (transcript p. 158-159). Mr Gerrard confirmed that he has indeed complained about the unequal distribution of mainline work between the award and staff locomotive engine drivers. Exhibit 3 is a notice put up by Mr Gerrard which requests an equalisation of all mainline jobs between staff enginemen and Award enginemen's rosters. He did not proceed any further because he understood that "it was going to be looked into".

The evidence is that the locomotive engine drivers do work more mainline jobs than the staff locomotive enginemen. Locomotive engine drivers work an average of 9 mainline jobs. The staff locomotive enginemen work an average of 6.5. This has been the case since the introduction of OMO (transcript p.105-6). In the context in which I have indicated that the Commission is to approach the resolution of the claim, I find it difficult to see how it can be fair to the locomotive engine drivers for them to lose money so that the Company may achieve some equality in mainline jobs for its workplace agreement employees. What the Company wishes to change with its workplace agreement employees is a matter for it. But any change should not prejudice the award-covered employees.

That is not to say that there cannot be an equalisation of the mainline jobs. In fact, fortuitously, the locomotive engine drivers accept that there should be some equality in the number of mainline jobs worked as between them and the staff locomotive enginemen. Indeed, it appears to me from a reading of the

evidence that there is common ground on that issue. I use the word "fortuitously" for this reason. There have been two issues raised in this case which have been blurred on occasions. The first issue is the equality in the number of mainline jobs. The second issue is whether the change to the locomotive engine drivers' roster should be cost neutral. The Commission is only concerned at this time with the second issue. If the Commission is asked to approve a roster which reduced the number of mainline jobs worked by locomotive engine drivers to be "fair" to the staff locomotive enginemen, a number of the issues which were eloquently argued by Mr Schapper would need to be considered. They may await a future occasion.

It is quite clear, particularly from the evidence of Mr Hayes, that it is quite possible to draw up a roster for locomotive engine drivers which maintains their earnings and which integrates with the staff schedule. In my view, that is what ought to now occur. Accordingly, the Commission decides that, for the purpose of the roster to be introduced for award-covered locomotive engine drivers, it be drawn in such a way as to reflect cost neutrality as that has been understood between the parties. The parties are directed to discuss the matter further between them accordingly.

In accordance with the reasons set out earlier, this application will now be adjourned to be re-listed at the request of either party.

Appearances: Mr D.H. Schapper (of counsel) appeared on behalf of the applicant.

Mr A. Cameron appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act, 1979.

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

and

Hamersley Iron Pty Limited.

No. 929 of 1997.

COMMISSIONER A.R. BEECH.

16 January 1998.

Supplementary Reasons for Decision.

Following the issuing of the Reasons for Decision on 19 November 1997 the application was adjourned in accordance with those Reasons. The Reasons noted that the application is able to be re-listed at the request of either party. On 5 January 1998 the applicant requested that an order issue in this matter. Minutes of a proposed order issued and a speaking to the minutes was held on 16 January 1998.

Two issues arise for consideration. The first issue is that the union seeks a timetable to be specified in the order so that draft rosters, the commencement of discussions and the completion of those discussions occur within a set time. That seems to be sensible and consistent with the direction to the parties to discuss the matter further.

The second issue arises from events which have occurred, or are to occur, since the Reasons for Decision were published. On 22 December 1997 the three award-covered locomotive engine drivers were transferred to day work. A claim of the union that the transfer is unfair and seeking an order returning them to shift work is the subject of a separate application before Cawley C (No CR 370 of 97). The Commission understands that the practical effect of the company's action is that the company now no longer has any employees who would be covered by a locomotive crew roster. For the purposes of an order issuing in this matter now, I see little point, therefore, in issuing an order as at today's date which directs that there be further discussions between the parties aimed at producing a roster. If the employees are re-transferred to shift work then such a direction will have a practical purpose. I am conscious of the comment made by Mr Schapper regarding the time saved if matters are dealt with concurrently and not consecutively but it seems to me that the time of both sides should only be spent on the process of drawing up and attempting to agree a roster if there are going to be employees working to it.

The company has foreshadowed a further change to the train schedule on 23 March 1998 arising from a need to change the mix of ore produced. In the company's view that further change will overtake the finding of the Commission in this matter and the only practical order to issue now is to adjourn this matter. However I am of the view that the union is entitled to an order reflecting the decision in this matter. The effect of any further change to the train schedule upon that order can only be properly assessed when the precise detail of the further change is known. The liberty to apply reserved to the parties to apply for further orders will be able to address that situation, if necessary, at that time.

Order accordingly.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Hamersley Iron Pty Limited.

No. 929 of 1997.

16 January 1998.

Order.

HAVING heard Mr D.H. Schapper (of counsel) on behalf of the applicant and Mr A. Cameron on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby—

A. DECLARES that for the purpose of the roster to be introduced for award-covered locomotive engine drivers, it be drawn in such a way as to reflect cost neutrality as that has been understood between the parties and as found by the Commission as set out in the Reasons for Decision.

B. DIRECTS

(1) that upon the re-transfer of the award-covered locomotive engine drivers to shift work (the re-transfer) each party shall, within 7 days of the re-transfer, produce and give to the other party at least one draft roster which complies with the Declaration in A above;

(2) that the parties commence discussions within 14 days of the re-transfer with a view to reaching agreement in relation to a roster for the award-covered locomotive engine drivers;

(3) that the parties complete their discussions within 28 days of the re-transfer.

C. ORDERS that the application be adjourned with liberty to the parties to apply, on 48 hours' notice to the other party, for further orders or for the re-listing of this matter.

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

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Joanna L. Collett

and

EBG Nominees Pty Ltd t/a Rottnest Hotel.

No. 1043 of 1997.

19 December 1997.

Order.

WHEREAS an application was lodged in the Commission pursuant to section 29 of the Industrial Relations Act;

AND WHEREAS a conference between the parties was convened;

AND WHEREAS the Commission adjourned the conference to another date at the request of both parties;

AND WHEREAS a further conference between the parties was convened;

AND WHEREAS the applicant did not attend at that conference;

AND WHEREAS the Commission wrote to the applicant and requested that she advise it, within a specified period of time,whether she wished to proceed with her application ;

AND WHEREAS that period of time has lapsed and the Commission has not heard from the applicant;

AND HAVING HEARD Ms J. Collett on behalf of herself as the applicant and Mr D. Jones 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 struck out for want of prosecution.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Neil Peter Collins

and

Integrated Packaging.

No. 1743 of 1997.

23 January 1998.

Order.

WHEREAS this matter was the subject of conciliation conferences held on 28 November 1997 and 19 December 1997; and

WHEREAS the parties resolved all issues between them arising from or in relation to the contract of employment which existed between them; and

WHEREAS the parties agreed that the terms of resolution are to remain private and confidential between them;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 and by consent, do hereby order —

1. THAT each party shall not disclose the terms of resolution of this matter to any person or third party unless required to do so by law.
2. THAT this application shall be and is hereby discontinued by leave.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Chad Josef Dehaan

and

Little Angels Day Care Centre.

No. 1494 of 1997.

COMMISSIONER J F GREGOR.

8 January 1998.

Reasons for Decision.

On the 18 August 1997 Chad Josef Dehaan (the applicant) applied to the Commission for an order pursuant to Section 29 of the Industrial Relations Act, 1979 (the Act) on the grounds that he had been unfairly dismissed from employment with Little Angles Day Care Centre (the respondent) on the 31 July 1997. The relevant history of this matter is as follows.

The applicant applied for a position with the respondent as an activity play leader. Due to lack of experience he was unsuccessful in gaining that position but later on he was offered a part time cleaning job which he accepted. The applicant told the Commission that for the first two months of the employment from his point of view things seemed to go smoothly. He had a reasonable relationship with the Director of the centre, Ms Lemay, and similarly with other ladies employed by the respondent. Soon after the engagement commenced the applicant was given a list of duties to be performed during each working week (*Exhibit P1*). According to his evidence the list was easy to follow. The duties took 4 hours per day. After about a month he was asked to fill in for an ill child carer minding children. He did this even though he was not qualified. In his evidence the applicant said he enjoyed the work and the thought the children in his care enjoyed themselves as well. He was though, given no instructions before he started the work except from one carer who suggested he act the fool or like a clown. In effect he learnt on the job from other carers who would tell him what to do. For instance, he had given dizzy wizzys in front of a qualified carer and nothing was said, but the next day Ms Lemay told him that he should not do so in case the children were injured. He understood her intervention and thought it was reasonable. The next week after the child minding experience Ms Lemay asked him if he would do some cooking. He was unqualified, but again he took it on as a challenge. This work had to be done in addition to the cleaning tasks. There was a set menu, but by the middle of the week he approached Ms Lemay and asked to be relieved from the duties because he could not cook the remaining recipes. He took her response to his request for reallocation to be dismissive. Later on there was another incident when the applicant was looking after children. A child bit him in the groin area and he moved the child away from himself. No one observed this but he thought that it would be prudent to advise another carer of the incident. He did so and later, together with Ms Lemay, filled in an accident incident report form (*Exhibit P2*). That report form described the incident as—

The child went to hug Chad and as he was hugging him he bit him on the left thigh.

The nature of injury is described as a—

Bite to the front of the left thigh.

The form indicates there was no treatment required. The follow up strategies were that the applicant should bend down to the children's level and watch to see if they were becoming over excited. Nothing more was said about that matter. Later the applicant was given an increase in hours when he was asked to do maintenance tasks which needed doing. This occurred after a visit from the proprietor. The additional work doubled his hours and added to pressure on the applicant, but he says he took it on. He was asked to paint fences and other parts of the building. He asked whether drop sheets were available and was told there were none. He asked for a touch up brush but there were none available.

The applicant complained that Ms Lemay took no notice of any advice he gave about how the maintenance could be improved. There was a lack of tools and a lack of communication and cooperation. He asked for his jobs to be prioritised. He did this because the jobs were overlapping. Ms

Lemay complained about his request. These complaints lead to the applicant being giving a first warning stating that he had missed some paint when mopping up and that the painting was messy because he did not use any drop sheets (*Exhibit P4*). As a result of the warning he was given a two week trial period "to show improvements in these areas". This confused the applicant as he was already on a period of probation for three months.

The applicant admitted that when he received the warning there was a verbal confrontation between Ms Lemay and himself. He later apologised and promised he would make sure his performance improved. About a week later he was approached by Ms Lemay and asked did he smoke. When he asked why he was told that a cigarette butt had been found in the baby's room. He denied that he smoked. The next day he was confronted by Ms Lemay about the issue again. She told him that other carers had told her that he did smoke. He denied this vehemently and Ms Lemay responded by telling him she was not accusing him of anything. On the following Friday he was called into Ms Lemay's office to receive a message. He was told by another employee that his hours had been cut in half. He did not respond verbally and commenced cleaning but he felt angry about it, so much so that he decided that he would go home sick and left a note to that effect. When he returned to work the following Monday he was asked to come into the office by another employee and he was told that he was being—

> *'Terminated on the grounds that you flung a child when you were bitten.'*

He was also told that he had frequent outbursts and aggressive behaviour and because the respondent had a duty of care towards the children he was being dismissed.

It is relevant too to note that the applicant was given an employment separation certificate which repeats the allegations as the reasons for dismissal. This caused the applicant great distress because the allegations were untrue.

On behalf of the applicant the Commission also heard evidence from Mr P J Gould who is a principal of a company for which the applicant had worked and who had supplied him a reference (*Exhibit P6*). Mr Gould noted in the reference that the applicant had demonstrated himself to be a friendly, reliable and enthusiastic worker at all times willing to learn new skills and take on responsibility. Mr Gould was also asked to comment on the cleaning duties required by the respondent. He expressed the opinion that the second list of duties would cause the applicant to work more hours than he had previously.

The Commission heard evidence from Carol Ann Lemay who is the Director of Little Angels Day Care Centre. She confirmed the circumstances of the applicant's hire and the duties he had been allocated. Ms Lemay said that the applicant had been engaged for a probationary period of three months. After three months there was to be a review and he understood that. Ms Lemay told the Commission about a diary in which entries were made for the applicant to do duties. She said that part of the applicant's responsibilities were to lock the centre up and that there were a number of occasions in June when windows were left open and the heater was left on. Ms Lemay observed that entries about the incidents were made in the diary although she did say that she had mentioned some matters to him verbally (*Exhibit B4*).

Ms Lemay told the Commission that she had given the applicant a written warning. She described it as not being a formal warning (see *Exhibit B1*). After the letter had been given to the applicant Ms Lemay showed him the area where there were paint droppings. She said he started yelling at her claiming that he did not make the mess. According to Ms Lemay it was important that the mess be cleaned up because of the accreditation requirements. In her evidence she also mentioned the incident when the applicant was bitten. She had received a report from a care giver who was in the room. In her evidence Ms Lemay talked about how the applicant had 'flung a child' whom she described as a 'victim'. She later in cross examination recanted saying that the child was instinctively pushed away. She said her intentions in making the entries on the employment separation certificate were not intended to be derogatory. Ms Lemay described how she decided to cut back on the tasks which had been given to the applicant. In short he was to return back to his original hours. After he had gone home she decided to dismiss him. This was after she talked to the Department of Social Security and the Department of Labor and Productivity. The Commission was also shown a set of photographs to support the contentions of the respondent that the work conducted by the applicant had not been up to standard (*Exhibit B3)*.

The Commission also heard evidence from Clare Louise Anthony. The purpose of the evidence was to support that given by Ms Lemay. There was a number of occasions when Ms Anthony acted as a communicator for Ms Lemay. There is no need to summarise that evidence for the purposes of these Reasons.

It is submitted by Ms Parks, of counsel who appeared for the applicant, that he was dealt with unfairly. He was given an initial set of tasks, his hours were then increased. There was some confusion in his mind as a result. This occurred after only 14 days in the job. He could be excused for thinking he was doing a good job. He was given still more extra duties and extra responsibilities in a child care area without experience. He was then asked to do painting as well as cooking and cleaning. After he was given the warning he was not given a chance to improve. If there was an overall impression of an inadequacy about the work, according to Ms Parks, that lie in incompetent management and the way the Director managed the staff.

The way the employment contract was entered into with verbal arrangement for a probationary period was confusing and was further confused when the applicant was given an additional two week trial. It was not explained to him how this was consistent with his probationary period. Ms Parks admitted that if the applicant had been dismissed at any point without any of the notices given to him by Ms Lemay that would have been acceptable. If his probationary period was simply up nothing further would be said. However the Director chose to go through another process, that is giving a series of warnings. In doing so she confused the applicant in that he did not know whether he was in fact on probation or whether he was a permanent employee. If he was not on probation he was not afforded procedural fairness. There is no doubt that the Director did not comply with the comprehensive guidelines which are set out in the staff information booklet. There was no adequate opportunity for the applicant to reply to the allegations in the first warning and there was no review undertaken. The trial date was set for two weeks after the warning but by that time he had been dismissed. This means he did not have an opportunity to respond to the allegations about his cleaning standards and in any event considering all of the different jobs he was given no wonder he was confused. Ms Lemay herself said she did not expect him to fit in all the jobs and on top of that she gave him another list of maintenance tasks. In doing this she was unclear about what she expected of the applicant. She had nominated a list of cleaning duties but it turned out because she felt he did not do the painting properly he was still in trouble. Whether or not the Director was under resourced, had too many staff or she simply herself was confused about termination procedures she was certainty confused about the probationary period and unfortunately the applicant was the victim in this.

On behalf of the respondent, Mr Beedham told the Commission that there was ample proof that the applicant was addressed on many occasions about his inability to perform his primary contract, that is to clean to the standard the child care required. There is no doubt whatsoever, nor is there any evidence to say that the cleaning was done to the standard required. All of the evidence says it was not satisfactory. Mr Beedham described the complaints by the applicant about the smoking incident as being indicative that he adopted the position that there was a conspiracy against him. It was nothing more than an investigation. Mr Beedham observed that if the Director waited one more week for the probationary period to have been finished, there would have been no grounds for this application. But she felt the contract had gone long enough and that even one more week would not make one iota of difference to the applicant's attitude and his ability to do or want the job, so as a consequence the decision was made to terminate. He was told to prioritise his work. He was told not to do maintenance duties and just do the cleaning to keep it up to standard. He was unsuccessful in doing so.

Mr Beedham submitted this as a simple case of a person being given a probationary period in a job. There is no dispute there has been a probationary period. There has been an argument about whether it was renewed. The applicant was asked to do some other duties but these were voluntary additions but essentially the primary contract was cleaning. The applicant agrees that there was a 12 week period, he also agrees that in the 11th week the contract failed. In any event there is a valid reason to dismiss him in any case.

The test for determining whether a dismissal is unfair or not is now well settled. The question is whether the respondent has acted harshly, unfairly or oppressively in its dismissal of the applicant. It is for the applicant to establish that the dismissal was in all these circumstances unfair. The test for ascertaining whether a dismissal is harsh, oppressive or unfair is that outlined by the Industrial Appeal Court in *Undercliff Nursing Home v. Federated Miscellaneous Workers Union of Australia (1985) 65 WAIG 385*. The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair (*see Shire of Esperance v. Mouritz (1991) 71 WAIG 891* and also *Byrne v. Australian Airlines (1995) 65 IR 32*). In *Shire of Esperance v. Mouritz,* Kennedy J also observed that whether an employer in bringing about a dismissal adopted procedures which were unfair to the employee, is but an element in determining whether the dismissal was harsh or unjust.

The concept of probationary employment is relevant to this application. The guiding case is *Westheafer v. Marriage Guidance Council of WA (1985) 65 WAIG 2311* where Commissioner G L Fielding as he then was observed—

> *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 Teachers Federation and the Education Commission of New South Wages (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 need to make findings on the credibility of the witness. I have no reason to disbelieve the applicant's version of events. Ms Lemay told the Commission that the applicant was loud an aggressive and verbally abusive on occasions. The witness Ms Anthony did not support in this allegation and I am inclined to think Ms Lemay has exaggerated the severity of the incidents. I also have grave doubts concerning, to put it at its least, the strange use of language by Ms Lemay. She gave evidence concerning the incident where she alleges that a child, whom she labelled a victim, was flung by the applicant. She recanted that evidence to some extent but it must be remembered she never witnessed the incident, in fact no one did. The applicant reported the matter himself. Ms Lemay filled out an accident report form which at its highest, if it describes the incident accurately, indicates a benign incident but Ms Lemay was prepared to use perjorative language on the separation of employment certificate in a situation where it could not fail but to damage to the applicant. There was no need for her to put that language on the employment separation certificate worse, it was most likely untrue. I am inclined to the view that Ms Lemay was in the context of the incidents in this matter inclined try and present the applicant in the worst light possible by exaggerating some events and concocting others. Because of that I favour the applicant's evidence in preference to hers.

The applicant was employed by the respondent to do cleaning work. That work continued for the first two months then he received a variety of jobs. Ms Lemay complained about the standard of the way these jobs were performed. It is hard to understand what she expected of this applicant. He was employed as a cleaner yet he was asked to do child minding, painting and cooking and it is in these areas where he is said to have fallen down. What can be concluded and on the balance of probabilities I do, is that too much was expected of him. In the end his services were terminated in quite doubtful circumstances and on any reasonable view of the facts what happened to him was unfair. What is patently obvious from the evidence was that the endorsements on the employment separation certificate which was forwarded to a third party were quite wrong and constructed in a way to paint the worst picture of the applicant possible. For instance it couples his alleged verbal aggression with the allegation that he flung a child. Such a construction of events is not open on the facts as they have been presented to the Commission. Also his behaviour is coupled with the respondents duty of care to it's clients. This is again a manifest unfairness to him, it is also false.

I am able to conclude that the applicant has been unfairly dismissed and so find. The question is what should happen. It is clear that he was on probation and that period was due to expire one week after he was dismissed. In most cases the failure to re-engage would not constitute a dismissal for purposes of a Section 29(b) of the Act although that is not a question which arises on this occasion *(see Exparte Wurth (1995) 55 SR (NSW) 47* and see too *Orange City Bowling Club Limited and Federated Liquor and Allied Industrial Employees Union of Australia NSW Branch, 1979 AR (NSW) 90*. Ms Parks says that the law as it is set out in *Westheafer's Case* can be distinguished here because the applicant was given a variety of tasks. His hours were increased and the nature of his duties changed. With respect to her I cannot see that *Westheafer* should not be applied. The circumstances here are similar to those which occur in the dismissal of a casual. As the President observed in *Swan Yacht Club v. Bramwell* (Full Bench 18 December 1997, Unreported) such dismissals can be unfair within the meaning of the Act. Applying the same reasoning so can the dismissal of a probationer. But even though the applicant was unfairly dismissed he could have only expected employment for another week, when the employer could have brought the contract to a close in the way Mr Beedham suggests. That is the employer has retained the right to see whether he wants the employee or not in his employment as if he was still at the first interview. If I exercise the powers vested in the Commission and reinstate the employee that would be for a period of one week only as I understand the law. That does not seem to be a sensible way to resolve the matter and therefore I have decided to award compensation to the applicant.

The question of compensation has been subject to discussion recently in Decisions of the Full Bench (see *Gilmore v. Cecil Bros., FDR Pty Ltd v. Another (1996) 76 WAIG 4434)*. I apply that case here. Also in *Bradley Richard Smith v. CDM Pty Ltd 1310 (1997)* (Decision of the Full Bench 18 December 1997, Unreported). The majority indicated—

> *In our opinion the correct approach is that which is outlined in Burswood Management Ltd and Federated Liquor and Allied Industries Employees Union of Australia, Western Australian Branch, Union of Workers' (1987) 67 WAIG 1529 @ 1531 subject to the statutory limitations imposed by Section 23 of the Act.*

The *Burswood Case* directs the Commission when assessing compensation as follows—

> *The primary rule is to ask what loss has been suffered by the employee as a consequence of his dismissal from employment and the answer will vary according to the nature of employment, the period for which he has been employed, the period for which employment may reasonably be expected to continue and the length of time which may elapse before the employee gains other employment and the nature of that other employment and any different in rate of pay which may be applicable before and after the dismissal. The amount to be awarded must not be arrived at*

arbitarility but at the same time may be necessary to adopt a fairly broad brush approach.

Applying those principles here, as I have indicated above it is clear that the employment contract could have been brought to a close within a further week upon the principles in the *Westheafer Case*. I take that into account. I also take into account that the period of engagement has been for three months. The nature of employment is fundamentally that of a cleaner. The applicant has been employed as a cleaner before according to the evidence and it is likely that is an area he may work in the future therefore it is likely to be no different between the rate of pay he may receive in the future and what he would have received if he continued with the respondent. In all the circumstances a reasonable assessment of the injury and loss to the applicant and applying what was said in *Gilmore's Case* I will award the sum of $500 in compensation. In doing so I have taken into account the salary which is set out by the applicant in the documentation supporting his application.

Minutes of Proposed Order will now issue.

Appearances: Ms R Parks, of counsel, appeared on behalf of the applicant.

Mr J Beedham appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Chad Josef Dehaan

and

Little Angels Day Care Centre.

No. 1494 of 1997.

COMMISSIONER J F GREGOR.

2 February 1998.

Order.

Having heard Ms R Parks on behalf of the applicant and Mr J Beedham on behalf of the respondent the Commission pursuant to the powers vested in it under the Industrial Relations Act, 1979 hereby orders—

1. THAT the applicant was unfairly dismissed by the respondent.
2. THAT the respondent pay the applicant the sum of $500 in compensation.

(Sgd.) J. F. GREGOR,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amanda Devine

and

Sun Sai Kai.

No. 1692 of 1997.

21 January 1998.

Reasons for Decision.

COMMISSIONER S A CAWLEY: This application was filed pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979. By it Amanda Devine ("the applicant") claims she was unfairly dismissed by Sun Sai Kai ("the respondent"). The applicant seeks an order that the respondent compensate her by the payment of a sum of $2,390.00, which she says is equivalent to payment of eight weeks' wages calculated on an average of $278.75 gross per week. The respondent denies the applicant was dismissed unfairly or at all and objects to any order for compensation issuing.

Sun Sai Kai is, it appears, the trading name for a business involved in the fast food industry carrying on as a takeaway Chinese food outlet in a major suburban shopping centre. The principal of the respondent business is Ms Dou Jeiau Fang Wu. The business is a seven day a week operation open between 9.30am—10.00pm. On or about 8 August 1997 it became solely engaged in selling self serve takeaway food whereas previously it had provided a table service. Usually two counter hands and a cook/chef are on duty at any time. The duties of a counterhand include cash handling, cash register operation, general cleaning, replenishment of stock and cleaning and replenishing food trays or bain-maries.

The applicant was first employed by the respondent on 2 July 1997 as a counterhand. According to the application as filed the last day of employment of the applicant by the respondent was 22 August 1997. The applicant says in her application that during her employment by the respondent she worked 25 hours per week for the hourly rate of $11.95. The applicant describes the employment as casual. She says she was employed initially on a two hour trial but otherwise there was no probationary period involved. The applicant says that from 2 July 1997 to her last day on 22 August 1997 she worked for the respondent on every day of the week except Saturdays. She says that during the first week she worked for the respondent she was paid her for hours worked at the end of each shift and thereafter was paid weekly.

In answer to a question as to how many hours she worked on each day the applicant said —

> ... On Mondays I would work about 5 or so hours, depending on whether I was working both during the day and in the evening and Tuesdays were pretty much the same as Monday. On Wednesday I would work about 4½ hours. On Thursday I would work 5 hours and on Fridays before it was changed I was working 4½ hours and then on Sunday I was working 5 hours.
>
> [Transcript: page 8]

It is noted that this answer was given in the context of the claim in the application of a contractual obligation for 25 hours per week which, it seems, was the base for the calculation of the remedy being sought. However it is clear from the applicant's evidence here that the hours per day/week were not regular and the total of the hours nominated by her is less than the 25 hours per week. There is also her evidence of changes in hours worked by her imposed by the respondent. The applicant says that a week before her employment ended on 22 August 1997 she was handed a roster for the coming week with the hours for her to work on Friday set at two and a half instead of the four and a half hours worked previously and with no hours to be worked on the Tuesday. The applicant says she agreed to this change after being told it was only temporary by the cook, Mr Doan Thiem Ha who was in charge in the absence of Ms Wu.

According to the applicant the dismissal occurred as follows. At the end of her work on Friday 22 August 1997 Mr Thiem told her the respondent had no more work for her and she was paid for the hours worked that week with some approximately $10.00 extra because, she says she was told, they "felt sorry for her". The applicant says that Mr Thiem told her she was a good worker and the only reason she had to finish up was that Ms Wu (who does not speak English) required Chinese speaking staff. The applicant says that successive and subsequent efforts by her to find out other or further reasons for the termination of her employment from the respondent were unsuccessful.

The grounds on which the applicant relies for her claim that the dismissal was unfair may be summarised as follows. She was a diligent, competent worker with good timekeeping. No criticisms of her work were raised with her. No concerns about her work were raised with her. She was not warned about her standard of work at any time and she received no warning that her employment was at risk. She had always worked on any day as requested.

The respondent disputes the applicant's contentions in a number of respects. It says that at the time the employment of the applicant ceased she was not only a casual employee but still within a three month trial period. The respondent says the applicant's work attitude was unsatisfactory. It says the hours the applicant was required to work were reduced not once but

twice as a result of this conclusion and, when she objected, she was told that she need not attend any more as her services were not required. The respondent emphatically denies that the respondent ended the employment because the applicant could not speak Chinese and says other non-Chinese speaking people were employed as counterhands at the time and continue to be.

So far as the applicant's work performance is concerned the respondent says she was not sufficiently cooperative, that she was too intent on sitting behind the cash register in lieu of carrying out other tasks without direction, that she ignored or did not adequately respond when Ms Wu and the cook requested tasks of her; that she was not prepared to work on some days and that she ignored some instructions such as the restriction on the number of serves of takeaway food staff were able to take home.

Three employees of the respondent as well as Ms Wu gave evidence for the respondent. The employees are Mr Jiun Chien Yap, Mr Doan Thiem Ha ("Mr Thiem") and Ms Silvana Spagnol. It is convenient to note here that the services of an official interpreter were obtained with respect to the taking of Ms Wu's evidence. However these services were not availed of for the purposes of the evidence of Mr Yap and Mr Thiem despite the fact that English is not their first language and it becoming obvious that they had some difficulties in conversing fluently in English. The reason for this was because it was part of the respondent's case that both these employees acted as interpreter for Ms Wu on occasions in her dealings with the applicant in the workplace.

It is convenient to note here that it has been concluded that in considering their evidence there should be an allowance for inherent stress imposed in the formal setting of an arbitration hearing in a language other than their first; which experience reasonably is to be distinguished from communication in the workplace.

Mr Yap referred in his evidence to three criticisms of the applicant. One involved a co-worker, who, battling influenza, sought to take up the sitting position behind the cash register for a while as a means of rest but, according to him, the applicant unreasonably declined this request when put to her. He says on another occasion the applicant had been requested by Ms Wu to restock an outside fridge with apple juice but tried to pass this job on to him. And he says that despite knowing the respondent's limit of one takeaway serve of food per employee being allowed to take home without charge, the applicant took more on occasions. Mr Yap acknowledged he was unaware of any permission being given for an exception to the take home rule and, so far as any other criticisms are concerned save the incident with the sick co-worker, says he did not raise these with the applicant. According to Mr Yap the applicant spoke to him at about 6.00pm on the evening she was told her services were no longer required, told him she was unhappy about the reduction in hours and threatened to take the respondent to court on the grounds of harassment or to newspapers unless she was paid six months' wages. He denies he ever told the applicant her employment was terminated because she could not speak Chinese.

Mr Thiem gave evidence that when the business changed to solely a customer self serve takeaway operation much more of a team effort was required between counterhands and kitchen staff. He says it was he who told the applicant her employment was subject to a trial and that it was for two to three months. As to work attitude, he says he told the applicant two to three times she was not doing her job properly and complained to her about sitting down eating chips in front of customers and going off in paid time for half an hour to eat or smoke cigarettes outside and, that notwithstanding his direct order, she continued to take home more than one serve of food on occasions. According to Mr Thiem the applicant was not happy when told her hours of work would be cut and said she was going to quit. He denies he ever told the applicant she was a good worker.

Ms Spagnol gave evidence that she commenced employment with the respondent within two to three days of the applicant and that she had worked at the same time as the applicant on some occasions. Her evidence confirmed that the work involved with the self serve takeaway operation actually meant more teamwork and cooperation was required. She says communication between her and Ms Wu is effective through gestures, hand signs and use of a Chinese/English phrasebook by Ms Wu. Ms Spagnol, who it seems was quite friendly with the applicant during the employment, said from her observations the applicant was not a good worker in that she tended to stay behind the cash register and be "laid back" in what was a busy, hardworking operation. Ms Spagnol says that while she had heard other staff complain about the applicant's attitude to work she had not heard anyone criticise the applicant directly. This witness emphatically rejected the possibility that the applicant was dismissed for not speaking Chinese when it was put to her in cross examination. According to her there are three non-Chinese speaking counterhands employed by the respondent and there was "no way" based on her experience that the fact of the applicant not speaking Chinese could be reason for any end of employment of the applicant in this workplace. Ms Spagnol was unshaken in her evidence that the applicant had telephoned her on two occasions to complain about cuts in the hours she was to work, the second of these being the last day the applicant worked for the respondent. The witness said the applicant did not say she was dismissed in this conversation but said she would be taking the respondent to court.

Ms Wu said that on several occasions she, by gesture, asked the applicant to do things but was met with indifference or shrugs and no response even after Mr Yap or Mr Thiem, at the request of Ms Wu, had reiterated the requests. In particular, Ms Wu referred to the stocking of a carton of soft drink and the needs of the sick co-worker as occasions when the applicant ignored her and Ms Wu had to refer her request through Mr Yap or Mr Thiem. Ms Wu says that on one occasion she and others in the kitchen observed by way of the video monitor that the applicant was falling asleep while seated behind the cash register but when Ms Wu approached her about this she merely laughed and told Mr Thiem she was working a few jobs. She said the reduction of the applicant's hours reflected dissatisfaction with her attitude.

According to Ms Wu it was not intended to dismiss the applicant on 22 August 1997 but to reduce her hours further. She says the applicant rejected this prospect, and threatened to take the respondent to court and then, and thereafter, sought money from the respondent. Effectively, she says, the applicant walked out.

First, the question of a probationary period. The only evidence going directly to this issue is that of the applicant and Mr Thiem who made the initial offer of employment. There is no written contract or expression of any contractual terms. Having carefully considered this evidence I think it more likely than not that after an initial short term trial there was no further term of probation established, or established between the parties with sufficient clarity so as to constitute a condition of employment. It follows that at the time of the end of the employment no probationary period applied.

Next, the matter of the nature of the employment. Both the applicant and the respondent describe the employment as casual. Applying a label, even mutually, does not of itself establish it as fact of course. It is the conduct of the relationship which is relevant.

It is convenient to observe here that casual employment should not be construed as merely an administrative arrangement whereby some conditions of employment such as paid sick leave and paid recreation leave, which likely would apply to a "permanent" employee, are converted to a cash payment in lieu. Casual employment, of its nature, usually means temporary or limited. It may be a series of on going contracts or even apparently regular employment for a time but its essence is that it is not "permanent" (which should not be taken to mean "for life" either). And, lest it needs to be said, whether an industrial award establishing minimum conditions of employment with respect to a particular contract of employment contains provisions on casual employment or not does not of itself change the actual nature of that individual contract of employment. That is, a breach of an award obligation is just that; not a means of conversion of the nature of a particular contract of employment.

In this case there is evidence that in practice the employment of the applicant was of a casual nature. The hourly rate was set having regard for casual work. The hours worked were, it appears, subject to change to reflect the needs of the operation

as determined by the respondent from time to time. This is consistent with the offering of casual work on an as needs basis for an employer. No sick leave or holiday pay applied. While there was a roster it was set at the end of each week for the next week and, effectively, was a means of informing casual employees of the hours of work put down for them in the next week. This is more akin to a means of communication of offers of casual employment in that week than anything else. The applicant had other jobs while employed by the respondent. As well as the apparent variations in hours which could apply at times as described by the applicant in the evidence cited earlier, there was a change in hours offered and accepted in the week prior to the employment ceasing.

Having considered all this I have concluded that any employment relationship between the applicant and the respondent in the relevant period was indeed casual in nature with weekly contracts of employment being entered into on the basis of the roster hours notifying of hours to be worked in the next week. It appears from the evidence of the applicant and Ms Spagnol in particular that the rosters were produced on Fridays for the following week with the week, it seems, being deemed to commence on the Monday following.

An issue between the parties is whether there was a dismissal of the applicant for the purposes of the jurisdiction of the Commission. The respondent says that on 22 August 1997, the last day the applicant worked for it, Ms Wu, through Mr Thiem told the applicant that from Monday 25 August 1997 she would only be employed on Thursday and Friday afternoons. The respondent says the applicant rejected this position, stated she would take the issue further, was paid by the respondent and left.

I turn now to the question of any dismissal. This goes in part to the evidence of what transpired on the last day the applicant worked at the respondent's business. The applicant's evidence that she was simply told there would be no work there for her the following week was contradicted by Ms Wu and Mr Thiem who said the applicant was offered less hours the following week, which she refused and then left. The evidence given by Ms Spagnol of a conversation with the applicant that evening supports the evidence of Ms Wu and Mr Thiem on this point.

I think it more likely than not that the respondent, not being satisfied with the applicant's approach to the employment, decided to reduce the applicant's hours to be rostered the next week further than had occurred the previous week and offered work on only the Thursday and Friday. The applicant objected and in the upshot of all this then left. That is, the offer of casual employment in the next week was rejected. It follows that there was no dismissal. Even if the applicant's evidence as to the respondent telling her there was no work for her the following week is preferred (which it is not) it does not follow that there was a dismissal. Such a situation would amount, in the circumstances of an employment relationship consisting of a series of casual engagements, to the respondent not making a further offer of employment.

It follows from all of the foregoing that the argument in the alternative put by the applicant that a reduction in hours would in the circumstances have amounted to a constructive dismissal of an existing contract of employment has not been made out.

There is the applicant's claim of discrimination on the basis of an inability to speak Chinese. Against this is the evidence of Ms Spagnol, which was emphatic, and the evidence of Ms Wu. I have considered all this evidence carefully. This includes the applicant's evidence that she was told that her inability to communicate with Ms Wu was a problem. It seems to me that communication in the workplace between the applicant and Ms Wu likely was poor and it was probably not very good between the applicant and Mr Thiem either. I doubt this was due just to language differences though, more likely differences in personality and approach. In any event given the conclusion as to the contract of employment's ending, however, it is not necessary to take this any further.

An order of dismissal will now issue.

Appearances: Mr T C Crossley appeared on behalf of the applicant.

Ms D J F Wu appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amanda Devine

and

Sun Sai Kai.

No. 1692 of 1997.

21 January 1998.

Order.

HAVING heard Mr T C Crossley on behalf of the applicant and Ms D J F Wu on behalf of the respondent, now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application be and is hereby dismissed.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Marc J Dyer

and

Solahart Industries Pty Ltd.

No. 1524 of 1997.

COMMISSIONER A.R. BEECH.

19 January 1998.

Reasons for Decision.

COMMISSIONER A.R. BEECH: Mr Dyer was employed by Solahart Industries Pty Ltd from December 1995 until 30th July 1997. He was employed as a Leading Hand Container Packer in the transport section at Solahart's premises in Welshpool.

I find from all of the evidence before me that Mr Dyer resigned from Solahart on the 30th July 1997. Although there was some issue during the hearing about whether Mr Dyer had used the words "I quit" it is not essential that those precise words be used before an employee can be taken to have resigned. In this case Mr Dyer admits to saying that he could no longer work with "these guys", referring to the management at Solahart, because they had accused him of stealing and he could not work for them any longer in those circumstances. His words were along the lines "find yourself a new worker because I'm not going to work under this kind of pressure and management". In my view that is a sufficient indication of Mr Dyer's intentions. Further, when he completed his Notice of Application in this Commission on the 22nd August 1997 he stated in his claim that he had been "forced to quit". The finding is inevitable, therefore, that Mr Dyer did, in fact, resign.

The Commission can only consider his claim if he has been dismissed. He therefore needs to show that his resignation was a "dismissal". It is settled, at least in this jurisdiction, that cases where an employer gives an employee an option of resigning or being dismissed or where an employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign will be held to be "constructive dismissals" (*Attorney General v WA Prison Officers' Union of Workers* (1995) 75 WAIG 3166 per Rowland and Anderson JJ). However there is no closed category of circumstances when a resignation will constitute a dismissal. Whether Mr Dyer's resignation can be a dismissal for the purposes of the Commission's jurisdiction will depend upon a consideration of the circumstances.

The evidence before me is that, for some time previous to the events of the 29th July 1997, Solahart had been concerned about suspected stealing of some of its stock, in particular, anodes and valves. The missing stock has an estimated value over the twelve month period of eight to ten thousand dollars. Solahart was aware that that type of stock was going missing

from the spare parts section. The company initially had suspicions regarding two or three employees who worked in that area. Over time, and after observing whether the stock continued to go missing when each of the employees was on annual leave, the company's suspicions centred on Mr Dyer. In this regard, I accept particularly the evidence of Mr Thompson who was the Inventory Manager and the immediate Supervisor of Mr Tobin. He was familiar from his personal knowledge of Mr Dyer's work arrangements. He stated that Mr Dyer regularly worked overtime alone when the rest of the staff in the area had ceased work. He had access to the areas where anodes and valves were stored and had keys to gain access if those areas were locked. Mr Thompson had observed Mr Dyer in the parts-box area where valves and similar material were stored when Mr Dyer had no business being there.

Some two to four weeks prior to the 29th July 1997, just before leaving work himself, Mr Thompson noticed some anodes wrapped with an adhesive tape stamped "fragile" (referred to as "fragile tape") had been thrown over the back fence adjacent to the area where Mr Dyer had been working. This was at approximately 6.15pm. By the time Mr Thompson had contacted security and a Security Officer accompanied him to the spot where the anodes had been seen, they were gone. Nothing further was done about that incident although suspicions against Mr Dyer increased further when it became known that Mr Dyer had requested a roll of fragile tape. This had been refused him.

Then, on the 29th July 1997, Mr Thompson was about to leave work. He had been informed at approximately 3.00pm that Mr Dyer was working down the back by himself on overtime. He drove around the back of the company's premises to have a look because of the previous incident. Mr Thompson noticed two packages thrown over the fence, one was a pack of anodes wrapped in fragile tape and one was a carton. The time was approximately 4.30pm. Mr Thompson contacted management and it was decided to contact a private security firm.

At approximately 6.00pm or slightly thereafter, Mr Thompson and Mr Sneddon waited with a torch behind the fence where the packages had been dumped. Another manager waited in a vehicle at the entrance to the laneway down which a vehicle would have to pass to get access to the area. Two contract security officers were, apparently, at the other end of the laneway. The two managers knew that Mr Dyer drove a white Commodore with a V8 engine. It was dark. The manager at the entrance to the laneway informed them that a white Commodore had just entered the laneway. Mr Thompson's evidence, supported by Mr Sneddon, is that a white Commodore with a V8 engine drew up adjacent to where the packages had been dumped over the fence. An unidentified person walked towards them through some bushes but then stopped, apparently seeing their silhouettes, and turned and ran back to the car and drove off at high speed, resulting in a lot of dust. At no time was the person's face observed nor was the number plate of the car observed. For a reason that is not entirely clear, the two contract security officers did not see anything.

Mr Sneddon then contacted the Personnel Officer of the company and found out Mr Dyer's home address. It was in Kewdale, which is not far from the company's premises. Mr Sneddon, Mr Thompson and one other person then drove to that address. It was by then 7.00pm. They observed Mr Dyer in the driveway of the address, having just washed his vehicle. A brief conversation then ensued between Mr Sneddon and Mr Dyer. It is sufficient for me to observe that Mr Dyer was accused of stealing, he indicated that he did not want to discuss the issue there and it was arranged that he would go to Mr Sneddon's office first thing in the morning.

The next morning a meeting took place involving Mr Sneddon, Mr Thompson, Mr Tobin (the Transport Supervisor) and Mr Dyer. The principal difference between the evidence of Mr Dyer and the evidence of the others is in the timing of Mr Dyer's resignation. Mr Dyer's evidence is that in the early part of the meeting he was told of the company's suspicions and that he could resign and the incident would be forgotten and later in the meeting he was told that the police were outside. He states he was also told that the general manager didn't want him to work there. It was at that stage he said "find yourself a new worker because I'm not going to work under this kind of pressure and management". In contrast, the evidence of Mr Sneddon, Mr Thompson and Mr Tobin is that Mr Dyer's resignation came at the early part of the meeting. Any suggestion that the police would be informed came after the resignation. In considering the evidence of the witnesses I tend to prefer the evidence of Mr Sneddon, Mr Thompson and Mr Tobin in preference to that of Mr Dyer because I accept that Mr Dyer was quite upset at the meeting and his recollection may not be entirely accurate. Further, I preferred the evidence of Mr Tobin to the evidence of Mr Dyer in relation to the use of fragile tape by Mr Dyer. I do not accept Mr Dyer's evidence that he uses it all the time. Therefore I find that—

1. Mr Sneddon informed Mr Dyer of the details of the company's suspicions.
2. He asked Mr Dyer for Mr Dyer's response.
3. Mr Dyer indicated that he could no longer continue working for the company whilst having been accused of stealing.

The authorities make it clear that where an employee is falsely accused of stealing without proper investigation the employee is entitled to treat the contract at an end (*Robinson v. Crompton Parkinson Ltd* [1978] IRLR 61). However I am not convinced that that is the case here. It is a fact that Mr Dyer was subsequently informed by the police that no criminal charges were going to be laid against him as a result of police investigations into the matter. But it does not follow that Mr Dyer was therefore falsely accused of stealing by his employer. There may a number of reasons why the police did not lay charges. Further, although Solahart's witnesses conceded that the company did not have enough evidence to prove that Mr Dyer was actually stealing, it does not need to be able to prove it. Rather it needs to be able to show that it had reasonable grounds for the accusation which it made. I have little hesitation in reaching the conclusion that the circumstances of the stock losses and the reasons given in the Commission for Solahart suspecting Mr Dyer were beliefs reasonably held by Solahart. Further, Mr Dyer concedes, through his counsel, that it was reasonable for the company to put those suspicions to him for him to comment on them, the issue being the manner it does so. To put it another way, if Solahart had accused Mr Dyer of stealing and had no evidence whatsoever to substantiate that allegation then Solahart would be likely to have acted in a way contrary to the mutual trust and confidence necessary in a contract of employment by destroying any basis of confidence that could exist between the company and him in the future. That much might well amount to a constructive dismissal.

It was not a "resign or be fired" situation. It was a situation where the company put its suspicions and the basis for them to Mr Dyer. His response was to resign but I am satisfied that if he had not done so he would not have been dismissed at that meeting. On the facts of this matter I have not been persuaded that that the threat of the involvement of the police was such that it would constitute a dismissal (c.f. *Mohazab v Dick Smith Electronics* (1995) 62 IR 200 at 206). I am left with the conclusion that Mr Dyer decided to resign and his resignation was not a dismissal for the purposes of the Commission's jurisdiction.

Mr Dyer's claim will therefore be dismissed because the Commission does not have the jurisdiction to deal with his claim. That conclusion, however, does not mean that the company's conduct in this matter is not above criticism. The point was made during the cross-examination of Mr Sneddon that an alternative would have been to have involved the police in the beginning. As Mr Sneddon readily concedes, he is an Operations Manager and not a detective. It is not inappropriate to describe the inconclusive outcome of the attempted surveillance on the 29th July 1997 as a consequence of a rather amateurish effort. I include in my comment the decision which was taken to drive to Mr Dyer's home address. I find it difficult to think of any other conduct less within the purview of an Operations Manager. While I do not quarrel with Mr Sneddon's evidence that he thought it best for the company to put its beliefs to Mr Dyer prior to involving the police my decision in this matter should not be taken in any sense as an endorsement of the events of the evening of the 29th July 1997. Finally, in this regard, an employer will more easily avoid criticism if, when it decides to interview an employee in order to put to the employee allegations of misconduct, it ensures that the

employee has an opportunity to attend the meeting with another person of the employee's choice to act as an independent observer, or even merely as a friend. I appreciate that an employee in the position of Mr Dyer can hardly be able to recollect with clarity the precise words used or even perhaps the order of proceedings when he is also being accused of stealing. The assistance of a person of his choice both at the time and later in re-telling what actually happened is obvious. It provides a safeguard for both the employee and for the employer.

Appearances: Mr C. Williams on behalf of the applicant.

Mr A.J. Randles on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Marc J Dyer

and

Solahart Industries Pty Ltd.

No. 1524 of 1997.

19 January 1998.

Order.

HAVING heard Mr C. Williams on behalf of the applicant and Mr A.J. Randles on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the application be dismissed for want of jurisdiction.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1979.

Jan Irimia

and

Swan Transit Services (South) Pty Ltd.

No. 1799 of 1997.

15 January 1998.

Reasons for Decision (extempore).

SENIOR COMMISSIONER: The Applicant in this matter complains that he was unfairly dismissed from his employment on or about the 22nd of September. There is some dispute as to the precise date, but nothing turns on that.

The matter has been before one of the Commission's deputy registrars for conciliation. That was unavailing. As I understand it, the question of the Commission's jurisdiction, or lack of it, was a matter of discussion at those conferences. The application has been listed for hearing to require the Applicant to show cause why the matter should not be dismissed for want of jurisdiction. However, the Applicant has not appeared. The notice of hearing was sent to the Applicant's address as appears on the papers lodged in the Commission. That notice of hearing has not been returned. As I have indicated to the agent for the Respondent, the Applicant's non-appearance before the Commission today is sufficient to justify the matter being dismissed in effect for want of prosecution.

However the Respondent, through its agent, has advanced a detailed argument as to why the matter should be dismissed for want of jurisdiction. In the circumstances, it is perhaps not inappropriate that I should make some comment on those arguments.

The Respondent advances three arguments as to why the matter should be dismissed for want of jurisdiction. The first is that the provisions of the State Act governing the jurisdiction of the Commission with respect to claims of this nature are inconsistent with the provisions of the federal award which, at all material times, regulated the Applicant's employment. Secondly, it is said that in any event the federal Workplace Relations Act, insofar as it creates a remedy for unfair dismissal, evinces an intention to cover the field of unfair dismissal in respect of those in the employ of the Respondent because the Respondent is a constitutional corporation. Thirdly, it is said that whether or not there is any inconsistency between State and federal laws on the matter now before the Commission, the State Act should, in any event, be interpreted as applying only to employees whose employment is regulated by the State system. In advancing that argument the Respondent refers to and relies upon the recent decision of the Full Bench of the Industrial Relations Commission of New South Wales in the case of *Moore v. The Newcastle City Council; re The Civic Theatre Newcastle (1997) 42 AILR 5-139*.

On the material before me it seems clear that the Applicant's employment was covered by a federal award, namely the Transport Workers (Swan Transit) Award 1996. That Award, amongst other things, provides by clause 17 that the termination of employment by an employer, to use the words of the Award, "shall not be harsh, unjust or unreasonable". In addition, clause 17 provides what can now be said to be a fairly standard provision outlining the method by which employment may be terminated and the employees entitlement in those circumstances. In addition, the Award by clause 16 provides a quite detailed dispute settling procedure.

The federal Act now provides in section 152 (1A) that if a State law or a State award makes provision in respect of the termination of an employee's employment, any provision in a relevant federal award that also makes provision in respect of the termination of employment of the employee, is not to be taken to show an intention to cover the field to the exclusion of the State law or State award.

In my view, those provisions can be taken as effectively overruling the decisions of the Industrial Appeal Court in *Metropolitan (Perth) Passenger Transport Trust v. Gersdorf (1981) 61 WAIG 611*, and *Martindale v. British Petroleum Refinery (Kwinana) Pty Ltd (1992) 72 WAIG 1263*. Thus, if a federal award simply contains a provision regulating the termination of employment, then it may well be, apart from any other consideration, that that is now no longer to be taken as covering the field to the exclusion of the State law.

However, the federal Award now in question does not only deal with the mechanism for terminating employment, but it also contains a provision expressly outlawing dismissals which are harsh, unjust or unreasonable. In those circumstances there could hardly be a more definite expression of an intention to cover the field insofar as unfair dismissals are concerned. Indeed, were the Commission to deal with this matter, it would effectively embark upon a process of enforcing the federal award, something in my view it cannot do by reason of the federal Act and certainly cannot do in the case of State awards. Furthermore, as the agent for the Respondent has said, the Respondent is a constitutional corporation for the purposes of the Federal Workplace Relations Act Thus, there is scope under the federal Act for dealing with unfair dismissals which occur in the circumstances now in question. Those provisions serve to reinforce the argument that there is an inconsistency between the State and federal law in this respect.

In my view, the matter is for those reasons, beyond the jurisdiction of the Commission, and hence the application should be dismissed.

Without wishing to decide the point on this occasion, I consider that there is some force in the argument advanced by the agent for the Respondent that the relevant provisions in the State Act in any event are limited to covering those employees whose employment is not regulated by the federal system. In this case that means by a federal award. Rather, the State Act is confined to those employees whose employment is regulated by the State system of industrial relations.

In my view the ratio of the decision in *Moore's case (supra)* to which the agent for the Respondent has referred, can be readily applied to the State Act. In essence, if that is the case,

then the argument advanced by the Respondent is correct, that is, that in any event there is no jurisdiction for the Commission to deal with the matter. As pointed out in *Moore's case (supra)* the mere fact that the federal Act might remove any objection to dealing with the matter on the grounds of inconsistent State and federal laws, does not give the State Act any wider import that it would otherwise have.

For these brief reasons, in my view the application should be dismissed.

Appearances: No appearance on behalf of the Applicant.

Mr S.C. Foy on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1979.

Jan Irimia

and

Swan Transit Services (South) Pty Ltd.

No. 1799 of 1997.

15 January 1998.

Order.

THERE being no appearance on behalf of the Applicant and having heard Mr S.C. Foy as agent for 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.

Mark Wilfred John

and

Outback Accessories.

No. 1530 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

28 January 1997.

Reasons for Decision.

CHIEF COMMISSIONER: The applicant was employed as a welder fabricator with the Respondent company from October 1996 to the end of July 1997. He had tendered his resignation giving notice that he would finish up in one month's time. This was accepted. Under the contract of employment, an unregistered workplace, only one week's notice was required. Two weeks after he had given the notice the applicant's services were terminated with payment of one week's pay "in lieu". The applicant claims that the termination was unfair and seeks an additional weeks pay as an outstanding contractual entitlement.

It was submitted by the applicant that the pretext for terminating his services had been his action in contacting Worksafe to report what he considered to be unsafe equipment and lack of protection in the workshop. This contact was made after the applicant had served notice of his intention to resign. It was submitted that he had raised some concerns when he commenced employment and that nothing had been done. Furthermore he believes that the Managing Director's wife, the paymaster for the workshop was antagonistic to him. This had arisen from a disagreement over time cards and late payment of his wages. The applicant believes that he had been a good worker but that his worth had not been recognised. He claims that his concerns about safety had been ignored by the Factory Manager and that he was discouraged from taking them up with Mr Stafford the Managing Director, although he had attempted to make several appointments to speak with him. He denies that he yelled at the paymaster or that his work practices were unsafe. He maintains that he was not disruptive during the period of his notice and that he maintained a high level of productivity during that period as well as instructing another employee on the work he was undertaking.

For the Respondent, Mr Stafford the Managing Director acknowledgs that the advice from the Factory Manager that the applicant had contacted Worksafe and was bragging of this in the factory was "the last straw!" Previously it had been reported to Mr Stafford that for the period of notice, the applicant had been disruptive in the workplace and his attitude to work had been unsatisfactory. Although this had been tolerated the applicant's recourse to Worksafe without any reference to management over safety issues was unacceptable. It was then that the decision was taken to terminate the employment relationship with one week's pay in lieu of work.

Through Mr Stafford the Respondent submits that if the applicant had real concerns about safety, they should have been pursued with management. As for those issues which Mr John claims to have harboured concerns about since the commencement of employment, Mr Stafford submits that there were several opportunities for the applicant to have taken them up with him when they were working together. Indeed Mr Stafford believes that the applicant has two standards with respect to safety. That which the Company should maintain and that which the applicant practiced. Mr Stafford cites the Company's Quality Assurance accreditation and its ongoing commitment to reviewing safety standards and practices. As to Mr John's standards he cites the applicant's failure to wear correct safety footwear and the injury the applicant sustained and the damage done to a machine when he attempted to adjust it while it was operating.

I accept on what is before me that if, as the applicant professes he had concerns about safety in the workplace, that he had ample opportunity to pursue them with management. Indeed, I have formed the view that his actions in contacting Worksafe were mischievous and arise from his antagonism towards the Managing Director's wife and a general dissatisfaction with the workplace. I am satisfied that he did brag about the trouble he thought he could cause by contacting Worksafe. If his concerns were real and if he held genuine apprehension about the operation of the punch machine for himself and other workers he would have pursued the issue earlier particularly in view of his injury.

I accept that the applicant's attitude and performance declined during the period in which he was working out his notice. Indeed he concedes as much although this is qualified to the extent that he though it was not at a level that should have concerned the employer. I do not agree.

After assessing the applicant's demaneaour and that of the Respondent's Managing Director and considering the evidence presented, I am not persuaded that the termination was unfair. A period of notice was not a licence to behave in a manner inconsistent with an employee's obligations at the workplace.

The contract entered into when employment relationship commenced provided for seven days notice of termination. That was what the applicant was given by "payment in lieu". In the absence of a finding that the dismissal was unfair there cannot be a claim for an outstanding contractual entitlement. The expectation that he would work for one month from the time he indicated an intention to resign does not displace this.

The application is dismissed.

Appearances: 0

Mr Mark John appeared on his own behalf.

Mr Adrian Stafford appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Wilfred John

and

Outback Accessories.

No. 1530 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

28 January 1997.

Order.

HAVING heard Mr M. John on his own behalf and Mr Stafford 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.) W. S. COLEMAN,
[L.S.] Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrew Kittel

and

Alan J Marshall Pty Ltd.

No. 1092 of 1997.

16 January 1998.

Reasons for Decision.

COMMISSIONER S A CAWLEY: This application is brought pursuant to section 29(1)(b)(i) and (ii) of the Industrial Relations Act, 1979. By it Andrew Kittel ("the applicant") claims he was unfairly dismissed from employment by Alan J Marshall Pty Ltd ("the respondent") and that he has been denied contractual benefits due him pursuant to that contract of employment. According to the claim as filed the benefits denied are payment for holiday pay and loading ($1645.00), superannuation payments ($1248.00 approximately) and payment in lieu of two weeks' notice ($700.00). The applicant seeks orders that the respondent pay these to the applicant and pay compensation amounting to six months wages ($8,400.00) for the alleged unfair dismissal.

The respondent acknowledges the applicant was dismissed but denies any unfairness and denies the contractual benefits claimed are due. According to the respondent, the applicant was summarily dismissed for gross misconduct.

The respondent is engaged in the real estate industry as an agent for the buying and selling of property and managing rental properties. Its principal is Mr Alan Marshall who represented the respondent in this matter. The applicant was employed by the respondent in February 1996. He was summarily dismissed on 26 May 1997 after attending a meeting with Mr Marshall. The respondent says the applicant was employed as a property manager to manage rental properties on the books of the respondent. The applicant denied this at the hearing and said he was employed as an assistant property manager. This issue is dealt with subsequently.

A contract of employment is binding in its terms provided that where there is conduct by one party such as to strike at the heart of that contract the other party has a right in law to terminate it summarily or instantly. In this case it falls to the respondent to demonstrate on the balance of probabilities that the applicant's conduct gave rise to the right to dismiss him summarily. If that onus is discharged then it follows that the claim for payment in lieu of notice must fail as well as the claim for holiday pay; that being an accrued benefit which in a case of misconduct would be forfeited. The onus so far as the claim of unfair dismissal is concerned lies with the applicant. That is, it is for the applicant to demonstrate on the balance of probabilities that the dismissal, whether of a summary nature or not, was unfair.

At the hearing of this matter the respondent, having asserted a right to summarily dismiss which arose as a result of the applicant's conduct, was required to present its case first. The respondent says the applicant's conduct which gave rise to the dismissal included the following —

- misleading the respondent by assertions that he had completed a property management course required for proper standing in carrying out that role in a registered real estate agency when he had not;
- false and misleading statements to Mr Marshall in relation to his circumstances with respect to a driving license;
- acting to the detriment of the respondent's business by driving a vehicle without a driving licence during the course of work;
- mishandling and/or losing monies paid in rent;
- abusing his position by advising tenants of rental properties managed by the respondent in relation to eviction actions instituted against the tenants by the respondent;
- using his position to gain a friend employment with a cleaning contractor engaged by the respondent and then taking steps to inflate the charge for labour to the detriment of the respondent;
- reversing a receipt of monies and falsely altering electronic records of the respondent's operations;
- arranging rental of a property on the respondent's books without properly recording the details and obtaining rent monies from the tenants directly and failing to deposit them properly in the respondent's accounts thereby improperly obtaining monies due to the property's owners and for which the respondent was responsible; and
- making incorrect electronic transfers of monies between accounts to the detriment of the respondent's business records and conduct of its business.

The respondent called seven witnesses. Mr R Alvey, a senior detective in the Western Australian police service gave evidence of a complaint from Mr Marshall about the applicant, enquiries into which were still to be completed. Ms M Davis, the receptionist for the respondent gave evidence of monies being receipted on a Friday and deposited in a safe and the discovery subsequently that the record of this receipt had been reversed on a day when it is said only the applicant was present. Another employee of the respondent, Ms N Binks, gave evidence about duties involving her driving the applicant to property inspections and the like due to his losing his licence and his insisting on driving on some of these occasions, the receipting of monies and her knowledge of a subsequent change to this record and the interview between Mr Marshall and the applicant which ended with the termination of the applicant's employment. Ms J Della, a personnel placement consultant, gave evidence of the circumstances which gave rise to the contract of employment between the applicant and the respondent and her knowledge of that employment since.

Mr T Newman and Mr D Morel gave evidence of their taking up residence, through the applicant, in a rental property in the suburb of Willagee for which the respondent was the agent, payments made to the applicant for rent, a subsequent confrontation with Mr Marshall after becoming aware that the respondent contended that no rent at all had been paid and there was a bond arrear as well (for a total owing of $2367.55) and subsequent events involving the applicant repaying some $800.00 in relation to the three persons living in the Willagee house. Mr T Newman also gave evidence of a phone call received from the applicant during which, after advising that he was no longer employed by the respondent, the applicant stated that he had removed two weeks' rent from the respondent's accounts in relation to the Willagee property and would repay it to the three tenants if requested. Mr H Newman, the father of Mr T Newman, gave evidence of being told by his son and the other two persons staying in the Willagee house of the arrangements for payments of rent directly to the applicant, of the problem arising with the respondent asserting no rents had been received and of a meeting with Mr Marshall. Mr Marshall also gave evidence.

The respondent introduced a number of documents into evidence through witnesses. These included a written statement dated 2 June 1997 by Morel and Newman to which are attached copies of receipts these witnesses said were provided to them by the applicant for rent monies for the Willagee house. Another document produced by Mr Morel was said by him to be an original receipt provided by the applicant on receipt of $150.00 cash and a fee of $10.00.

The applicant chose not to give evidence himself and called no witnesses. Effectively then the presentation of his own case in response to the allegations of misconduct as well as with respect to his claim of unfairness and denied contractual benefits was confined to statements from the bar table.

First, the issue of the position occupied by the applicant in the respondent's business.

Della's evidence is that the applicant initially sought to be placed by her company in a clerical position in the real estate industry. In any event she forwarded what she said was the applicant's resumé and two questionnaires the applicant had filled in to the respondent for consideration in filling a vacancy. Copies of the resumé and the questionnaires were produced [Exhibit 1]. Della understood that the applicant had been engaged by the respondent subsequently to work in its property management services area and an account was raised against the respondent for the personnel placement services provided.

The applicant's resumé as forwarded to the respondent states that the applicant was currently employed by a real estate business and while he initially carried out duties relating to clerical work, he had "completed [his] property management course and moved into the property management department where [he] currently handle 120 residential properties". A list of duties follows. It is noted that a significant proportion of these are duties reasonably likely to be involved in managing rental properties. One of the questionnaires Della says was forwarded to the respondent includes a statement that the applicant's greatest professional achievement to then was becoming a property manager. Another states that the previous position he had enjoyed the most was that of property manager. Having regard for all this I have concluded that whether or not the applicant was seeking a clerical position, the detail in these documents represented that he was able and competent to carry out the duties of a property manager and indeed had experience in such a position.

I turn now to the evidence of the actual position occupied by the applicant in his employment by the respondent. The applicant made some statements in the course of proceedings which were to the effect that when the respondent engaged him there was a senior property manager in its employ and the applicant's role was therefore only to assist that manager. However no details of any arrangements of this nature or of any such duties were raised and this was not canvassed in cross examination of such witnesses for the respondent as Marshall and the two other employees. And what evidence is before the Commission on the work actually carried out by the applicant does not bear out his assertion. There is evidence that in his employment by the respondent the applicant carried out duties such as property inspections, arranging leases, arranging maintenance and/or cleaning of rental properties on the respondent's books and maintenance of records in relation to rental properties. There is also evidence that the applicant presented as a property manager working for the respondent by way of business cards. Added to this is the fact that in his application as filed the applicant states in answer to the question as to the title of the position he held or the nature of the work he performed that it was property management. Having considered all this I have concluded that the work carried out by the applicant was largely that of property management of rental properties on the books of the respondent.

There is evidence, and it is a relevant consideration, that the property management work involved representing the respondent as agent for the owners of properties who had charged the respondent with the responsibility of letting a property and managing any lease arising. In this respect the agent stood in the place of the owner in dealing with tenants. It seems to me then that it is implicit that the position of property manager is one which involves a significant duty of care in the interests of the owners concerned. A significant and deliberate breach of such a duty of care would, in my view, amount to a serious matter and could give rise to misconduct such as to strike at the heart of any contract of employment involved and give rise to a right to summarily dismiss.

First, the question of misconduct by the applicant claimed by the respondent. As already noted the respondent raises a number of allegations against the respondent. Some of these are based on enquiries instituted by the respondent well after the event and even after the applicant's dismissal but this is not necessarily a bar to that conduct, if reasonably established as fact, providing justification for a summary dismissal. But, in my view, it is not necessary to go here either to each allegation or to matters which the respondent says it discovered subsequent to the termination of employment.

The applicant clearly occupied a position of trust in his employment in that he was representing the respondent in the arranging of money matters and records. The most serious claim by the respondent of misconduct, and that which it appears gave rise to the decision to dismiss, was that the applicant improperly arranged to directly receive rental payments from the three occupants of the Willagee property managed by the respondent and failed to deposit these as required in the respondent's records.

If on a consideration of the evidence it is found on the balance of probabilities that this conduct complained of is fact, then it follows from the conclusion as to the level of responsibility and trust involved and the liability of the respondent to property owners with respect to the proper administration of monies on their behalf that such conduct would constitute a significant breach. Lest it needs to be said it is not necessarily the case in this matter that the respondent must prove that the applicant misappropriated monies for a right to summarily dismiss to arise. A truly significant dereliction of duty or reasonable standards to be expected pursuant to the contract of employment established as fact on the balance of probability test could be sufficient.

The evidence of Marshall is that among other things he confronted the applicant on 26 May 1997 with the allegation that he was involved in fraud to the serious detriment of the respondent in relation to the property in Willagee and, receiving no satisfactory explanation by the applicant of this and other matters, summarily dismissed him. According to the respondent the applicant arranged for the rental of the Willagee property by Newman, Morel and another and thereby was responsible on behalf of the respondent for the proper administration of the lease arrangements and records in the interests of the property's owners. The respondent says the total due on the rental property between 24 February 1997 when it was let to 2 June 1997 was $2,367.55. It says however that no rent was recorded as received by the respondent on behalf of the owner. Shortly after the respondent decided to take action against the tenants Marshall became aware that the three occupiers of the property had receipts for at least some rent and other payments made to the applicant. Morel and T Newman gave evidence of such payments. Binks also gave evidence on the circumstances of the respondent becoming aware of the existence of some receipts signed by the applicant for monies said by Morel and Newman to be rent. Some receipts are before the Commission.

I accept the evidence of Marshall, the younger Newman and Morel in particular and, in the absence of any evidence to the contrary, I am satisfied that the respondent had sufficient cause in the applicant's actions in relation to the Willagee property to summarily end its contract of employment with the applicant. At the very least, the conduct of the applicant was reckless and misleading and demonstrated a scant regard for the interests of the respondent let alone the property owners to whom any rental monies belonged. Whether the monies obtained somehow ended up recorded somewhere else than in the respondent's records for the owners of the Willagee property would not alter this conclusion in the circumstances here. There is nothing before the Commission to establish that the respondent's business was conducted in such a way that it was reasonably open to the applicant to enter into ad hoc arrangements and record-keeping in relation to the management of properties for which he was responsible. The respondent's claim of misconduct in relation to the Willagee property is made out. It follows that the applicant's claim for denied contractual benefits of holiday pay and notice must fail.

So far as the claim for superannuation benefits is concerned the respondent says contributions on behalf of the applicant have been made to an approved fund. But in any event, in the absence of any case being put by the applicant in support of this part of the claim pursuant to section 29(1)(b)(ii), it too must fail.

That leaves the claim of unfair dismissal. The applicant made a number of statements and allegations from the bar table but made out no case of unfairness for the respondent to answer and no question of procedural unfairness was raised by the applicant. The claim of unfairness is not made out by the applicant.

An order of dismissal of Matter No. 1092 of 1997 will now issue.

Appearances: The applicant appeared on his own behalf.

Mr A Marshall appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrew Kittel

and

Alan J Marshall Pty Ltd.

No. 1092 of 1997.

16 January 1998.

Order.

HAVING heard the applicant on his own behalf and Mr A Marshall on behalf of the respondent, now therefore, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application shall be and is hereby dismissed.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Scott McEwan Linn

and

Obion Pty Ltd Trustee For The Usukan Trust, Trading as Personal Touch Caterers.

No. 1633 of 1997.

23 January 1998.

Reasons for Decision.

COMMISSIONER S A CAWLEY: This application was filed pursuant to section 29(1)(b)(i) of the Industrial Relations Act, 1979. By it Scott McEwan Linn ("the applicant") claims he was unfairly dismissed by Obion Pty Ltd Trustee For The Usukan Trust, Trading as Personal Touch Caterers ("the respondent"). The applicant seeks an order from the Commission that the respondent pay him the sum of $50,000.00 in compensation for loss and injury.

The respondent acknowledges that the applicant was employed by it but denies that he was dismissed at all. It says the applicant terminated the employment when he declined all endeavours to resolve the problems resulting from a positive result from a routine drug test on him. Or, in the event of a finding that there was a dismissal (which is denied) the respondent denies that such dismissal was unfair.

The respondent is in the business of providing cleaning and catering services in the field for mine operators. On or about July 1997 the respondent secured a contract with Resolute Mine Ltd which operates a mining lease some 60 kilometres from the town of Norseman, in the goldfields region east of Perth.

The contract with Resolute Mine Ltd is the only industrial catering contract the respondent has at this time. The residential complex for the mine operation is known as Camp Chalice it appears. A wet mess operates in the camp. A Mr Mark Turner was identified in the proceedings as the mine manager for Resolute Mines Ltd. It is agreed that the mine manager has responsibility for matters involving the campsite too. The respondent's principals are Ms Leigh Grover and Ms Lesley Peacock. Ms Peacock had worked for the catering company engaged by Resolute Mines Ltd as site manager prior to the respondent succeeding in getting the cleaning and catering contract. The applicant was employed by the previous catering contractor too. The position he held then was that of breakfast cook and relief head chef. He worked on a two weeks on, one week off basis. The applicant worked for the prior contractor on the Resolute mine lease for approximately six months though, in all, he was employed by this catering company for some seventeen months prior to accepting a proposal from Ms Peacock that he take up the post of head chef when the respondent's contract with Resolute Mines Ltd came into operation on 1 September 1997. The position was to be full time working a cycle of two weeks on one week off. The pay was to be $45,000.00 per annum and the applicant expected to be able to bring his family from Perth to be housed in Northam.

According to the application as filed the applicant commenced employment on 1 September 1997 and was dismissed the following day. The applicant says that he was dismissed from the position of head chef by the respondent after it had been informed that a routine on site drug test on the applicant had returned a positive count. Essentially, the applicant says that the respondent, through Ms Grover and Ms Peacock, failed to support him at this time despite having committed to provide him with "100% support" at the time the employment contract was entered into and despite his good record and a "one off breach". He says that in all the circumstances the dismissal was harsh and unfair and he should be awarded compensation for loss and injury.

The applicant gave evidence in this matter as did Ms Grover and Ms Peacock. The applicant's partner, Ms Stephanie Barron also gave evidence on behalf of the applicant.

In his evidence the applicant does not dispute the fact of a positive drug test and acknowledges conduct by him such as to give rise to that result. He also acknowledges that he was aware of the policy of Resolute Mines Ltd banning the possession or use of drugs on the mine lease and the firm application of that policy by the mine manager. And, it appears, he acknowledges that his ability to return to the mine lease was a matter for decision by the mine manager who previously had reprimanded him over an unrelated incident. The applicant says that his cause was not supported as it should have been by Ms Grover and Ms Peacock and for reasons which had more to do with their concern that it had emerged that the mine manager favoured the previous head chef than anything else. According to the applicant, the respondent took the opportunity presented by the positive drug test, and the uncertainties that entailed with respect to the mine manager's attitude to his returning to the camp, to dismiss him.

Ms Barron's evidence went to discussions between the applicant, herself and Ms Grover on what had transpired as well as evidence of a discussion over lunch some time earlier with Ms Peacock and Ms Grover.

The evidence of Ms Peacock went to the discussions giving rise to the offer and acceptance of the position of head chef, discussions about the expectations of each party with respect to the employment contract, matters in relation to a recent celebratory occasion in the wet mess on the mine lease, a prior incident giving rise to the mine manager reprimanding the applicant, the institution of a random drug test on the mine site to apply to all persons including those involved in the catering service such as Ms Peacock, Ms Grover and the applicant, notification to Ms Peacock of the results of that test so far as the applicant and another was concerned and subsequent discussions between her and Ms Grover and with the applicant about the situation. Ms Grover's evidence goes to the celebration on site, the drug test, conversations with Ms Peacock about the drug test result in relation to the applicant and discussions involving the applicant, Ms Barron and Ms Glover.

Some notes said by Ms Grover and Ms Peacock to have been made contemporaneously in relation to some of these conversations were produced in evidence. Other documents described as copies of the camp rules, the drug policy applying on site, the results of the applicant's drug test and letters from Ms Grover to the applicant are in evidence.

The only significant area of dispute between the parties as to facts goes to the conversations between Ms Grover and the applicant and Ms Grover, the applicant and Ms Barron over what was said.

The questions for the Commission are whether there was in fact a dismissal and if so whether it was unfair. The onus of establishing on the balance of probabilities that any dismissal was unfair lies with the applicant.

There was certainly an offer of employment as head chef made by the respondent to the applicant. There were discussions leading up to this and verbal understandings reached. Relevantly, these included the fact that the respondent was a new business venture with the contract with Resolute Mines Ltd being its first, and only, engagement as well as the applicant's interest in committing to the venture's success with a view to his longer term advancement in the business and industry. It is quite clear that Ms Grover and Ms Peacock (who had been the site manager for the contractor the respondent was to replace) were keen to make a success of their first contract and saw the applicant as a key employee to that end. It is also clear that the applicant, having decided that his prospects were better with the respondent than with his then employer saw the taking up of the position of head chef as an important opportunity. He accepted the offer.

The respondent's contract obligations pursuant to Resolute Mine Ltd commenced on 1 September 1997. To all intents and purposes it appears the applicant's employment by the respondent commenced then. His pattern of work was to remain unchanged however and as at that time he would have been due for one week away from work at the site his employment with the respondent commenced with paid absence from work. Thus at the time the employment ended the applicant was in Perth on a rostered week off. It appears he was due to return to the site to work on 9 September 1997.

First the question of whether there was a dismissal. This goes to the matter of the drug test and its aftermath. On 1 September 1997 a routine drug test of persons on site at the mine resulted in the applicant testing positive with respect to cannabis. It appears the result of this test was communicated to Resolute Mine Ltd on 3 September 1997 and it was subsequently made known to Ms Peacock as a principal of the employer of the applicant. In passing I note that there is nothing before the Commission to suggest that Ms Peacock or Ms Grover discussed the result of the applicant's test with other than himself and relevant personnel of Resolute Mine Ltd.

It is quite clear that the corollary of the applicant's failure of the drug test was the question of whether he would indeed be able to perform in accordance with the contract of employment between him and the respondent arose. In this respect, there is an issue of obligation under the contract which is pertinent.

The respondent submitted a document headed "Application For Employment" [Exhibit 1] which, it appears, was to be used by the respondent as a record of personnel details for the purposes of the employment. It refers to any offer of employment being subject to passing a medical examination which was to include drug screening/testing. The document is not filled in and, it appears, the contract of employment was offered and accepted before it was provided to the applicant. There is no evidence that the actual condition contained in the document was discussed at the time of offer and acceptance but in the face of the evidence as to the mine site and camp drug policy and the general knowledge of this and the probably consequences in the event of any breach, including banning from the work site, it is not necessary to take this further. It was at least an implicit term of the contract that the applicant would not return a positive drug test. The fact is he did but it appears the respondent did not seek to rely on this failure as a frustration of the contract at the time it became known. Nonetheless it is relevant.

The applicant (and his partner) made assertions about what was practical, possible and common in the industry as to what the respondent should have done so as to restore the applicant's position and it is in the respondent's alleged failure in this respect and the subsequent references to an alternative position of breakfast chef that the applicant's claim of unfairness is founded. But I think it more likely than not on the evidence that the respondent, not having the mine manager's decision as to any return of the applicant to the site and not being able to establish the position in the short term as well as knowing of the previous reprimand, and in the context of its perceived need to start its contractual relationship with the principal as well, was not confident that the applicant's occupation of the head chef position remained viable. It seems the position of breakfast chef was offered to the applicant with a view to a less senior position making any negotiation with the mine manager as to the applicant's return more likely to succeed and, also, with a view to consolidating the respondent's position.

As it turned out the applicant objected vehemently to any such prospect and pressed the point with the respondent. It appears on the evidence that the respondent did not confirm the original appointment. However, I have concluded that there was an offer of alternate employment (subject to the mine manager's decision) and that it was implicit in this that the head chef position was denied to the applicant as a consequence. That is, I consider it probably that the employment was terminated.

Was the termination unfair? As noted the applicant contended that in the light of the previous assertions by Ms Peacock and Ms Grover of full support, the respondent should have sorted out his situation satisfactorily with the mine management but instead subjected him to misleading and contradictory statements and then dismissed him for the purpose of installing someone else.

This last allegation is not made out. And with respect, it seems to me that the applicant's version of the respondent's responsibilities is not reasonable in the circumstances here. A new contractor, setting about its first venture, is faced with its newly appointed head chef, who has been previously chastised by the mine manager for some irresponsible conduct on site, failing a drug test and thereby invoking the application of a drug policy with, possibly, dire consequences for his ability to perform that work. The cause of this situation is the conduct of the applicant. The interests of the applicant were affected as a consequence. But so too were the interests of the respondent. This appears to have been of no or little account in the applicant's approach to the problem at the time or now. Yet it is a relevant consideration here for the Commission.

The prohibition on the use of drugs was known by the applicant. It was an implicit term of his contract of employment that he be clear of banned substance use on site. It could be argued that by failing in that respect, with the consequences attendant on that so far as his ability to perform in accordance with his contract, the applicant first, repudiated the contract and second, by the consequences, frustrated it. It appears the respondent, while having regard for its legitimate interests, endeavoured to ameliorate the situation. The applicant walked away from that.

Having carefully considered the evidence I have concluded the respondent did not act unfairly in all the circumstances. The claim by the applicant has not been made out. An order dismissing the application will now issue.

Appearances: Mr S M Linn appeared on behalf his own behalf.

Mr C Keys appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Scott McEwan Linn

and

Obion Pty Ltd Trustee For The Usukan Trust, Trading as Personal Touch Caterers.

No. 1633 of 1997.

23 January 1998.

Order.

HAVING heard the applicant on his own behalf and Mr C Keys on behalf of the respondent now therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application shall be and is hereby dismissed.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ronald Lukman

and

Pac-Am Restaurants (WA) Pty Ltd.

No. 2180 of 1997.

23 January 1998.

Order.

WHEREAS the parties to this matter reached a resolution of all issues arising from and in relation to the contract of employment which existed between them, at a conciliation conference pursuant to section 32 of the Industrial Relations Act, 1979 held before me on 9 January 1998; and

WHEREAS the parties agree that the resolution agreed upon is to be a bar to any other claims or counterclaims, in any jurisdiction; and

WHEREAS the parties agree that the terms of the resolution are to be kept confidential; and

WHEREAS the parties agree that subject to the terms of the resolution being given effect, the claim is to be finalised by a consent order; and

WHEREAS the applicant has advised that the terms of the resolution have been given effect;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT each party shall keep confidential the terms of resolution agreed upon unless disclosure is required by law.
2. THAT this application shall be and is hereby discontinued by leave with effect on and from the date of this order.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael David Morgan

and

Keyros Pty Ltd Trading As Port Hedland Security.

No. 731 of 1997.

24 December 1997.

Reasons for Decision.

COMMISSIONER S A CAWLEY: This application is brought pursuant to section 29(1)(b)(ii) of the (WA) Industrial Relations Act, 1979 as amended ("the IR Act"). By it Michael David Morgan ("the applicant") claims he has been denied a contractual benefit due under a contract of employment with Keyros Pty Ltd Trading As Port Hedland Security ("the respondent").

The applicant says he was employed as an emergency services officer by the respondent from 15 October 1996 to 21 February 1997 when the contract was terminated by him with one week's notice. The applicant claims that the respondent, without authority and unlawfully, deducted a total of $846.00 from his final remuneration payment. According to the applicant the respondent did this on the basis that during the employment the applicant attended various training courses in paid time (amounting to 72 hours) which payment the respondent asserted it was entitled to recoup, and did so at the hourly rate of $11.76 from the final payment made to the applicant. The applicant claims he is due a total of $846.00 from the respondent on this basis. The claim as filed also adverts to the possibility of some other unspecified benefits on account of prospective developments.

No answers were filed until the matter was listed for hearing. The respondent then raised the question of jurisdiction on the grounds that the contract of employment giving rise to the employee-employer relationship between the applicant and the respondent was bound by a workplace agreement registered under the (WA) Workplace Agreements Act 1993 ("the WPA Act"), which agreement, the respondent said in its answers, "makes provision for dispute resolution and provides for Arbitration of disputes by either The Regional Industrial Inspector—Department of Productivity and Labour Relations—Karratha or Industrial Registrar—Western Australian Industrial Relations Commission—Karratha". By the time of hearing these grounds had changed somewhat but this is dealt with subsequently. The applicant maintained there was jurisdiction for the Commission to deal with the claim.

The parties agree that a workplace agreement between them was registered by the Commissioner of Workplace Agreements in 1996 and that the contract of employment it bound ended in February 1997. The dispute as to jurisdiction for the Commission to deal with the applicant's claim of denied contractual benefits is not founded on whether a workplace agreement between these parties was registered but the effect of a specific provision within it and the effect on the standing of the agreement as a result of the contract of employment ending.

Before going to these arguments, I note section 26A(a) of the IR Act precludes the Commission in the course of an exercise of the jurisdiction conferred in section 23 from receiving in evidence or informing itself of any workplace agreement or any provision of a workplace agreement registered by the Commissioner of Workplace Agreements. But as the hearing here is limited to the question of whether or not jurisdiction exists, then the preclusion in section 26A(a), concerned as it is with the exercise of power in the event of jurisdiction, does not apply. The registered workplace agreement was accepted into evidence for the purpose of considering the question of jurisdiction.

It appears registration occurred on 20 November 1997 with the term of the agreement to expire on 14 October 1998. The agreement contains a provision headed "Training and Qualifications"; this, it seems, goes to the substance of the applicant's claim and thereby was not canvassed in the hearing. The provision referred to in the respondent's answers as filed was

however. Both the applicant and the respondent made submissions on it in relation to the question of jurisdiction. In full it is as follows.

> **DISPUTE RESOLUTION**
>
> Any disputes relating to the meaning, effect or conditions of this agreement, including any provisions implied, will in the first instance be endeavoured to be resolved inhouse i.e discussed between the management and the employee. Management are to provide a written decision on the matter and a copy is to be handed to the employee.
>
> **ARBITRATION**
>
> In the event that a mutual agreement cannot be achieved between the parties, either party can seek to have the matter arbitrated by an individual person.
>
> The nominated arbitrator is either—
>
> Regional Industrial Inspector—Department of Productivity and Labour Relations—Karratha
>
> **OR**
>
> Industrial Registrar—Western Australian Industrial Commission—Karratha
>
> Either party can refer a question or dispute for arbitration to the abovementioned and both parties agree to accept the decision of the arbitrator as final and binding for the purpose of this agreement.
>
> Rights of appeal may be addressed through the formal Processes of Western Australian Industrial Commission.
>
> Any costs associated with the arbitration process, (nominated arbitrators), will be borne by each respective party.
>
> **DISPUTE RESOLUTION**
>
> Any costs associated with rights of subsequent appeal will be apportioned at the rate of 50% of costs of the successful party, to be incurred by the unsuccessful party to the appealed action, or in the event of a withdrawal, to the party withdrawing the action.
>
> In the event of an equal or balanced decision, each party, will bear their own respective costs.

The argument put by the respondent at the hearing differed from its answers as filed in that where, effectively, it was claimed then that the dispute resolution procedure precluded any role for the Commission, it now says that the provision for recourse to the Commission is ultra vires. The respondent's submissions in support of this were succinct. It says that there is in existence a workplace agreement registered under the WPA Act, with that legislation, per section 4, overriding the IR Act. Thus it is said there is no jurisdiction for the Commission arising under section 23 of the IR Act, an exclusion confirmed by section 7C of that legislation. The respondent further says that while the employment has ended it is quite clear that this fact does not affect the standing of the registered workplace agreement and any accrued rights arising under it. The respondent says that while the WPA Act is silent on the effect of determination of employment covered by a registered workplace agreement other than by the effluxion of the term of the agreement per section 19, to conclude other than the respondent says as to ongoing rights would make a mockery of section 50 of the WPA Act which provides a right to apply to the Industrial Magistrate for enforcement in claims of a breach of contract. The respondent acknowledges the provisions in the registered workplace agreement for rights of appeal to the Western Australian Industrial Relations Commission but says these could have no effect because, being contrary to the WPA Act, it is ultra vires.

The applicant, however, says there is jurisdiction for the Commission to deal with this claim notwithstanding that a workplace agreement between the parties was registered under the WPA Act. Much of the applicant's argument went to questions about the dispute resolution provisions and the termination of employment in relation to the standing of the registered workplace agreement.

Before dealing with these it is noted that by sections 16 and 21 of the WPA Act it is a requirement that any workplace agreement which is sought to be registered, "must provide for resolution of certain disputes".

Section 21(1) and (2) are as follows.

> **21.** (1) A workplace agreement must set out provisions for dealing with any question or dispute that arises between the parties about the meaning or effect of the agreement, including any provisions implied in the agreement by the *Minimum Conditions of Employment Act 1993*.
>
> (2) The provisions referred to in subsection (1) must —
>
> (a) confer a right on any party to refer to arbitration a dispute of the kind described in that subsection;
>
> (b) specify the means for appointing a person or persons to conduct an arbitration referred to in paragraph (a), and for making any new appointment that may be required; and
>
> (c) contain an undertaking by the parties to accept the arbitrated decision as final and binding for the purposes of the agreement, but subject to section 64 (3).

Section 64(3) refers to the Supreme Court and its powers with respect to arbitration pursuant to Part V of the Commercial Arbitration Act 1985 being powers to be applied under the WPA Act with respect to any arbitrators or arbitrations under a provisions described in section 21.

The applicant's submissions on the dispute resolution procedure in the registered workplace agreement and the question of jurisdiction can be summarised as follows. The substantive issue sought to be determined by the applicant was raised with the respondent prior to the termination of the contract when he clearly had a right to access the dispute resolution procedure and the employer had an obligation to follow that procedure. The respondent, by failing to fulfil its obligations under the dispute resolution procedure, is now seeking to deny the jurisdiction for the Commission which the parties had agreed, and expressed it terms, was to be available; albeit the applicant acknowledges sections 7F and 7G of the IR Act with respect to this.

The applicant went on to question the validity of the dispute resolution provision on the following bases. He says the legislative requirement for nomination of a "person" or "persons" as arbitrator was not met in that the agreement specifies the office of Regional Industrial Inspector—Department of Productivity and Labour Relations—Karratha or the office of Industrial Registrar—Western Australian Industrial Relations Commission—Karratha as the nominated arbitrator/s. He says it is a matter of law that for a nominated arbitrator to have standing in a matter of this kind that the named "person" must have consented to that nomination: that is, absent that consent the nomination can have no force. The applicant went on to say it seems there was no consent given here. He also says there is no ability under the IR Act for an office holder such as a Deputy Registrar, the office being established under the IR Act, to function as an arbitrator pursuant to a registered workplace agreement. And further, the applicant says there is no ability under the IR Act for an office holder such as an Industrial Inspector (who has standing for the purpose of taking enforcement proceedings) to function as an arbitrator.

The applicant also submits that despite the obligation on both parties to accept any arbitrated decision under the provision, there is then reference to the "rights of appeal" through "the formal Processes of Western Australian Industrial Commission". This, says the applicant, clearly contravenes both the IR Act and the WPA Act and as such is ultra vires. Thus, according to the applicant, the dispute resolution procedure in the workplace agreement is fundamentally flawed and should not have been registered. But, he says, the fact that it was registered must mean that the applicant is entitled to the rights expressed therein, including access to the Commission or if the registration is invalid, it cannot preclude access to the Commission.

The applicant also raised matters going go the termination of the contract of employment between the parties in February 1997 and the question of jurisdiction. Section 19(4) of the WPA

Act is referred to in this respect. That subsection is as follows—

(4) On the expiry of a workplace agreement this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to —

(a) another workplace agreement; or

(b) some other arrangement between the parties provided for in the expired workplace agreement.

The applicant says if the termination of employment means that the registered workplace agreement no longer has force or has expired, then any outstanding benefits due under its terms must be an "industrial matter" for the purposes of the Commission's jurisdiction.

The applicant says further that there is an imperative with respect to this in that if it is argued (as the respondent did) that he has an avenue for redress under section 50 of the WPA Act to the Industrial Magistrate with respect to his claim of a denied benefit, this has been effectively disposed of by the requirement in section 54 of the same Act that any person who brings such a claim for enforcement must include in the claim a certificate which states either that there is no provision in the workplace agreement for resolution of the dispute or, if there is, that the claimant has complied with them as far as possible. That is, the registered workplace agreement provides for access to the Commission which, if not allowed, would result in a bar to the applicant proceeding in the Industrial Magistrate's court because he would not be able to produce the requisite certificate.

And the applicant says that as the substantive claim only arose as a dispute on termination of the contract of employment, by its failure to respond to the applicant's earlier query on the matter or to afford him recourse to the dispute resolution process, the respondent has conceded, effectively, that the termination of employment ended its obligations under the registered workplace agreement. Accordingly says the applicant, the respondent has no grounds for now denying the Commission has jurisdiction.

Having considered all the submissions, the relevant terms of the registered workplace agreement and the relevant legislation I have concluded as follows.

The jurisdiction of the Commission is founded in section 23 of the IR Act. It provides that, subject to the Act, the Commission "has cognisance of and authority to enquire into and deal with any industrial matter". That section goes on to provide for express exclusions from the jurisdiction. For this matter, though, the relevant exclusion provisions are contained in Part 1A of the IR Act. Section 7A of this Part provides that without limiting the other provisions in it, the IR Act has effect subject, however, to the WPA Act. Section 7C(1)(a) and (b) of this Part precludes any matter that is part of the relationship between an employer and employee party to a registered workplace agreement being an industrial matter or capable of being agreed to be an industrial matter of capable of being determined under section 24(1) of the IR Act from being an industrial matter. Section 7C(3) extends the preclusion in subsection (1) where a registered workplace agreement has expired and where there is a replacement agreement registered or an arrangement between the parties is provided for in the expired workplace agreement "except to the extent that the employer and any employee agree that any matter is to be treated as an industrial matter between them."

But in this case the term of the registered workplace agreement has not expired. The contract of employment it governed has ended. The termination of a contract of employment is the subject of section 14 of the WPA Act. It effectively expresses in subsection (1) that the end of a contract of employment results in a registered workplace agreement having no application (albeit still registered) unless there has been recourse to the enabling provision in subsection (2) subject to subsection (3) which provides that the ending of the contract of employment does not end any rights or obligations in the registered workplace agreement to take effect after termination of the employment. There is no express reference to rights and obligations which have arisen under the contract of employment prior to its termination but there is nothing to be read into this in my view. An existing right such as a benefit arising out of service (e.g. an annual leave entitlement) is not disposed of by virtue of an end to the employment contract.

It is noted that in this respect the applicant says that as he raised the issue the subject of his substantive claim with the employer prior to termination, then his right to access the dispute settlement provision as expressed in the registered workplace agreement was activated. And, in the absence of the employer accepting its responsibilities with respect to the dispute resolution provision to date, the applicant has a right per the registered workplace agreement to now access the Commission for determination of the dispute. But, and notwithstanding the other significant elements of the dispute resolution provisions which could give rise to questions as to its validity, it is quite clear that that part of the provision which purports to confer a right of access to the Commission on the parties to the registered workplace agreement is ultra vires. That is, the agreement between the parties to the registered workplace agreement in this respect is contrary to the law and thereby is void. It makes no difference whether or not the term of the registered workplace agreement has expired or the contract of employment it governed is ended.

The applicant, relying on the obligations in the WPA Act for the Commissioner of Workplace Agreements to be satisfied before registration that the document sought to be registered contains, among other things, dispute resolution provisions, says that in this case the registration should not have occurred and must collapse. Whatever the merit of this argument, however, the validity or otherwise of a registration of a workplace agreement is not a matter for which the Commission can determine.

So far as the applicant's argument is that the inability of the applicant to have the dispute resolution provisions apply with respect to his substantive claim because first, the prescribed provision in the registered workplace agreement amounts to an unlawful provision incapable of constituting a right and, second and in the alternative, the unwillingness of the employer to follow it, acting as a bar to the applicant taking his claim to the Industrial Magistrate's court, I make the following observations. While the matter of any certificate required in a particular case is one for the Industrial Magistrate, it seems to me that where it is established as fact that a dispute resolution provision which has not been followed for either of the reasons advanced by the applicant, it is unlikely that the WPA Act could be read so narrowly on the matter of provision of a certificate so as to constitute a bar to having a claim for a contractual benefit determined. But, in any event, such a prospective outcome can not be said to give rise to a jurisdiction for the Commission in this case.

Having particular regard for the provisions of the legislation governing the Commission and in relation to this registered workplace agreement, I have concluded there is no jurisdiction to enquire into and deal with the claim raised by the applicant. An order to that effect will now issue.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael David Morgan

and

Keyros Pty Ltd Trading As Port Hedland Security.

No. 731 of 1997.

24 December 1997.

Order.

HAVING heard Mr A Lovell on behalf of the applicant and Ms C Rosair (of counsel) on behalf of the respondent, now

therefore I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT this application shall be and is hereby dismissed for want of jurisdiction.

(Sgd.) S.A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hazel Valerie Oxley

and

Kraft Foods Ltd.

No. 1835 of 1997.

23 December 1997.

Order.

WHEREAS the parties to this matter resolved all differences between them in relation to the contract of employment which existed between them; and

WHEREAS it is a condition of the agreement between them that the terms of resolution be kept confidential and that the application be dismissed subject to the terms of resolution being executed; and

WHEREAS the Commission is satisfied that no reason exists not to proceed to dismiss the application by consent;

NOW THEREFORE I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979, do hereby order —

1. THAT the terms of resolution of all issues arising from or in relation to the contract of employment between Hazel Valerie Oxley and Kraft Foods Ltd are to be kept confidential by each party and will not be disclosed to a third party except as required by law.
2. That this application be and is dismissed with effect on 23 December 1997.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Carl Pearson

and

J & R Sacca Poultry

No. 1545 of 1997.

1 December 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: The application before me is one which, on its face, alleges that the applicant Mr Pearson was, firstly, unfairly dismissed from his employment with the partners J. and R. Sacca and, secondly, that arising out of that dismissal he did not receive a benefit to which he was entitled according to his contract of employment.

At the commencement of proceedings the commission established that, notwithstanding the application as filed alleges that Mr Pearson had been constructively dismissed, his claim is that the monies paid to him upon the termination of his employment are wrong and he has not been allowed monetary benefits he asserts are due to him.

Mr Pearson seeks to recoup the sum of one weeks wages which he asserts the respondents wrongfully deducted from monies which were otherwise due to him pursuant to his contract of employment. And further, Mr Pearson asserts that he was dismissed from his employment without the required period of one weeks notice from the respondents and therefore claims that the respondents are obligated to pay him a further one weeks wages which they failed to do.

The respondents deny that Mr Pearson was dismissed from his employment and allege that he abandoned his employment and did not provide one weeks notice of his intention to terminate the employment. According to the respondents, the failure of the applicant to give the required notice entitled them to deduct one weeks pay from the monies otherwise due to Mr Pearson.

For the reasons which follow it is not necessary to determine which party terminated the employment as it is irrelevant to the disposition of the claims made.

The application before the Commission is one authorised by s.29(1)(b)(ii) of the Industrial Relations Act, 1979 ie—

"(1) An industrial matter may be referred to the Commission—

(a) .....

(b) in the case of a claim by an employee—

(i) .....; or

(ii) that he has not been allowed by his employer a benefit not being a benefit under an award or order, to which he is entitled under his contract of service,

by the employee."

It is well settled that the entitlement of an employee to pursue a claim by application to the Commission is limited to a benefit of a kind ".... to which he is entitled under his contract of service" that is, a benefit the right to which is bestowed by a term of the contract of employment.

Mr Pearson informed the Commission from the bar table that there had been no discussion at the time of his engagement, nor during the course of his employment, regarding a period of notice, or a payment in lieu thereof, being required to terminate his employment. The applicant told the Commission that his claim is based on the assumption that one weeks notice, or a monetary payment in lieu thereof, is an automatic right applicable to an employment relationship.

Ms B.S. Sacca—Dinkgreve testified that she interviewed Mr Pearson for the position of employment in which he had been subsequently engaged and says that she then informed him he would be required to give a minimum of one weeks notice to terminate his employment. Mr J. Sacca, a respondent, testified that he engaged Mr Pearson following upon his daughter, Ms Sacca-Dinkgreve having spoken with Mr Pearson, at which time he stated to him to the effect that each party would be required to give the other party one weeks notice of an intention to terminate the employment. No evidence was lead from either Ms Sacca-Dinkgreve or Mr Sacca which showed any discussion occurred, or any arrangement was entered into, with Mr Pearson regarding either party to the employment relationship being able to, or being required to, end the relationship by a terminating party paying to the other party what in effect is damages of one weeks pay in lieu of giving one weeks notice.

I am satisfied that when Mr Pearson accepted employment with the respondents it had been made known to him that it was a condition thereof that either party would be required to give one weeks notice to terminate the employment.

There is no evidence of any additional arrangement involving the forfeiture by Mr Pearson, or the payment by the respondents, of one weeks wages in lieu of giving and observing a period of notice to terminate the employment. Hence I find that such was not a term of the contract of employment.

There is no dispute that upon the termination of the employment Mr Pearson became entitled to the sum of $453.35 on account of annual leave not taken. Correspondence to him dated 3 August 1997 (exhibit 1) indicates that is so and confirms the weekly wage of Mr Pearson to be $340.00 and further confirms that the respondents deducted such a sum, together with an undisputed amount, from the $453.35 due to

Mr Pearson. Had it been that Mr Pearson terminated the employment there was no term of the contract of employment which required Mr Pearson to forfeit the one weeks pay of $340.00 and therefore it was wrongfully deducted from the money benefit due and payable to him. The Commission will order that he be paid the $340.00 due to him.

Conversely, were it the case that the employment had been terminated by the respondents without the required notice, Mr Pearson would have no right to a payment in lieu of notice for the reasons given (supra). His claim which is so based is therefore without foundation.

Appearances: Mr C. Pearson appeared on his own behalf.

Mr D. Clarke appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Carl Pearson

and

J & R Sacca Poultry.

No. 1545 of 1997.

20 January 1998.

Order.

HAVING heard Mr C. Pearson on his own behalf and Mr D. Clarke on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the partnership of J & R Sacca pay to Carl Pearson $340.00; and

THAT the partnership of J & R Sacca shall make the said payment to Carl Pearson within 21 days from the date of this order.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

R. B. Robertson

and

Kraft Food Ltd.

No. 1494 of 1996.

COMMISSIONER R.N. GEORGE.

23 January 1998.

Reasons for Decision.

THE COMMISSIONER: By this Application Mr Raymond Brian Robertson (hereinafter referred to as the Applicant) claims that he was unfairly dismissed from his employment with Kraft Foods Limited (hereinafter referred to as the Respondent). The remedy sought is reinstatement without loss of entitlements or, in the alternative, an order for compensation in an amount equivalent to six months remuneration quantified as being a sum of $26010.00.

The facts as I find them to be on the evidence can be summarised as follows.

The Applicant commenced employment with the Respondent on 12 November 1979 as a Retail Sales Representative. In or about 1982 the Applicant transferred to the Food Service Division of the Respondent and by way of promotion progressed to the positions of Food Service Supervisor (late 1982), Food Service Sales Manager (1983) and State Manager, Food Service (1985). The Applicant occupied the latter position until 31 August 1995 when his appointment as State Manager Food Service came to an end as a consequence of his acceptance of an offer of a lower position as Manager Coffee, Western Australia and South Australia, commencing on 1 September 1995. While the Applicant sought at one point to present this as a recognition of his good work in the Respondent's coffee business (transcript p.55/56) it was conceded that it was in fact as a consequence of his poor performance as State Manager, Food Service. The question of the Applicant's performance in that position was first raised with him in 1992 at which time Mr John Ubaldi, the then Director of Food Service, wrote to the Applicant raising concerns about the "state of the business" (See Attachment JU1 to the Affidavit of John Ubaldi—Exhibit L28) and came to a head in the period March/August 1995. In February 1995, a performance appraisal for the year 1994 was conducted and the Applicant was given a negative rating. This was despite the fact that he was still considered to be carrying out the requirements of the position. It was noted at that time that the Applicant was spending a disproportionate amount of effort in what was referred to as the coffee business. As a consequence he was requested to reduce his involvement in the coffee business and to concentrate on the food service business for which he was responsible. The work associated with the coffee business was allocated to Mr Jean Marc Debuf who was subordinate to the Applicant. The Applicant was also requested to improve aspects of his work relating to administration and reporting.

At a meeting in Melbourne in March 1995 Mr Debuf initiated discussions with Mr Mark Edward Franks, the Food Service Business Manager for the Respondent, about concerns in relation to the manner in which the Respondent's business was being run in Perth and particularly the lack of involvement by the Applicant in its operation. While Mr Debuf reported directly to the Applicant on day to day matters, the work of the food service business was divided into two geographic territories. While there was some overlap the Applicant dealt largely with customers in one territory and Mr Debuf dealt largely with customers in the other territory. On Mr Debuf's evidence he was continuously being contacted by the Applicant's customers to follow up requests and product complaints the Applicant had failed to deal with or had taken too long to deal with. In general terms Mr Debuf expressed concerns about communication problems with the Applicant, complaints from customers and lack of leadership or guidance. Mr Debuf also reported to Mr Franks that members of the trade had indicated to him that the Applicant had other business interests which impacted on his ability to carry out his obligations to the Respondent. Mr Debuf had also noted that the Applicant was spending time on activities associated with private interests in the food and cafe business.

In May 1995 Mr Debuf attended a meeting of Countrywide Western Australia, a group of independent distributors who purchase products from Kraft for distribution throughout Western Australia. The relationship with Countrywide was said to be important in the context of the Respondent's policy to focus on distributors. Also in attendance at that meeting was a Ms Sharon Reid who had been appointed in January of that year to the position of National Account Manager—Countrywide. In that capacity she reported directly to Mr Franks. It was the evidence of Mr Debuf that Ms Reid spoke to distributors at the Countrywide meeting about what were considered to be poor figures for Western Australia and invited questions or advice of any problems. This resulted in open criticism of the Applicant in relation to his contactability, lack of service and favouritism towards some distributors. While this criticism was led by one person in particular who was said by the Applicant to be critical of all suppliers, his comments were echoed by other distributors who were also critical of the Applicant.

Ms Reid also gave evidence which supported what Mr Debuf had said about events at the Countrywide meeting. According to Ms Reid, at the time the meeting was held Countrywide sales nationally were down 4% and in Western Australia they were down 30%. If the Western Australian result was deleted from the equation, sales in the rest of Australia were up by 6%. Approximately one half of the 16 to 18 Countrywide members present at the meeting expressed similar concerns about the Applicant. Ms Reid also said that she had difficulty contacting the Applicant before the meeting and as a consequence had no opportunity to have prior discussions with him about issues which he may have considered to be relevant.

Due to her concerns about the level and nature of complaints raised at the Countrywide meeting Ms Reid took the matter up with her supervisor, Mr Franks, in Perth on the following Monday and the issues raised were discussed by Mr Franks with Ms Reid and the Applicant. Mr Debuf was also told by Mr Franks at that time that he would be following up the matters raised by him in March.

In June 1995 Mr Franks attended the National Conference of Countrywide in Queensland along with a number of Western Australian members of the Countrywide Group. At that conference the Chairperson of the Western Australian Countrywide Group, who was also a National Director, Ms Richards, expressed to Mr Franks her concerns about the Applicant and advised that a number of members were reluctant to do business with the Respondent because of his performance. At least two other members advised Mr Franks that they previously had a good relationship with the Applicant but that the Respondent was currently seen as a "joke" (Exhibit L25 p.3) and that if it wasn't for Mr Debuf no members would deal with the Respondent at all. It was also confirmed by the National Director of Countrywide, Mr Bourne, that the Respondent had significant problems in Western Australia that were affecting the relationship between it and Countrywide.

In June 1995 the Respondent held a meeting in Victoria attended by all its State Managers. At that time Mr Franks met separately with the Applicant to discuss the concerns expressed at both the May and the June meetings of Countrywide. The Applicant was informed by Mr Franks that it was his intention to conduct trade interviews to confirm what problems were arising with the Respondent's customers. Mr Franks also requested that the Applicant take steps to repair the damage to the Respondent's relationship with Countrywide by visiting its State Manager, its Chairperson and various individual members.

It was about this time that the Applicant was offered a position by Mr Franks and Mr Ubaldi as National Sales Manager for Coffee in Victoria. The reason for this was said by Mr Ubaldi to be—

- to assist the Applicant to "revitalise his career" (Exhibit L28 p.2);
- to release the Applicant from Food Service in Western Australia and give someone else the opportunity to run that part of the business; and
- to set up a Victorian coffee business model similar to that of Western Australia.

The Applicant declined the position for reasons associated with his mothers' health. It is Mr Ubaldi's evidence that on being advised of the Applicant's decision he indicated to the Applicant that he expected an improvement in performance in his existing position.

In August 1995 Mr Franks conducted his trade interviews. These included an interview with a Ms Richards in her capacity as a Director on the National Board of Countrywide, Chairperson of Countrywide Western Australia and owner of a distributorship in Merredin, Western Australia.

The criticisms raised by Ms Richards in relation to the Applicant included—

- his indifference and ineffectiveness as State Manager;
- that there was little or no contact by the Applicant with her in her capacity as either a Director or a distributor;
- his poor follow up and failure to return phone calls;
- that he was seen as a "joke" (Exhibit L25, p.5) in the industry;
- his inconsistent treatment of distributors;
- noticeable absences of the Applicant at recent trade shows; and
- his apparent other business interests outside of the Respondent.

Mr Franks also met with the State Manager of Countrywide, Mr Boston, and other member distributors. Mr Boston confirmed the group's general concerns about the Applicant's performance, his lack of professionalism and lack of follow up. He also confirmed that he had not been contacted by the Applicant subsequent to the May and June meetings of Countrywide, despite instructions given to the Applicant by Mr Franks following both meetings. Of the other members contacted one had his account serviced by Mr Debuf and had no complaints while the other, who dealt with the Applicant, was particularly critical of his performance. The criticisms of the Applicant during the trade interviews were consistent with those raised on other occasions.

On 17 August 1995 Mr Ubaldi met with Mr Franks and the Applicant in Perth to discuss the Applicant's performance and the outcome of the trade interviews conducted by Mr Franks. At that meeting Mr Franks outlined the complaints raised about the Applicant and asked for his response (See Exhibit L25 p.7/10). The Applicant was also asked whether he had any business interests which conflicted with the interests of the Respondent and on several occasions whether he had any interests in coffee businesses or shops. Both those questions were met with a denial and it was the evidence for the Respondent that the only interest to which the Applicant admitted was an "arms length" relationship with a business in which his brother in law was involved and in which Kraft equipment had been placed. This differs from the evidence of the Applicant who said that he told Mr Ubaldi and Mr Franks of coffee and pastry interests through two shops with which he was involved. At the conclusion of their meeting the Applicant conceded that he had let Mr Ubaldi, Mr Franks and his employer down and that the opinion of him held in the trade reflected on the Respondent. The meeting closed with the Applicant being told to take the remainder of that day and the following day, which was a Friday, off work to consider the matters raised with him and to also consider his future with the Respondent.

On 24 August 1995 Mr Franks again met with the Applicant together with Mr Arthur Ivan Arnold, the Melbourne based Corporate Personnel Manager of the Respondent. At that meeting Mr Franks advised the Applicant that he was to be removed from the position of State Manager, Food Service. He was also told that the position of Manager Coffee was being considered and that if he was interested he should contact Mr Ubaldi and convince him that he should be offered the position. This was followed by a telephone link up with Mr Ubaldi during which Mr Ubaldi discussed with the Applicant his interest in the coffee business and advised that he was prepared to offer him the position of Manager Coffee, Western Australia/South Australia, if Mr Rodney Andrew Hannington, the Coffee Business Manager for the Respondent, agreed. He was also told that a significant improvement in performance would be required and that he would have to comply with specified guidelines and conditions if he wished to take on the position. Mr Hannington subsequently met with the Applicant in Perth on 28 August 1995 to explain the requirements of the position. At that meeting Mr Hannington told the Applicant of the expectations of the Respondent and that he was "on notice from his previous position" and was on his "last chance" (Transcript p.227 and p.264). He also had explained to him the parameters of the role as Manager Coffee and was provided with a copy of those parameters in writing (Exhibit L20). The Applicant accepted the appointment to the new position with effect from 1 September 1995 reporting initially to Mr Hannington and later to a Mr John Canearth Williams who took over as National Sales Manager with responsibility for coffee in early December 1995. While it is not entirely clear from the evidence, it would seem that the Applicant's employment with the Respondent might have come to an end at that time had he not accepted the position of Manager Coffee, Western Australia/South Australia.

The fact that the Applicant's new appointment was a demotion and the circumstances leading to that demotion were not disputed by the Applicant and witnesses for the Respondent were not cross examined in relation to those issues in any detail for reasons that will be referred to later in these Reasons for Decision.

On the evidence before the Commission it is apparent that despite the change in the Applicant's contract of employment and his awareness of the deficiencies in his performance which led to that change, those deficiencies were not rectified and continued to have an impact on the Respondent's business. This was evidenced by—

1. The Applicant's continuing failure to work in accordance with the role and parameters explained to him

by Mr Hannington and set out in writing prior to him commencing in his new position as Manager, Coffee (Exhibit L20).

2. The Applicant's failure to follow up or address specific business opportunities set out in point 3. of the memo to him from Mr Hannington dated 28 August 1995 (Exhibit L20).
3. Complaints from clients and the management of Tea and Coffee Supplies, the Respondent's distributors for the coffee business, about contactability and lack of action, follow up and customer service.
4. Continued difficulty in contacting the Applicant and his failure to promptly return calls or to return calls at all.
5. The Applicant's failure to work to strategy despite senior management working with and counselling him directly in that regard—eg the Moama Conference of managers in January 1996 where Mr Williams and Mr Hannington had "one on one" discussions with the Applicant away from the main group and a follow up session on the same issue in Perth following his performance appraisal in February 1996.
6. A thirty percent downturn in the Respondent's coffee business in Western Australia in March 1996 compared with the previous year. This was against the national trend and did not improve after March 1996 while the Applicant occupied the position of Manager Coffee.
7. The Applicant's failure to provide weekly call reports, which were an important management tool, on time or at all (See Exhibit L21).
8. The Applicant's February 1996 Performance Appraisal which rated his performance between unacceptable and marginal and his salary review which resulted with him receiving the minimum CPI adjustment only. Only two salaried employees out of approximately 700 received less.
9. The Applicant's failure to properly organise a promotion night for key clients, the press and senior management from Melbourne.
10. Failure to properly manage the placement and location of expensive coffee equipment provided free on loan to users of the Respondent's products.

While these matters were the subject of ongoing discussions with the Applicant by his direct supervisor, and for a time his direct supervisor and the person to whom that supervisor reported, there were no formal counselling sessions in the industrial relations sense that led to warnings of dismissal. Nevertheless it is clear on the evidence that the Applicant would or should have been aware that he was under scrutiny and that having once been demoted, continued poor performance would have severe consequences.

By May 1995 it had been decided by senior management of the Respondent that the question of the Applicant's continuing failure to meet the requirements of his contract of employment had to be dealt with. To that end both Mr Hannington and Mr Williams travelled to Perth to meet with the Respondent. Their first meeting took place on 8 May 1996 prior to the product promotion function earlier referred to. In the course of that meeting a number of issues were again raised with the Applicant including communication, contactability, uncertainty about the whereabouts of equipment, poor sales, frustration experienced by the distributors and his failure to work to strategy. At the conclusion of the meeting the Applicant was requested to review the strategies discussed at and following the Moama conference of January 1996 and to report the following day on his plan to correct the poor sales performance in Western Australia. The Applicant's response the following day was essentially that he would continue on his present course as he believed that would "get him back on strategy" (Transcript p.257).

As a consequence of these events the Applicant was told that he was to be removed from the coffee business and that Mr Williams was to replace him in the role of Manager. The Applicant was then given two options. The first was to resign from his employment with the Respondent and the second was to work in the office for a period of five weeks to clear up outstanding paperwork and what was described as an administrative mess. If he elected to accept the latter option the Applicant was told that his behaviour over that period would be monitored and Mr Hannington would re-consider his status. These were options that had been discussed by Mr Hannington and were approved by Mr Ubaldi prior to his visit to Perth as options to be put to the Applicant if appropriate. The Applicant was instructed to consider the options put to him and to meet with Mr Hannington and Mr Williams the following day, 10 May 1996, at about 9.00am, to give his response.

On Monday 10 May 1996 the Applicant did not attend the meeting as arranged and despite numerous attempts to contact him through his home phone, his mobile phone and his pager, there was no response. The first indication Mr Hannington received as to what was happening in respect of the Applicant was when he was phoned by Mr Arnold from his Melbourne office to say that the Applicant had contacted him by telephone at about 11.30am Perth time. By that time the Applicant's failure to follow the instructions given to him the previous day or to make contact with Mr Hannington had been discussed by Mr Arnold with Mr Ubaldi and the Respondent's Director of Human Resources. It had been decided in the course of those discussions that in view of what had occurred the Respondent could "no longer tolerate his continuing with the organisation" (Transcript p.363).

When Mr Arnold spoke with the Applicant he was told by the Applicant that he had been sacked by Mr Hannington. Mr Arnold confirmed that this was not the case but also told him that he had now "clearly come to the end of the road with Kraft" (Transcript p.364-365) and should meet with Mr Hannington to resolve the issues. The Applicant refused in his conversation with Mr Arnold to reveal his whereabouts other than to say that he was calling on clients and attending to work he had been unable to do the day before because of his meeting with Mr Hannington and Mr Williams. It was also during this conversation that the Applicant revealed for the first time to his employer his true date of birth which was 23 July 1941. This was raised in the context of the consequences for the Applicant if he was to be terminated just prior to his 55th birthday and the difficulty of finding other work at that age. Until that time it was understood, and the Respondent's records showed, that the Applicant was born in 1947 and that he was only 48. The Applicant sought in proceedings before the Commission to present this as an error in the Respondent's records. There was other evidence, however, that the date of birth of 23 July 1947 had been used on other official documents such as company records held by the Australian Securities Commission and on an application filed in the Federal Commission in relation to the termination which led to the proceedings now before the Commission which belie that contention.

On the afternoon of 10 May 1996, following his conversation with Mr Arnold, the Applicant did contact Mr Hannington who again sought to meet with him either at the office or outside. The invitation was rejected and despite continued attempts up until 11pm that night the Applicant would not respond to or return calls. As a consequence Mr Hannington and Mr Williams returned to Melbourne with the matter still unresolved.

On 13 May 1996 following continued unsuccessful attempts to contact the Applicant, a letter was couriered from Mr Arnold to the Applicant seeking a meeting in Perth on 16 May 1996. The letter confirmed that at that stage the Applicant's services had not been terminated and while payment of salary was to be continued he was asked not to undertake any work commitments during that week. The 16 May meeting was attended by the Applicant, Mr Hannington and Mr Arnold. At that meeting the performance issues raised in previous meetings were again discussed and it concluded with the Applicant being told that his services were to be terminated with effect from 26 July 1996. This date was chosen so that the Applicant's superannuation entitlements would not be adversely affected as would otherwise have been the case had he been terminated before reaching the age of 55 on 23 July 1996. The reasons for his dismissal and his entitlements on termination are set out in detail in a letter to the Applicant dated 17 May 1996 (Exhibit H6). Under the terms of the arrangement set out in that letter the Applicant was effectively given ten weeks notice of termination and paid an additional five weeks salary in lieu. Other entitlements were also paid out.

It should be noted that in recording the facts as they are found to be in this matter the evidence of the Respondent has been preferred where it is in conflict with that given by the Applicant. The evidence for the Respondent was consistent across a number of witnesses and having had the opportunity to observe those witnesses in the giving of their evidence I find no reason to doubt what was said. The evidence of the Applicant, however, demonstrated a pattern of deception in his dealings with the Respondent and in his outside business interests which raises doubts about his credibility. His evidence was also inconsistent and vague in some areas, particularly in relation to his outside business interests which he consistently denied existed in his discussions with the Respondent, and did not stand up well under cross examination.

While Mr Halliwell for the Applicant argued that performance issues which existed before 1 September 1995 when the Applicant was demoted should be ignored, as to do otherwise would amount to double jeopardy, I do not accept that to be the case. This argument was raised by Mr Halliwell at the outset of proceedings as a preliminary point at which time it was ruled that whether or not matters relating to the period prior to 1 September 1995 ought be taken into account and the weight to be attached to those matters would have to be determined on the basis of the totality of the evidence before the Commission. The Commission further observed that the principle of double jeopardy applies in the criminal jurisdiction to prevent a person being prosecuted twice for the same offence and was not relevant to the matter now under consideration. The principle of double jeopardy is described in Howard's Criminal Law, 5th Edition at p.22 in the following terms.

> "There is a principle of the criminal law that if an issue has been litigated between P and D and decided by a court of competent jurisdiction in favour of D, P cannot reopen that issue in another trial, either by way of repeating the same accusation or by way of making another accusation necessarily dependent on a resolution in favour of P of the disputed point which has already been decided once in favour of D."

This is not a retrial of matters previously before and decided by a court of competent jurisdiction. What is in question is the fairness or otherwise of the Applicant's termination effective from 26 July 1996.

In its ruling on the preliminary point the Commission went on to say "What is being tested here is whether his (the Applicant's) dismissal under his current contract of service is fair or otherwise and, if on the evidence events prior to August 1995 are seen to be relevant, that is a matter for the substantive proceedings." (Transcript p.20-21) In the knowledge of that ruling the Applicant chose not to challenge the evidence of his performance which led to his demotion on 1 September 1995. That evidence is reflected in facts recorded in these Reasons for Decision and in my view is a relevant consideration in the determination of the matter before the Commission.

The provisions of the now repealed section 23AA of the Industrial Relations Act 1979 (hereinafter referred to as the Act) apply to these proceedings. As observed by Fielding C. in *John Edwin Rowe and Barminco Pty Ltd*, "it is incumbent upon the Respondent to establish that there is a ground on which the Commission could find that the dismissal was justified. For these purposes , a dismissal is justified if there was a valid reason, or were valid reasons, to terminate the Applicant's employment connected with the Applicant's capacity or conduct or based on the operational requirements of the Respondent. To be valid in this context, the reason should be one which is sound, defensible or well founded (see: *Selvachandran v. Peteron Plastics Pty Ltd (1995) 62 IR 371, 373*). Whether that onus is satisfied depends to a large degree on a consideration of the circumstances leading to the termination of the Applicant's employment." (77 WAIG 2381)

In this case I am satisfied that there were valid reasons connected with the Applicant's conduct which provide justifiable grounds in the context of s.23AA of the Act for the action taken by the Respondent.

Those grounds are to be found in the Applicant's continuing unsatisfactory performance from approximately March 1995 when issues in that regard were first raised by Mr Debuf. It was not a question of the employee's ability to do the job for which he was appointed, as his capacity in that regard had been demonstrated over a number of years prior to 1995. It was rather the Applicant's continued refusal from that time to make himself accessible to the industry for which he was responsible and to carry out instructions given to him in that regard and in relation to other matters such as working to company strategy and attending to administrative tasks. This impacted on the Respondent's business to the point where sales were lost and there was strong criticism from the industry.

It was argued for the Applicant that he had never been formally counselled or warned that his continued employment was in question. In fact he claimed to be largely unaware of complaints about his performance. While it is true that there were no formal warnings as such, I do not accept that the Applicant as a senior manager with the Respondent was not aware that his performance was under scrutiny and that his failure to address his shortcomings would have severe consequences. In fact the Applicant was told of and acknowledged the reasons for his demotion in August 1995 and that it was an opportunity to revitalise his career and demonstrate that he could rectify those areas of his performance which were of concern. He was also told that he was on "notice" in relation to his performance as Manager, Food Service and as Manager Coffee, was on his "last chance". As stated by Fielding C. in *Van Witsen v. World Services and Construction Pty Ltd (1992)*

> "A person in a senior position such as the Applicant's cannot expect a second warning that his performance is less than satisfactory (See: Sewards v Cannon Copiers Australia Pty Ltd (1983) 5 IR 227, 232)."
>
> [72 WAIG 1849 at 1851]

Despite management setting clear parameters and guidelines to apply in his new position and working closely with him in his role of Manager Coffee, the same concerns which existed prior to his appointment to that position continued to be evident. This is despite those concerns being raised with him on a number of occasions. These occasions included—

- Meetings and conversations between the Applicant Mr Ubaldi, Mr Franks and Mr Arnold prior to him being removed from the position of State Manager Food Service.
- Discussions between the Applicant, Mr Williams and Mr Hannington at Moama in January 1996 and subsequently at the time of his performance review in February 1996.
- Memos and verbal discussions between the Applicant, Mr Williams and Mr Hannington.
- Meetings between the Applicant, Mr Williams and Mr Hannington on 8 and 9 May 1996.

In the end, when asked what he was going to do to address the issues of concern, particularly in relation to the drop in sales since his appointment as Manager Coffee, his response was that there was no need for change and that if he continued on his existing path this would eventually bring him back on strategy. Finally, when he was given the options of resigning or working in the office for a period of five weeks during which time his behaviour would be assessed and his status reviewed, he responded by making himself unavailable for contact and refused to attend meetings with senior management. In that respect the Applicant contributed to his own demise and was partly responsible for the Respondent terminating his services in the way that it did. Further, it came to the attention of the Respondent after it had been decided that the Applicant's services ought be terminated, that he had misled them in respect of his age and his business interests outside of his work for the Respondent. I am satisfied on the evidence, that the Applicant's outside business interests were significant and in some cases represented a conflict in interest (See for example the evidence of Mr Ubaldi at Transcript p.352/353). Although this information only came to the Respondent's attention after the decision to terminate his services, it is a relevant consideration in assessing whether the dismissal was justified (See Von Doussa J in *Lane and Others v Arrowcrest Group Pty Ltd (1990)* 99 ALR 45 at 74/5).

The test for determining whether a dismissal is harsh, oppressive or unfair is outlined by the Industrial Appeal Court in Ronald David Miles & Others T/A The Undercliffe Nursing Home v Federated Miscellaneous Workers Union of Australia

(1985) 65 WAIG 385. The question to be answered on that authority is whether the legal right of the employer to terminate the employment of an employee has been exercised so harshly or oppressively against the employee as to amount to an abuse of that right. Also of relevance are the decisions of the Full Bench of the Commission in *Margio v. Fremantle Arts Centre Press (1990) 70 WAIG 2559*, and *Shire of Esperance v. Mouritz (1991) 71 WAIG 891* which are authority for the propositions that an employee as far as practicable will not be dismissed without a warning as to the possibility of dismissal and that whether an employer in bringing about a dismissal adopted procedures which were fair to the employee is one element to be taken into account in determining whether the dismissal was harsh or unjust. Procedural unfairness of itself may result in a finding that a dismissal was harsh or unjust but this will not always be so and each case must be viewed on its own merits.

In the present case I am satisfied for the reasons set out above that the rights of the employer have not been exercised so harshly or oppressively against the employee that intervention by the Commission is warranted. The dismissal was not a summary dismissal but a dismissal with notice on terms that took into consideration the personal circumstances of the Applicant. To the extent that there was any procedural unfairness on the part of the Respondent, that unfairness was not such that it rendered the dismissal itself unfair.

Even if I am wrong in my conclusion that in all of the circumstances the Applicant's termination was justified, it is clear that reinstatement would not be a practicable remedy. This was the evidence of a number of witnesses for the Respondent and nothing was put by the Applicant to establish otherwise. Nor was there any evidence to establish loss or injury in support of the alternative remedy sought of compensation or of any attempt to mitigate any such loss (See the Full Bench of the Western Australian Industrial Relations Commission in *Bradley Ricard Smith and CDM Australia Pty Ltd*—Appeal No. 1310 of 1997 unreported).

Having regard for all of the considerable material before the Commission in this matter and for the reasons set out above, the Application is to be determined by an Order of dismissal.

Appearances: Mr G.G. Halliwell for the Applicant

Ms A. Colgate (of Counsel) and with her Mr D. Cronin and later

Mr A. Lucev (of Counsel) and with him Ms A. Colgate (of Counsel) for the Respondent

---

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

R. B. Robertson

and

Kraft Food Ltd

No. 1494 of 1996.

COMMISSIONER R. N. GEORGE.

23 February 1998.

Order.

HAVING heard Mr G. G. Halliwell on behalf of the Applicant and Ms A. Colgate (of Counsel) and with her Mr D. Cronin and later Mr A. Lucev (of Counsel) and with him Ms A. Colgate (of Counsel) on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 as amended, hereby orders—

THAT the Application be and is hereby dismissed.

(Sgd.) R. N. GEORGE,
[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ray Valentin

and

Quadrant Holdings Pty Ltd as Trustee for Quadrant Trust.

No. 2389 of 1997.

COMMISSIONER P E SCOTT.

23 January 1998.

Order.

WHEREAS this is an application pursuant to Section 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979; and

WHEREAS on the 22nd day of January 1998 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at that conference the parties agreed that the name of the Respondent should be amended to Quadrant Holdings Pty Ltd as Trustee for Quadrant Trust; and

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

THAT the named Respondent to this application be amended to Quadrant Holdings Pty Ltd as Trustee for Quadrant Trust.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christopher Walker

and

Hester Properties Pty Ltd.

No. 2214 of 1997.

13 January 1998.

Order.

WHEREAS the parties to this matter reached a resolution of the dispute between them at a conciliation conference pursuant to section 32 of the Industrial Relations Act, 1979 held on 9 January 1997; and

WHEREAS the agreement reached between the parties is in full and final settlement of all issues arising from or in relation to the contract of employment which had existed between them; and

WHEREAS the parties agree that the terms of the resolution between them should remain confidential between them; and

WHEREAS the parties agreed to the issue of a consent order finalising this matter; and

WHEREAS on the basis of the resolution of the dispute the applicant sought to discontinue the claim;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

1. THAT each party shall keep confidential the terms of resolution agreed between them other than any disclosure required by law.
2. THAT this application shall be and is hereby discontinued.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act, 1979.

Stefan Witt

and

David Adams.

No. 1817 of 1997.

19 January 1998.

Order.

WHEREAS this application was filed on 6 October 1997; and

WHEREAS by way of letters dated 1 December 1997 and 17 December 1997 the applicant was requested to confirm in writing that he intended to prosecute the claim; and

WHEREAS there was no response from the applicant within the times allowed or at all; and

WHEREAS the applicant was given notice that unless it was confirmed that he intended to prosecute the claim then the application may be discontinued by the Commission; and

WHEREAS there has been no response; and

WHEREAS having regard for the foregoing the Commission has concluded that the powers conferred by the Industrial Relations Act, 1979 should be exercised to finalise this matter by order;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 and specifically section 27(1)(a)(iv) do hereby order —

THAT this application shall be and is hereby dismissed for want of prosecution.

(Sgd.) S. A. CAWLEY,
[L.S.] Commissioner.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stefan Ziola

and

Red Shield Industries.

No. 1818 of 1997.

COMMISSIONER P E SCOTT.

29 January 1998.

Reasons for Decision.

By this application the Applicant claims that he has been unfairly dismissed from his employment by the Respondent. That employment commenced in June 1995 when the Applicant undertook a six months training period as a shop assistant. Prior to the conclusion of the six month training period the Applicant was advised that the Respondent was still uncertain as to the future of the Midvale store and therefore his appointment could not be confirmed, but it was confirmed soon after. He was offered and accepted a position as the manager of the Midvale Family Store which he was to run with the assistance of volunteers from time to time, and also some persons working on community service orders. The store was a very large one. The Applicant says that this is at least part of the reason for some of the difficulties he experienced.

The Applicant received warnings by letters dated 3 July 1996, 20 June 1997 and 24 June 1997. The Applicant says that he received all three letters in one envelope soon after the 24 June 1997. However, Robert Stone, the Retail Coordinator for the Respondent, says that each letter was provided to the Applicant soon after the warning was issued but that copies of the first two were also supplied in the envelope with the third letter as the Applicant said he had lost the first two.

The first letter of warning deals with the Applicant failing to open the store for business and he was reminded of the requirement for the store to be open during the specified trading hours. This letter also noted his late arrival on a previous Saturday. This letter contained, in clear terms, a first warning and advice that his attendance would be carefully monitored (Exhibit 2).

The letter dated 20 June 1997 deals with discrepancies in his store's till, one of $14.50 and another of $20.00. This letter contains a clear reference to this being the second warning (Exhibit 3).

The letter of 24 June 1997 relates to the sale of a lounge suite by the Applicant. According to the evidence of Robert Stone, the lounge suite should have been sold at a specialist location where antiques and the like are sold by the Respondent on the basis they will attract a greater return than in their family stores where prices are considerably less. Mr Stone says that he gave the Applicant a specific instruction that this lounge suite was not to be sold by him at that store but was to be held at the store until it could be collected and taken to the other store. However, the Applicant says that a customer offered him $700 for the lounge suite and he accepted a deposit for it. He says that he tried to contact Mr Stone but was unable to do so and the customer came back the next day. He says that he was entitled to sell goods collected from his area and have those sales credited to him for the purpose of profit bonuses. Mr Stone says that he had told the Applicant that as he had erroneously taken a deposit for the suite that he was to explain the situation to the customer and resolve it. The customer became annoyed when told by the Applicant the next day that he was not able to sell the suite to the customer and directed the customer to Mr Stone. The customer contacted Mr Stone who sought advice through the Ministry of Consumer Affairs. On the basis that a deposit had been accepted from the customer, Mr Stone felt there was no alternative but to proceed with the sale and the customer was able to purchase the suite for the $700 previously arranged. Mr Stone says that in this way the Applicant breached a direction from him, breached the policy of not accepting deposits, and did not accept the responsibility of explaining the matter to the customer as he ought. His actions resulted in the sale of the lounge suite for less than the price which the Respondent says it could have received by selling it from the other location. The letter which covers the warning on this matter says that the Applicant disregarded a directive to him not to sell the suite and accepted a deposit in direct contravention of the company's policy and, accordingly, he was given a final warning (Exhibit 4).

The final events in the Applicant's employment came about on the 9 and 10 September 1997 when Andrew John Batty, the Human Resource and Security Manager for the Salvation Army Family Stores for the Southern Region, and John William Batty, who was undertaking mystery shopping for the Respondent, visited Western Australia. Because of the similarity in the names of these two gentleman, both of whom gave evidence, for the sake of convenience I shall refer to them as the "HR and S Manager" and the "mystery shopper" respectively. The HR and S Manager gave evidence that his purpose was to visit all of the Respondent's stores in Perth and assess the stores' security. For example, whether their cash registers were locked, whether the staff were alert to shop theft etc. The mystery shopper was to undertake normal mystery shopping assessments in each of the stores.

The HR and S Manager and the mystery shopper arrived at the Midvale store at about 3.15pm on the 9 September 1997. The HR and S Manager says that they went into the store separately, and the mystery shopper selected something for $5.00. The mystery shopper gave the money to the Applicant who was engaged in conversation with another person away from the cash register. The Applicant did not process the sale through the cash register or provide the mystery shopper with a receipt. The mystery shopper left the store. The HR and S Manager gave evidence that he later observed the Applicant take the $5.00 to the register and place it on top of the cash register. The HR and S Manager then selected a torch priced at $1.00, he presented his $1.00 to the Applicant and when the till was opened by the Applicant, the Applicant put the $5.00 into the till along with his $1.00, but the $5.00 sale was not recorded on the till. The HR and S Manager was concerned that the $5.00 was not immediately put into the till and was not rung up. He noted a subsequent sale of $5.20 being made so that he would be able to identify the $1.00 sale which had been made to him and therefore, would be able to check later whether the $5.00 had been rung up at all.

On the basis of the HR and S Manager's concern, both he and the mystery shopper went back to the store the next day, 10 September 1997. The mystery shopper went into the store five minutes ahead of him. The mystery shopper selected some speakers priced at $20.00. The Applicant was on the telephone. The mystery shopper showed him the price of the goods and gave him the $20.00. The Applicant thanked him, and the mystery shopper departed. The HR and S Manager says that he observed the Applicant ring up $2.00 not $20.00, put the $20.00 into the till and take out $18.00 from the till and put it into his own pocket. On the basis of his concerns, the HR and S Manager reported the matter to Mr Stone.

The mystery shopper's evidence as to his own actions and observations concurs with that of the HR and S Manager. The Commission also received into evidence Family Store Appraisal—Mystery Shopping Forms completed by the mystery shopper relating to the incidents at the Midvale store on 9 and 10 September 1997 (Exhibits C & D respectively).

Mr Stone gave evidence that upon receiving the reports about the mystery shopping, he went to the store late in the afternoon of 10 September 1997 and advised the Applicant of the reports he had received. He checked what was called the journal roll, being the paper till tape which records transactions conducted through the cash register. He advised the Applicant that they would lock up the store and the Applicant was to come to the head office the next day at 9.00am.

The next morning at 9.00am, the Applicant attended as directed and was offered the opportunity to have a support person attend the meeting with him. He asked why it was necessary for such a person to be there—was he accused of anything? He eventually declined to have someone present. Apart from the Applicant and Mr Stone, the Respondent's Wholesale Coordinator, Brett Mulder, was present. Mr Stone presented to the Applicant the detail of the report provided to him and gave the Applicant the opportunity to respond. The Applicant's response was to the effect that he was often busy and, due to the size of the store, could not ring up every item and every sale but would ring them up later, and further that he had rung up the $20.00 as four amounts of $5.00 because at the time he went to ring them up he could not recall what the amount was. On the basis of—

1. the Applicant's clear breaches of procedures;
2. unsatisfactory responses by the Applicant; and
3. the fact that the Applicant had received three previous warnings,

Mr Stone terminated the Applicant's employment.

The Commission was presented with evidence of a memorandum dated 29 April 1996 (Exhibit E) and Minutes of Meetings of the 13 August 1996 and the 19 September 1996 (Exhibit F and G respectively). These documents contain reminders as to the correct sales procedures. It is said that the Applicant was reminded of the procedures to be followed in dealing with sales and recording them and that he failed to comply with those procedures. There was also evidence that on one occasion, when the Applicant was absent from his store, a relief person was sent in to replace him. That relief person is said to have contacted Mr Stone to report an unusual practice of a volunteer recording on paper transactions as they were made and putting the money in the till but not ringing the amounts up. When asked about this procedure, the volunteer was said to have advised that the Applicant would normally ring up those amounts later. Mr Stone says that he advised the Applicant the next day that everything needed to be done correctly although it is clear from the evidence of Mr Stone that he did not specifically raise with the Applicant the particular practice which was not acceptable but simply reminded him that the procedures had to be followed.

The Applicant says that the procedures of being required to record each purchase through the cash register, and provide a receipt to each customer are not practical or reasonable in a store of the size which he operated particularly when he was given no assistance. He says that Mr Stone and another member of management of the Respondent observed him conducting transactions via this procedure of putting money into the cash register later rather than at the time of sale and did not raise the matter with him. He said that they thereby tolerated, if not approved of, the procedure he used.

It is said by Mr Stone that the particular store, albeit acknowledged as a large one, has been in operation for 12 years with only one person in the store except for a short period when the store contained a salvage area, when two people were engaged. Mr Stone says that he has also managed that store on occasions and has been able to comply with the procedure. He says that it is important that not only are the records of the sales kept accurately for various purposes, but it is also important for customers to see that sales are properly conducted. It was not appropriate that money be pocketed from sales made, even if the money is to be put into the cash register at a later time.

The Applicant also called evidence from Peter Allitson Dawson who, for a period of 2 1/2 months, for one to two days per week worked as a volunteer in the Midvale store. He gave evidence of an incident involving another member of the management staff of the Respondent which he says resulted in his resigning as a volunteer. The Applicant says that following Mr Dawson's reporting of this matter to the Respondent's Melbourne office the Applicant received unfair treatment. The Applicant also made other allegations of unfair treatment by the Respondent.

As to the three warnings, the Applicant says that a week after the third warning, Mr Stone told him that they would start afresh and the Applicant believed that the warnings had been withdrawn and would not be relied upon in the future. He says that this occurred after the Applicant threatened to report the difficulties he was experiencing to the Melbourne office. He also says that he was offered a new contract which he signed on the 1 August 1997 and he says that it was in conflict with the Respondent's position that it still relies on the three warnings when it subsequently entered into a new contract with him. He thought the Respondent would not have entered into a such a contract with the warnings standing. The Applicant says that the Memorandum and the Minutes, which were Exhibits E, F and G, are fabricated and that parts of the evidence of the mystery shopper are true but the remainder is a fabrication.

The Applicant says that he has been unfairly dismissed and seeks an Order for compensation and other matters.

In claims of unfair dismissal it is for the Applicant to satisfy the Commission that the employer has so abused its lawful right to terminate employment as to warrant the intervention of the Commission.

Having observed the witnesses, I am satisfied, without reservation, that the evidence called for the Respondent is to be preferred over the evidence of the Applicant. I find that the three warnings issued to the Applicant were issued to him soon after the matters were raised with him, but the three warnings were not withdrawn. Mr Stone had indicated that he had hoped they could move on and not have any repeat of the sort of incidents which had resulted in warnings. I do not accept that the Respondent has, in any way, resiled from those warnings. The fact that the Respondent then entered into a contract with the Applicant does not reduce the standing of those warnings. I am also satisfied as to the appropriateness of those warnings.

In these circumstances, by the 9 September 1997, the Applicant was in a situation where his employment was in jeopardy should there be further cause for complaint. Subsequent to this there were two such incidents, both relating to the Applicant's failure to comply with the procedures set down in the Respondent's procedures manual, and of which the Applicant was advised and reminded on a number of occasions. I do not accept that, because of the size of the store and he being on his own running that store, the Applicant could not return to the cash register and record each sale as it was made. His conduct has left him open to accusations of theft which the Respondent, for compassionate reasons, has not pursued. It is quite clear that the Applicant has brought about his own downfall by this conduct. He appears not to have understood the need for the procedures, both for the appearance of propriety and for the security of resources of the Respondent. It is clear from the mystery shopper's reports that the Applicant not only breached the procedures with which he was required to comply but he has created a clear impression that he has taken money for his own personal use. In all of these circumstances, it has not been demonstrated by the Applicant that his employment had been unfairly terminated. On the

contrary, I am satisfied that the Respondent had cause to terminate his employment and went about doing so in a fair and reasonable manner. Accordingly, an Order of dismissal shall issue.

Appearances: The Applicant appeared on his own behalf

The Mr M O'Connor appeared on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stefan Ziola

and

Red Shield Industries.

No. 1818 of 1997.

COMMISSIONER P E SCOTT.

29 January 1998.

Order.

Having heard the Applicant on his own behalf and Mr M O'Connor on behalf of the Respondent the Commission pursuant to the powers vested in it under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed.

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

CONFERENCES—
Matters arising out of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

United Construction Pty Ltd

and

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

No. C 22 of 1998.

CHIEF COMMISSIONER W.S. COLEMAN.

20 January 1998.

Order.

WHEREAS the Commission received an application on Monday 19 January 1998 under S.44 of the Act and convened a conference on Tuesday 20 January 1998; and

WHEREAS the Commission was informed that industrial action was occurring on two operations being undertaken by the Applicant Company and that that action would continue until start up time on Thursday 22 January 1998; and

WHEREAS the Commission was informed that the industrial action had been taken by crane drivers employed by the Applicant Company on the BHP HBI Project and on the Nelson Point Capacity Expansion project over the Respondent organisations dispute with the Applicant Company over that organisations exclusion from Agreements on other sites and the organisation's understanding that its members would be excluded from work on those other sites; and

WHEREAS it appears to the Commission that prima facie the strike action being taken on each site is in breach of the Avoidance of Industrial Disputes provisions under paragraph 7.1 of the Hot Briquetted Iron Project Agreement No. AG 62 of 1997 and paragraph 2.6—Dispute Resolution Procedures of the Nelson Point and Finucane Island Capacity Expansion Project—Port Hedland Agreement 1997-1998, No. AG 113 of 1997 respectively;

NOW THEREFORE pursuant to S.44(5b) of the Act the Commission, to ensure that normal work resumes immediately, hereby orders—

THAT the Respondent organisation ensures that work resumes immediately and its members employed as Crane Drivers and participating in strike action at present of the BHP HBI Project and the Nelson Point Capacity Expansion Project respectively resume work immediately.

Provided further that the Respondent organisation or the Applicant Company on giving reasonable notice to the other may apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metropolitan Health Service Board, Sir Charles Gairdner Hospital

and

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

No. C 366 of 1997.

23 January 1998.

Order.

WHEREAS on 10 December 1997 the application cited herein was filed in the Commission requesting a conference pursuant to section 44 of the Industrial Relations Act, 1979 (the Act) regarding a dispute at Sir Charles Gairdner Hospital over the introduction of a delay in the date for the payment of wages; and

WHEREAS on 5 January 1998 a conference was held pursuant to section 44 of the Act whereat the Commission was made aware that a similar dispute at Royal Perth Hospital (RPH) had been resolved upon the acceptance of a recommendation from the Commission differently constituted; and

WHEREAS the undersigned Commissioner later ascertained that no written recommendation had issued in the matter involving RPH; and

WHEREAS the Commission ascertained that the recommendation made in relation to the RPH dispute is likely to provide a resolution suited to the circumstances of the present dispute; and

WHEREAS the Commission therefore made the recommendation—

THAT each employee at Sir Charles Gairdner Hospital whose pay cycle is to be altered, and who is a member of, or eligible to be a member of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch; The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; The Plumbers Gasfitters Employees' Union of Australia, Western Australian Branch; The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers, be given the additional option of being paid the amount of four days pay in advance; and

PROVIDED THAT any such monetary amount advanced to an employee shall be reimbursed to Sir Charles Gairdner Hospital upon the termination of any recipient employee's contract of employment; and

WHEREAS the Metropolitan Health Service Board did not agree to adopt the said recommendation;

AND WHEREAS the Commission reconvened the s.44 conference on 23 January 1998 however the dispute between the parties was unable to be resolved by further conciliation;

NOW THEREFORE the Commission, being satisfied that it will prevent the deterioration of industrial relations, and pursuant to the power conferred on it under s.44 of the Act hereby makes the interim orders—

THAT in addition to the options associated with the change to the date wages will be paid, which the Metropolitan Health Service Board has offered employees 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; The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; The Plumbers Gasfitters Employees' Union of Australia, Western Australian Branch and The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers, the Metropolitan Health Service Board shall allow such employees the additional option of being paid the amount of two days pay in advance; and

THAT the time allowed for such employees to declare to the Metropolitan Health Service Board the option each has selected, shall be extended to 27 January 1998; and

THAT these orders shall remain in force until the Commission finally hears and determines the dispute between the parties.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

CONFERENCES—
Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Liquor, Hospitality and
Miscellaneous Workers' Union,
Miscellaneous Workers Division,
Western Australian Branch

and

The Manager, Low Cost Cleaning.

No. CR 71 of 1997.

13 January 1998.

Order.

WHEREAS the application cited herein was unable to be resolved by conciliation at a conference conducted pursuant to section 44 of the Industrial Relations Act, 1979 (the Act) and on 14 March 1997 it was referred for hearing; and

WHEREAS on 20 March 1997, the Commission issued a notice that the matter would be heard on 5 May 1997; and

WHEREAS on 28 April 1997 the Commission received a facsimile from the applicant requesting that the matter be adjourned as the parties were attempting to negotiate a settlement; and

WHEREAS the agent for the respondent advised the Commission by facsimile, dated 28 April 1997, that the respondent had no objection to the adjournment; and

WHEREAS the hearing listed for 5 May 1997 was vacated and adjourned to a date to be fixed;

AND WHEREAS a Notice of Discontinuance was filed on 7 January 1998;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby wholly discontinued by leave of the Commission.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kenneth John Walker

and

Baracus Pty Ltd T/A Hannan's View Motel.

No. 2103 of 1997.

CHIEF COMMISSIONER W.S. COLEMAN.

27 January 1998.

Direction.

HAVING heard Mr C. Young on behalf of the Applicant and Mr C. Keys on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs that to facilitate the expeditious hearing of the matter that the Respondent make available for the inspection the following documents—

1. Letter of resignation given by the Applicant to the Respondent dated 1992.
2. Banking (deposit) details including Bank Deposit Books for Akudjura Restaurant Pty Ltd and Baracus Pty Ltd from the 4th September 1997 until 19th October 1997.
3. Contract of employment signed by the Applicant in October/November 1994.
4. Fortnightly "summary of wages" during the Applicant's period of employment with the Respondent.

Provided further that the documents be made available for inspection by the Applicant no later than 12 noon Friday 30 January 1998 at 190 Hay Street, East Perth.

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Megan Maree In de Braekt

and

Chief Executive Officer, Department of Productivity and
Labour Relations.

No. P 42 of 1997.

23 January 1998.

Order.

WHEREAS on 4 September 1997 the application cited herein was filed in the Commission pursuant to section 80E of the Industrial Relations Act, 1979 (the Act); and

WHEREAS on 20 November 1997 proceedings were held, whereat the respondent consented to discovery and production of documents; and

WHEREAS the respondent provided partial discovery and production of documents;

AND WHEREAS a further proceeding was conducted on 22 January 1998;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, and by consent, hereby orders—

THAT within fourteen days of the date of this Order, the Respondent's representative shall make and serve on the Applicant, a list of documents which have been in its possession, power or control relating to applications Nos. P 4 of 1997 and P 42 of 1997, by the Applicant, and do within the same period, make and file an affidavit sworn by duly authorised officer, verifying that list, and serving a copy thereof on the Applicant.

(Sgd.) C. B. PARKS,
[L.S.] Commissioner.

NOTICES— Appointments—

APPOINTMENT

ADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the Industrial Relations Act, 1979, hereby appoint, subject to the provisions of that Act, Commissioner P. E. Scott to be an additional Public Service Arbitrator for a period of one year from the 31st day of January, 1998.

Dated the 28th day of January 1998.

(Sgd.) W. S. COLEMAN,
Chief Commissioner.

The Industrial Relations Act 1979.

I, the undersigned, the HONOURABLE DAVID KINGSLEY MALCOLM AC, Chief Justice of Western Australia, in exercise of the powers conferred upon my by s.85(6) of the *Industrial Relations Act 1979*, DO HEREBY NOMINATE the HONOURABLE KEVIN HORACE PARKER, a Judge of the Supreme Court of Western Australia to be an Acting Deputy Presiding Judge of the Western Australian Industrial Appeal Court from 1 October to 31 October 1997 or until the completion of the hearing and determination of any proceedings he may be participating in at the expiration of that period.

As witness my hand this 30th day of September 1997.

DAVID K. MALCOLM,
Chief Justice of Western Australia.

The Industrial Relations Act 1979.

I, the undersigned, the HONOURABLE DAVID KINGSLEY MALCOLM AC, Chief Justice of Western Australia, in exercise of the powers conferred upon my by s.85(6) of the *Industrial Relations Act 1979*, DO HEREBY NOMINATE the HONOURABLE KEVIN HORACE PARKER, a Judge of the Supreme Court of Western Australia to be an Acting Deputy Presiding Judge of the Western Australian Industrial Appeal Court from 1 February to 31 March 1998 or until the completion of the hearing and determination of any proceedings he may be participating in at the expiration of that period.

As witness my hand this 23rd day of January 1998.

DAVID K MALCOLM,
Chief Justice of Western Australia.

NOTICES— Cancellation of Awards/ Agreements/Respondents— Under Section 47—

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the Building Trades Award 1968 No. 31 of 1966,

namely

Stramit Pty Ltd

on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 103 on all correspondence.

Dated 3 February 1998.

J. SPURLING,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the Government Officers Salaries, Allowances and Conditions Award 1989, No. PSA A3 of 1989, namely Western Australian Meat Commission on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 184 on all correspondence.

Dated 3 February 1998.

J. SPURLING,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to cancel out the following award, namely the Concrete Masonry Block Manufacturing Award 1969 No. 28 of 1969 on the grounds that there are no longer any persons employed under the provisions of that award.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 686 of 1977 Part 164 on all correspondence.

Dated 3 February 1998.

J. SPURLING,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following party/respondent to the Government Officers Salaries, Allowances and Conditions Award 1989, No. PSA A3 of 1989, namely Western Australian Meat Commission on the grounds that the respondent is no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980 Part 184 on all correspondence.

Dated 3 February 1998.

J. SPURLING,
Registrar.

NOTICE.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following parties/respondents to the Retail Pharmacists' Award, 1966, No. 23 of 1965, namely

1. Perth United Friendly Societies
2. Fremantle Friendly Societies
3. Boulder United Friendly Societies
4. Boans Limited

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980, Part 23 on all correspondence.

Dated 5 February 1998.

J. SPURLING,
Registrar.

NOTICE

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS
COMMISSION

TAKE NOTICE that the Commission acting pursuant to Section 47 of the Industrial Relations Act 1979, intends by order, to strike out the following parties/respondents to the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, No. R32 of 1976, namely—

1. Cockburn Cement Ltd
2. Miss Maud Swedish Pastry House
3. Knox Schlapp Pty Ltd

on the grounds that the respondents are no longer operating in the industry or employing persons in the industry to which the award applies.

Any person who has sufficient interest in the matter may, within 30 days of the date of the publication of this notice object to the Commission making such order.

Please quote File No. 76 of 1980, Part 196 on all correspondence.

Dated 10 February 1998.

J. SPURLING,
Registrar.